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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Doc. No. AMS–FV–08–0062; FV08–945–1 FR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon and Imported Irish Potatoes; Relaxation of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule relaxes the size requirements for potatoes handled under the marketing order for Idaho-Eastern Oregon potatoes and for long type potatoes imported into the United States. This rule revises the size requirements to allow: Creamer size (¾ inch to 1⅝ inches diameter) for all varieties of potatoes to be handled if the potatoes otherwise meet U.S. No. 1 grade; and round type potatoes to be handled without regard to size so long as the size is specified on the container in connection with the grade. The changes are intended to improve the handling and marketing of Idaho-Eastern Oregon potatoes and increase returns to producers. The changes would also allow the importation of Creamer size long type potatoes under regulations as authorized by section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: *Effective Date:* October 5, 2009.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This final rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the terms of the marketing order, fresh market shipments of Idaho-Eastern Oregon potatoes are required to be inspected and are subject to grade, size, quality, maturity, pack, and container requirements. This final rule relaxes the current size requirements for potatoes handled under the order. As required under section 8e of the Act, the addition of the Creamer size allowance for U.S. No. 1 grade potatoes to the size requirements contained in the marketing order regulations also changes the import regulations for imported long type potatoes.

At its meeting on June 9, 2008, the Committee unanimously recommended relaxing the size requirements for all varieties of U.S. No. 1 grade potatoes. Additionally, the Committee recommended adding a provision to the current requirements that would allow handling of U.S. No. 2 or better grade round type potatoes without regard to size so long as the size is specified on the container in connection with the grade.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of grade, size, quality, and maturity regulations applicable to the handling of potatoes.

Section 945.341 establishes minimum grade, size, and maturity requirements for potatoes handled subject to the order. Currently, the order's handling regulations specify the size requirement for round type potato varieties handled subject to the order to be 1⅞ inches minimum diameter. All other varieties of potatoes handled must be 2 inches minimum diameter, or 4 ounce minimum weight, provided that at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier. Additionally, the order's handling regulations allow the handling of Size B potatoes (1½ to 2¼ inches diameter), as established in the United States Standards for Grades of Potatoes (7 CFR 51.1540–51.1566), so long as the

potatoes otherwise meet the requirements of U.S. No. 1 grade.

This final rule relaxes the size requirements of potatoes regulated under the order to allow the handling of Creamer size potatoes (¾ to 1⅝ inches diameter, as defined in the United States Standards for Grades of Potatoes), if those potatoes otherwise meet the requirements of U.S. No. 1 grade. In addition, this rule adds a provision to the existing size requirements to allow U.S. No. 2 grade or better round type potatoes to be handled without regard to size, so long as the size is specified on the container in connection with the grade. This change is consistent with the size requirements for U.S. No 1 and U.S. No. 2 grade potatoes as contained in the United States Standards for Grades of Potatoes.

Committee members stated that consumer demand for small potatoes has been increasing in recent years and now makes up a significant percentage of total domestic potato consumption. The trend has also increased domestic market demand for potatoes smaller than currently allowed by the size requirements prescribed in the order. This shift in consumer preference has been recognized with the inclusion of the new Creamer size classification in the most recent update of the United States Standards for Grades of Potatoes, which became effective April 21, 2008 (73 FR 15052). The market for smaller potatoes is currently being supplied by potato production areas outside the order's production area and through limited special purpose shipments authorized under § 945.341(e)(iii).

Committee members believe that it is important that the handling regulations be changed to recognize the significant increase in the demand for small size potatoes. They believe that relaxing the minimum size requirements for certain grades and packs of potatoes will enable handlers to market a larger portion of the potato crop in fresh market outlets, meet the supply needs of potato buyers, and satisfy the purchasing preferences of potato consumers.

According to the Committee, quality assurance is very important to the industry and to its customers. Providing the public with acceptable quality produce that is appealing to the consumer on a consistent basis is necessary to maintain consumer confidence in the marketplace. The Committee believes that relaxing the size requirements, while maintaining all other regulatory requirements, will preserve their commitment to quality while allowing the industry to adapt to changing consumer preferences.

The Committee reported that potato size is a significant consideration of potato buyers. Providing them the sizes desired by their customers is important to promoting potato sales. In addition, small size potatoes tend to command higher prices in the market, providing producers and handlers the opportunity to increase revenues. This change is expected to improve the marketing of Idaho-Eastern Oregon potatoes, increase the volume of potatoes handled, and enhance overall returns to producers.

Section 8e provides the authority for the regulation of certain imported commodities whenever those same commodities are regulated by a domestic marketing order. Potatoes are one of the commodities specifically covered by section 8e in the Act. In addition, section 8e provides that whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas are concurrently in effect, imports must comply with the provisions of the order which regulates the commodity produced in the area with which the imported commodity is in the ''most direct competition.'' Section 980.1(a)(2)(iii) contains the determination that imports of long type potatoes during each month of the year are in most direct competition with potatoes of the same type produced in the area covered by the order.

Minimum grade, size, quality, and maturity requirements for potatoes imported into the United States are currently in effect under § 980.1. Section 980.1(b)(3) provides that, through the entire year, the grade, size, quality, and maturity requirements of Marketing Order No. 945 applicable to potatoes of all long types shall be the respective grade, size, quality, and maturity requirements for imported potatoes of all long types. This rule relaxes the size requirements for imports of U.S. No. 1 grade, long type potatoes. Currently, the minimum size requirement for imported long type U.S. No. 1 grade potatoes is Size B (1½ to 2¼ inches). This change allows importation of Creamer size (¾ inch to 1⅝ inches) long type potatoes if the potatoes otherwise meet the requirements of the U.S. No. 1 grade standard.

Final Regulatory Flexibility Analysis

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

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

Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products.

There are approximately 46 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the order and about 900 potato producers in the regulated area. In addition, there are approximately 255 importers of all types of potatoes, many of which import long types, who are subject to regulation under the Act. Small agricultural service firms, which include potato handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Based on a 2005–2007 average fresh potato production of 32,242,467 hundredweight as calculated from Committee records, a three-year average of producer prices of $6.95 per hundredweight reported by the National Agricultural Statistics Service (NASS), and 900 Idaho-Eastern Oregon potato producers, the average annual producer revenue is approximately $248,984. It can be concluded, therefore, that a majority of these producers would be classified as small entities.

In addition, based on Committee records and 2005–2007 f.o.b. shipping point prices predominantly ranging from $5.00 to $26.00 per hundredweight reported by USDA's Market News Service (Market News), many of the Idaho-Eastern Oregon potato handlers do not ship over $7,000,000 worth of potatoes. In view of the foregoing, it can be concluded that a majority of the handlers would be classified as small entities as defined by the SBA. The majority of potato importers may be classified as small entities as well.

This final rule relaxes the size requirements of potatoes regulated under the order to allow the handling of Creamer size potatoes, if those potatoes otherwise meet the requirements of U.S. No. 1 grade. Additionally, this final rule adds a provision to the existing size requirements that allows round type potatoes to be handled without regard to

size, so long as the size is specified on the container in connection with the grade.

Pursuant to section 8(e), this final rule also relaxes the size requirements of the import regulations to allow importation of Creamer size, long type potatoes if the potatoes otherwise meet the requirements of U.S. No. 1 grade. This final rule will not affect the current import requirements for red-skinned, round type or all other round type potatoes and will not require any language changes to § 980.1 of the vegetable import regulations.

Committee members believe it is important to modify the handling regulations to recognize the significant increase in the demand for smaller size potatoes. They believe that relaxing the minimum size requirements will enable handlers to market a larger portion of the crop in fresh market outlets and to meet the needs of consumers and produce buyers. Market mechanisms have indicated that smaller minimum diameter potatoes are desirable, as evidenced by the increasing demand for such potatoes, and consistently command higher prices in relation to larger diameter potatoes. This action will better ensure that the growing market for smaller sized potatoes continues to be adequately supplied. This change is expected to improve the marketing of Idaho-Eastern Oregon potatoes and increase returns to producers.

Authority for this proposed rule is provided in §§ 945.51 and 945.52 of the order. Section 945.341(a)(2) of the order's handling regulations prescribes the size requirements. Relevant import regulations are contained in §§ 980.1 and 980.501.

At the June 9, 2008, meeting, the Committee discussed the impact of this change on handlers and producers. The proposal is a relaxation of current regulation and, as such, should either generate a positive impact or no impact on industry participants. The Committee did not foresee a situation in which this proposed change would negatively impact either handlers or producers.

Neither the Committee nor NASS compile statistics exclusively relating to the production of small size potatoes. The Committee has relied on the opinions of the producers and the handlers familiar with that market to draw its conclusions. Information presented in the June 9 meeting suggests that there is increasing domestic consumer demand for small size potatoes. There also appears to be a trend in domestic consumer preference toward increasingly smaller diameter potatoes. This is in contrast to the demand for larger size potatoes, which has been essentially static for several years.

The addition of the Creamer size designation to the United States Standards for Grades of Potatoes by the USDA Fresh Products Branch (Fresh Products) supports the Committee's position that market demand for small size potatoes is increasing. Prior to the recent changes made in the United States Standards for Grades of Potatoes, the smallest potato size designation was Size B, with a minimum diameter of 1½ inches. Fresh Products determined that a smaller potato size designation was necessary to accommodate emerging marketing trends in the potato industry. The addition of the Creamer size designation reduced the minimum potato size, as determined in the United States Standards for Grades of Potatoes, to ¾ inches diameter.

The Committee reported that smaller size potatoes of good quality receive premium prices. While USDA Market News does not report on round type potatoes or on small size, long type potatoes in the Idaho-E. Oregon area, but does report on activity in other regions producing both round types and smaller sizes of potatoes, reports from other areas do show that the higher grade, small size round type potatoes consistently command higher prices than larger potatoes. It would be reasonable to expect price trends between production areas to move together, given that the regions would compete with each other for sales in the domestic market.

Relaxing the size requirement will allow producers and handlers of potatoes under the order to ship a greater percentage of their crop to the fresh market. In addition, shipments of the smaller size potatoes that are allowed as a result of this rule change are expected to command higher prices, which should increase total net returns for those firms who chose to ship. The benefits derived from this rule change are not expected to be disproportionately more or less for small handlers or producers than for larger entities.

Additionally, this rule will allow potato importers to respond to the changing demand of the domestic consumers. The market's increasing preference for small size potatoes applies to imported potatoes as well as domestic potatoes. Thus, importers will benefit by increasing sales to this emerging domestic market segment.

The Committee discussed alternatives to this proposed change. One alternative included making no change at all to the current regulation. The Committee did not believe that maintaining the current requirements would serve to meet the needs of consumers or buyers, and would not ultimately be of any benefit to the industry. Another alternative discussed was to allow smaller size potatoes to continue to be handled exempt from regulation under the special purpose shipment provisions provided within the order. This option was also rejected because it could potentially allow lower quality potatoes to be shipped into the fresh market. Lastly, the Committee considered further relaxing the size requirement for potatoes beyond what is proposed in this rule. The discussion centered on whether to extend the relaxation to U.S. No. 2 grade potatoes as well. The Committee believed that the proposed relaxation is sufficient to adequately supply the growing market demand for smaller size potatoes while still maintaining high quality standards for such potatoes. After consideration of all the alternatives, the Committee believes that the proposed changes contained herein would provide the greatest amount of benefit to the industry with the least amount of cost.

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

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

Further, the Committee's meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the June 9, 2008, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on May 22, 2009 (74 FR 23958). Copies of the rule were mailed or sent via facsimile to all Committee members and potato handlers and importers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending July 21, 2009,

was provided to allow interested persons to respond to the proposal.

One comment was received. The commenter, representing a Canadian association of producers and handlers, fully supported the proposal to relax the size requirements.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth above, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

■ 1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 945.341, paragraphs (a)(2)(i) and (a)(2)(iii) are revised to read as follows:

§ 945.341 Handling regulation.

* * * * *

(a) * * *

(2) * * *

(i) *Round varieties.* 1⅞ inches minimum diameter, unless otherwise specified on the container in connection with the grade.

* * * * *

(iii) *All varieties, U.S. No. 1 grade or better.* (A) Size B (1½ to 2¼ inches diameter).

(B) Creamer (¾ to 1⅝ inches diameter).

* * * * *

Dated: August 31, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–21354 Filed 9–3–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 980

[Doc. No. AMS FV–08–0097; FV09–980–1 FR]

Vegetables, Import Regulations; Partial Exemption to the Minimum Grade Requirements for Fresh Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule provides a partial exemption to the minimum grade requirements under the tomato import regulation. The Florida Tomato Committee (Committee), which locally administers the marketing order for tomatoes grown in Florida (order), recommended the change for Florida tomatoes. The order's administrative rules and regulations were recently revised to exempt Vintage Ripes™ tomatoes (Vintage Ripes™) from the shape requirements associated with the U.S. No. 2 grade. A corresponding change to the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This rule provides the same partial exemption for Vintage Ripes™ under the import regulation so it conforms to the regulations under the order.

DATES: *Effective Date:* October 5, 2009.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793; or E-mail: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' which provides that whenever certain specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

USDA is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This final rule provides a partial exemption to the minimum grade requirements for Vintage Ripes™ imported into the United States. Absent an exemption, the import requirements specify that tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold into the fresh market. A final rule amending the rules and regulations under the order exempting Vintage Ripes™ from the shape requirements associated with the U.S. No. 2 grade was issued separately by USDA (74 FR 17591, April 16, 2009). This rule provides the same partial exemption under the import regulation so it conforms to the regulations under the order.

Section 966.52 of the order provides the authority to establish grade requirements for Florida tomatoes. Section 966.323 of the order specifies, in part, the minimum grade requirements for tomatoes grown in Florida. Section 980.212 specifies the corresponding import requirements. Form and shape represent part of the elements of grade. The current minimum grade requirement for Florida tomatoes and for imported tomatoes is a U.S. No. 2. The specifics of this grade requirement are listed under the U.S. Standards for Grades of Fresh Tomatoes (7 CFR 51.1855–51.1877).

The U.S. Standards for Grades of Fresh Tomatoes (Standards) specify the criteria tomatoes must meet to grade a U.S. No. 2, including that they must be

reasonably well formed, and not more than slightly rough. These two elements relate specifically to the shape of the tomato. The definitions section of the Standards defines reasonably well formed as not decidedly kidney shaped, lopsided, elongated, angular, or otherwise decidedly deformed. The term slightly rough means that the tomato is not decidedly ridged or grooved. This rule would amend § 980.212 to exempt Vintage Ripes™ from these shape requirements as specified under the grade for a U.S. No. 2.

Vintage Ripes™ are a trademarked tomato variety bred to look and taste like an heirloom-type tomato. One of the characteristics of this variety is its appearance. Vintage Ripes™ are often shaped differently from other round tomatoes. Depending on the time of year and the weather, Vintage Ripes™ are concave on the stem end with deep, ridged shoulders. They can also be very misshapen, appearing kidney shaped and lopsided. Because of this variance in shape and appearance, Vintage Ripes™ have difficulty meeting the shape requirements of the U.S. No. 2 grade.

In addition, the cost of production and handling for these tomatoes tends to be higher when compared to standard commercial varieties. The shoulders on Vintage Ripes™ are easily damaged, requiring additional care during picking and handling. These tomatoes are also more susceptible to disease. Consequently, Vintage Ripes™ require greater care in production to keep injuries and blemishes to a minimum. Still, when compared to standard commercial varieties, even with taking special precaution, larger quantities of these tomatoes are left in the field or need to be eliminated in the packinghouse to ensure a quality product. Losses can approach 50 percent or higher for Vintage Ripes™. With the higher production costs and the reduced packout, these tomatoes tend to sell at a higher price point than standard round tomatoes.

Heirloom-type tomatoes have been gaining favor with consumers. Vintage Ripes™ were bred specifically to address this demand. However, with its difficulty in meeting established shape requirements, and its increased cost of production, producing these tomatoes for market may not be financially viable without an exemption. In order to make more of these specialty tomatoes available for consumers, the Committee agreed to a change which provides an exemption for Vintage Ripes™ from the shape requirements of the U.S. No. 2 grade. This exemption is the same as previously provided for a similar type tomato (72 FR 1919, January 17, 2007).

This rule only provides imported Vintage Ripes™ with a partial exemption from the grade requirements under the import regulation. Consequently, Vintage Ripes™ are only exempt from the shape requirements of the grade and are still required to meet all other aspects of the U.S. No. 2 grade. Vintage Ripes™ also continue to be required to meet all other requirements under the import regulation, such as size and inspection.

Prior to the 1998–99 season, the Committee recommended that the minimum grade be increased from a U.S. No. 3 to a U.S. No. 2. A conforming change was also made to the import regulation. Committee members agree that increasing the grade requirement has been very beneficial to the industry and in the marketing of tomatoes. It is important to the Committee that these benefits be maintained. There was some industry concern that providing a partial exemption for shape for an heirloom-type tomato could result in the shipment of U.S. No. 3 grade tomatoes of standard commercial varieties, contrary to the objectives of the exemption and the order.

To ensure this exemption does not result in the shipment of U.S. No. 3 grade tomatoes of other varieties, this exemption only applies to Vintage Ripes™ covered under the Agricultural Marketing Service's Identity Preservation (IP) program. The IP program was developed by the Agricultural Marketing Service to assist companies in marketing products having unique traits. The program provides independent, third-party verification of the segregation of a company's unique product at every stage, from seed, production and processing, to distribution. This exemption is contingent upon the Vintage Ripes™ maintaining positive program status under the IP program and continuing to meet program requirements. As such, this should help ensure that only Vintage Ripes™ are shipped under this exemption.

Section 8e of the Act provides that when certain domestically produced commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. A final rule amending the rules and regulations under the order exempting Vintage Ripes™ from the shape requirements associated with the U.S. No. 2 grade was issued separately by USDA on April 16, 2009 (74 FR 17591). This rule amends § 980.212 of the import requirements to bring the tomato import regulation into conformity with the changes to the regulations issued under the order.

Final Regulatory Flexibility Analysis

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

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

There are approximately 200 importers of tomatoes subject to the regulation. Small agricultural service firms, which include tomato importers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000 (13 CFR 121.201). Based on information from the Foreign Agricultural Service, USDA, the dollar value of imported fresh tomatoes ranged from around $1.07 billion in 2005 to $1.22 billion in 2007. Using these numbers, the majority of tomato importers may be classified as small entities.

Mexico, Canada, and the Netherlands are the major tomato producing countries exporting tomatoes to the United States. In 2007, shipments of tomatoes imported into the United States totaled 1.7 million metric tons. Mexico accounted for 949,695 metric tons, 111,697 metric tons were imported from Canada, and 5,147 metric tons arrived from the Netherlands.

This final rule provides a partial exemption to the minimum grade requirements for Vintage Ripes™ imported into the United States. Absent an exemption, the import requirements for tomatoes specify that tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold into the fresh market. A final rule amending the rules and regulations under the order exempting Vintage Ripes™ from the shape requirements associated with the U.S. No. 2 grade was issued separately by USDA (74 FR 17591, April 16, 2009). Under section 8e of the Act, imports of tomatoes have to meet the same grade, size, quality, and maturity requirements

as under the order. This rule provides the same partial exemption under the import regulation so it conforms to the changes under the order.

This action represents a small increase in costs for imports of Vintage Ripes™, primarily from costs associated with developing and maintaining an IP program. However, the costs are minimal. This results in increased sales of Vintage Ripes™. Consequently, the benefits of this action more than offset the associated costs.

This final rule will not impose any additional reporting or recordkeeping requirements beyond the IP program on either small or large tomatoes importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Additionally, except for applicable domestic regulations, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. Further, the public comment received concerning the proposal did not address the initial regulatory flexibility analysis.

A proposed rule concerning this action was published in the **Federal Register** on March 9, 2009 (74 FR 9969). The rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending May 8, 2009, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period in response to the proposal. The commenter agreed that heirloom tomatoes are gaining favor in the marketplace, and recognized that such tomatoes have difficulty meeting size and shape requirements under the order. He stated that the exemption provided in this rule should include all heirloom tomatoes.

As previously discussed, the Committee is concerned that granting broad exemptions for unspecified heirloom-type tomatoes could result in the shipment of U.S. No. 3 grade tomatoes of standard commercial varieties, weakening the integrity and the effectiveness of the order. To prevent this and ensure that only the specified varieties are shipped under the exemption granted, the exemption has been tied to continued participation in the IP program developed by USDA. Further, this is the second exemption of this type to be issued, and other producers of heirloom-type tomatoes are free to seek similar exemptions. Therefore, this rule exempts only Vintage Ripes™, and the exemption is contingent upon maintenance of positive program status under USDA's IP program.

Accordingly, no changes will be made to the rule as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.o/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

■ For the reasons set forth in the preamble, 7 CFR part 980 is amended as follows:

PART 980—VEGETABLES; IMPORT REGULATIONS

■ 1. The authority citation for 7 CFR part 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 980.212 [Amended]

■ 2. In § 980.212, paragraph (b)(1) all references to ''UglyRipe™'' are revised to read ''UglyRipe™ and Vintage Ripes™''.

Dated: August 31, 2009.

Rayne Pegg,

Administrator.

[FR Doc. E9–21353 Filed 9–3–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3430

RIN 0524–AA28

Competitive and Noncompetitive Non-Formula Federal Assistance Programs—General Award Administrative Provisions and Program-Specific Administrative Provisions for the Specialty Crop Research Initiative

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is publishing as a final rule one set of administrative requirements that contain elements common to all of the competitive and noncompetitive non-formula Federal assistance programs the Agency administers. In a relatively short period of time, this allows CSREES to apply basic rules to Federal assistance programs that had been operating without them, including new non-formula Federal assistance programs created by the enactment of the Food, Conservation, and Energy Act of 2008 (FCEA) and to efficiently implement changes to programs with existing regulations as required by FCEA. The provisions in subparts A through E serve as a single Agency resource codifying current practices simply and coherently for almost all CSREES competitive and noncompetitive non-formula Federal assistance programs except the Small Business Innovation Research (SBIR) Program and the Veterinary Medicine Loan Repayment Program (VMLRP). As specific rules are developed for each CSREES Federal assistance program, CSREES will propose adding a subpart for that Federal assistance program to this regulation. This final rule is published with a first set of program-specific Federal assistance regulations as subpart F for the Specialty Crop Research Initiative, authorized under section 412 of the Agricultural Research, Extension, and Education Reform Act of 1998, as added by section 7311 of FCEA.

DATES: *Effective Date:* September 4, 2009, except that §§ 3430.56 and 3430.58(b) shall apply only to a grant or cooperative agreement awarded on or after September 4, 2009 or to a grant or cooperative agreement awarded prior to that date that receives additional funds

from the awarding agency on or after that date.

FOR FURTHER INFORMATION CONTACT: Ellen Danus, Chief, Policy and Oversight Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2299; 1400 Independence Avenue, SW., Washington, DC 20250–2299; Voice: 202–205–5667; Fax: 202–401–7752; E-mail: *edanus@csrees.usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

Authority

This rulemaking is authorized by section 1470 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended, Public Law 95–113 (7 U.S.C. 3316). It furthers the streamlining and standardization efforts initiated by the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106–107 (31 U.S.C. 6101 note), which sunset in November 2007, and is in accordance with the efforts of CSREES and the U.S. Department of Agriculture (USDA) to streamline and simplify the entire Federal assistance process while meeting the ever-increasing accountability and transparency standards.

Context

CSREES has published administrative provisions specific to some of the non-formula Federal assistance programs it administers. These provisions appear in 7 CFR parts 3400, Special Research Grants Program; 3401, Rangeland Research Grants Program; 3402, Food and Agricultural Sciences National Needs Graduate and Postgraduate Fellowship Grants Program; 3405, Higher Education Challenge Grants Program; 3406, 1890 Institution Capacity Building Grants Program; 3411, National Research Initiative Competitive Grants Program; and 3415, Biotechnology Risk Assessment Research Grants Program. This final rule applies to all competitive and noncompetitive non-formula Federal assistance programs administered by CSREES (including the programs in 7 CFR parts 3400 through 3402, 3405, 3406, 3411, and 3415), except for the Small Business Innovation Research (SBIR) Program with implementing regulations codified at 7 CFR part 3403 and the Veterinary Medicine Loan Repayment Program (VMLRP) with implementing regulations codified at 7 CFR part 3431. Where the administrative provisions in this regulation conflict with existing regulations for CSREES-administered non-formula Federal assistance programs (*i.e.*, 7 CFR parts 3400 through 3402, 3405, 3406, 3411, and 3415), this regulation will supersede.

Purpose

A primary function of CSREES is the fair, effective, and efficient administration of Federal assistance programs implementing agricultural research, education, and extension programs. The Agency's development and publication of regulations for its non-formula Federal assistance programs serve to enhance its accountability and standardize procedures across the Federal assistance programs it administers while providing transparency to the public. More than thirty Federal assistance programs administered by CSREES are not currently governed by administrative provisions; and CSREES' existing administrative provisions fail to take advantage of basic similarities between non-formula Federal assistance programs and the Federal government-wide efforts to standardize and streamline the entire Federal assistance process from pre-award through closeout and post-award. The cumulative effect is duplicative, confusing language, contrary to the needs and demands of applicants and awardees for consistent and clear Federal assistance policies and procedures.

This rulemaking attempts to solve the problem by addressing the elements common to all of the competitive and noncompetitive Federal assistance programs CSREES administers. In this way, the Agency is applying basic rules to Federal assistance programs that had been operating without them and can quickly implement regulations for any new program. In addition, this rule serves as a single resource, except for the SBIR, VMLRP, and formula grant programs, that codifies current processes simply and coherently.

This final rule allows CSREES to finally document and codify the Federal assistance policies and business practices it sought to standardize and streamline in concert with other Federal grant-making agencies in response to various laws (including Pub. L. 106–107), regulations, and Presidential, Departmental, and Agency directives and initiatives. As of fiscal year 2008, CSREES published program solicitations or Requests For Applications (RFAs) in an Agency-wide template (incorporating the Federal government-wide requirements and standards) on the Grants.gov Web site; accepted all applications (using the SF–424 form families) via Grants.gov; required all competitive and noncompetitive non-formula Federal assistance programs to submit all progress and final technical reports via the Current Research Information System (CRIS); and as of July 1, 2008, implemented a more comprehensive and updated set of award terms and conditions that are consistent with other Federal grant-making agencies, yet address the unique needs of CSREES programs and USDA and CSREES business practices. This final rule also addresses various issues related to audit findings and recommendations from the USDA Office of Inspector General (*e.g.*, timely closeout of expired awards and restriction of grant funds 90 days after the expiration date). In response to Office of Management and Budget (OMB) Circular A–123 on Internal Controls, Improper Payments Information Act of 2002 (IPIA) (Pub. L. 107–300), and other oversight and monitoring requirements, CSREES seeks to clearly establish and implement monitoring and oversight procedures and systems to ensure that Federal assistance funds are being efficiently and effectively expended in accordance with program authorities and Federal assistance laws and regulations.

Alternatives

CSREES considered publishing separate rules for each uncovered Federal assistance program. However, this would defeat the purposes of recent laws, regulations, and Presidential, Departmental, and Agency initiatives to standardize and streamline the entire award cycle. Furthermore, it would be a time consuming practice to draft and publish a final rule for each uncovered program. On the other hand, this final rule provides clearer, more consistent and effective Federal assistance policies and procedures for the awardee that will contribute to more efficient and effective program delivery and potentially result in less audit findings and disallowed costs. The Agency expects this final rule to contribute to and facilitate more consistent processes across Federal assistance programs within CSREES and across USDA and the Federal Government. By making better use of standard administrative provisions, CSREES also anticipates being able to publish clearer and more consistent RFAs within a shorter time frame and provide applicants, awardees, staff, and the public with one comprehensive set of administrative provisions.

Compliance

As implemented, applicants who fail to comply with the new administrative provisions may not have their applications considered for funding by CSREES, may have their award suspended or terminated, or may be billed for disallowed costs. This penalty provision can be enforced and is critical to CSREES' fair, effective, and efficient administration of Federal assistance programs. It is anticipated that having one set of administrative provisions codified in one part will assist applicants and awardees in understanding and complying with Federal assistance laws and regulations, as well as the intent of the authorizing legislation.

Organization

CSREES organized the regulation as follows: Subparts A through E provide administrative provisions for all competitive and noncompetitive non-formula awards. Subparts F and thereafter apply to specific CSREES programs.

CSREES is, to the extent practical, using the following subpart template for each program authority: (1) Applicability of regulations; (2) purpose; (3) definitions (those in addition to or different from § 3430.2); (4) eligibility; (5) project types and priorities; (6) funding restrictions; and (7) matching requirements. Subparts F and thereafter contain the above seven components in this order, to the extent practical. Additional sections may be added for a specific program if there are additional requirements or a need for additional rules for the program (*e.g.*, additional reporting requirements).

Subpart F—Specialty Crop Research Initiative

As stated above, this final rulemaking includes the program-specific rules as subpart F for the Specialty Crop Research Initiative (SCRI), which is authorized under section 412 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7632), as added by section 7311 of FCEA.

Through this program-specific regulation under subpart F, § 3430.202, CSREES is defining ''integrated project,'' ''specialty crop,'' and ''trans-disciplinary.'' Subpart F, at § 3430.203, also specifies the eligible program applicants. Section 3430.204 provides that CSREES can develop and implement new activities and focus areas not identified in § 3430.201 based on input provided by stakeholders and as determined by CSREES. Section 3430.205 states the specific program funding restrictions and provides that, subject to § 3430.54, indirect costs are allowable. Section 3430.206 states the specific matching requirements for this program, that these matching requirements cannot be waived, and that use of indirect costs as in-kind matching contributions is subject to § 3430.52. Section 3430.207 states that the term of a SCRI grant shall not exceed 10 years.

II. Response to Comments and Revisions Included in Final Rule

Response to Comments

On August 1, 2008, CSREES published 7 CFR 3430, subparts A through F, as an interim rule with a request for comments. CSREES received four comments on the interim rule during the 90-day comment period from the following organizations: American Society for Horticulture Science; Farm Bill Implementation Assistance Committee, National Association of State Universities and Land-Grant Colleges (NASULGC); Purdue University; and The Council on Government Relations, which submitted a joint statement with NASULGC. All four comments focused on the 100 percent matching requirement for the SCRI program and the institutions' inability to use unrecovered indirect costs in excess of the statutory cap of 22 percent as part of the matching contribution for the Federal funds awarded. Three of the organizations were speaking on behalf of their member institutions. With the application of these regulations, many of the institutions felt that they were, in essence, contributing more than half of the cost of the project effort and that CSREES was misinterpreting and misapplying the U.S. Office of Management and Budget (OMB) Federal assistance circulars as well as Federal-wide and Departmental assistance regulations.

In promulgating these regulations, CSREES strived to provide the maximum flexibility and to limit both the financial and administrative burden to its applicants and awardees while adhering to the intent of the legislation and accountability standards. CSREES has determined that, absent specific statutory authority, it has no authority to allow institutions to use indirect costs in excess of the maximum allowed indirect cost rate (*e.g.,* 22 percent for grants, pursuant to 7 U.S.C. 3310) to satisfy the matching requirement. This has been the longstanding policy of CSREES with regard to matching requirements and the use of indirect costs as a matching contribution. However, in response to the community, Congress enacted section 736 as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2009 (Pub. L. 111–8, div. A), to allow institutions to use unrecovered indirect costs not otherwise charged against the grant toward the matching contribution for the SCRI program, consistent with the indirect cost rate approved for the recipient. Consequently, because section 736 applies only in FY 2009, the appropriate sections of the final rule have not been revised in this regard (althoughf §§ 3430.52, 3430.205, and 3430.206 have been modified as a matter of clarification). This new authority for FY 2009 is explained, however, in the FY 2009 RFA for this program. Subpart F will be revised if and when this provision becomes a permanent change to the SCRI authority.

In addition, § 3430.54 is revised to state that the indirect cost rates for grants and cooperative agreements are determined in accordance with the applicable assistance regulations and cost principles unless superseded by another authority.

Under applicable assistance regulations and cost principles, the negotiated indirect cost rates would apply to both grants and cooperative agreements administered by CSREES. However, section 1462(a) of NARETPA (7 U.S.C. 3310(a)) establishes a statutory indirect cost rate cap of 22 percent for any CSREES grant. Prior to the FCEA amendment increasing the cap from 19 to 22 percent, a general provision of the annual appropriations act set the indirect cost rate cap for competitive grants at 20 percent; however, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2009, did not include that general provision for FY 2009. The FY 2009 appropriations act did, however, include a general provision setting the indirect cost rate cap for cooperative agreements to nonprofit institutions (including educational institutions) at 10 percent for awards supported with these appropriated funds.

Revisions Included in the Final Rule

This final rule was revised throughout to apply this regulation to not only grants but to Federal assistance cooperative agreements, which was the original intention in the interim rule.

Subpart A of the regulation was revised slightly to add definitions for award, cooperative agreement, and program announcement to § 3430.202.

Subpart B was revised to clearly define the differences between optional and required letters of intent and to clarify the eligibility of foreign entities (*i.e.,* individuals and foreign organizations). Subpart C was revised to make several minor clarifications regarding the type of review for competitive versus noncompetitive awards, and subpart D was revised by adding § 3430.42 on special award conditions.

Subpart E was revised to add the U.S. Department of the Treasury's Automated Standard Application for Payments (ASAP) system as an electronic payment system, as CSREES is currently transitioning to this system as part of USDA's implementation of a new accounting system, Financial Management Modernization Initiative (FMMI), on October 1, 2009. Along with this implementation, CSREES is currently exploring options for the implementation of the Federal Financial Report (FFR) required by October 1, 2009, as CSREES has been using the U.S. Department of Health and Human Services' Payment Management System (DHHS–PMS) since January 1991. Currently, awardees provide their PSC–272, Federal Cash Transactions Reports, through the DHHS–PMS. Once the business process for the FFR is established, CSREES will revise its Terms and Conditions and will update this subpart which will coincide with the revisions associated with the establishment of the National Institute of Food and Agriculture effective October 1, 2009.

Subpart E also was revised to make clarifying changes regarding indirect cost rates and use of indirect costs as in-kind matching contributions (§§ 3430.52(b), 3430.54). The previous sections on technical reporting (§ 3430.54), financial reporting (§ 3430.55), and project meetings (§ 3430.56) were renumbered as §§ 3430.55, 3430.56, and 3430.57, respectively. The previous section on hearings and appeals (§ 3430.57) was expanded and added as a new § 3430.62.

CSREES also added sections to clarify policies and procedures on prior approvals (*i.e.,* subcontracts and no-cost extensions of time) (§ 3430.58); review of disallowed costs (§ 3430.59); suspension, termination, and withholding of support (§ 3430.60); and debt collection (§ 3430.61). The previous § 3430.58 was re-titled ''Expiring appropriations'' from ''Closeout'' (and renumbered as § 3430.63) and was expanded to include procedures for Federal assistance awards supported with other Federal agencies' funds (transferred via an interagency agreement) and to specify that final draws need to be executed by no later than June 30th of the final year (although the 90-day period beyond the award expiration date is later) to allow CSREES to properly bill and close-out the interagency agreements before the end of the Federal fiscal year.

As mentioned earlier and based on USDA Office of Inspector General (OIG) audits and annual OMB Circular No. A–123 reviews, CSREES is establishing stricter internal controls to ensure that Federal assistance funds are no longer available for draw-down to the awardee beyond 90 days of the expiration date. In response, CSREES incorporated in this final regulation (§§ 3430.56, 3430.58) procedures for requesting an extension to submit a final SF–269, Financial Status Report; for requesting a no-cost extension of time; and for the approval of draw requests beyond the 90-day period in extenuating circumstances, as determined by CSREES.

Subpart F was revised in § 3430.203 by removing the reference to eligibility of individuals and foreign entities, which is already addressed in § 3430.16. Section 3430.205 was revised by removing provisions regarding indirect costs, which are addressed in §§ 3430.52 and 3430.54. Also, a new § 3430.207 was added to provide that the statutory maximum grant term is 10 years.

Other technical and clarifying edits are made throughout subparts A through F.

III. Future Rulemaking Activities for 7 CFR Part 3430

CSREES is publishing this rule as final and these regulations apply to all CSREES competitive and noncompetitive non-formula programs (including the programs implemented by 7 CFR part 3400, Special Research Grants Program; 7 CFR part 3401, Rangeland Research Grants Program; 7 CFR part 3402, Food and Agricultural Sciences National Needs Graduate and Postgraduate Fellowship Grants Program; 7 CFR part 3405, Higher Education Challenge Grants Program; 7 CFR part 3406, 1890 Institution Capacity Building Grants Program; 7 CFR part 3411, National Research Initiative Competitive Grants Program; and 7 CFR part 3415, Biotechnology Risk Assessment Research Grants Program). Where these parts conflict with a provision in this rule, this rule takes precedence. As stated previously, this regulation will not apply to the SBIR Program and VMLRP. Within the next three years, CSREES plans to cancel all of the existing program-specific regulations identified in 7 CFR and incorporate these program-specific regulations as separate subparts under this part 3430. In addition, CSREES is currently drafting a CSREES Grants Policy Manual, which while incorporating the regulations under this part, will apply to both grants and Federal assistance cooperative agreements and provide more specific instructions, detailed explanations, and background for potential applicants, awardees, Agency and Departmental staff, and the public.

Per section 7511 of the FCEA, the Secretary shall establish within the Department an agency to be known as the 'National Institute of Food and Agriculture.' Effective no later than October 1, 2009, the Secretary shall transfer the authorities (including all budget authorities, available appropriations, and personnel), duties, obligations, and related legal and administrative functions of CSREES to the National Institute of Food and Agriculture. Consequently, it is anticipated that this rule will undergo future regulatory action within the next 12 months. At that time, the regulation also will be updated to incorporate the implementation of the FFR as well as the Agency's implementation of the U.S. Department of the Treasury's ASAP system as the Agency's electronic payment management system.

IV. Administrative Requirements

Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget. This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; nor will it materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of $100 million or more; nor will it adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way. Furthermore, it does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities or principles set forth in the Executive Order.

Regulatory Flexibility Act of 1980

This final rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory

Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department concluded that the rule will not have a significant economic impact on a substantial number of small entities. The rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

The Department certifies that this final rule has been assessed in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* (PRA). The Department concludes that this final rule does not impose any new information requirements; however, the burden estimates were increased for existing approved information collections associated with this rule due to additional applicants. These estimates were provided to OMB. In addition to the SF–424 form families (*i.e.,* Research and Related and Mandatory), SF–272, Federal Cash Transactions Report, and SF–269, Financial Status Reports, CSREES has three currently approved OMB information collections associated with this rulemaking: OMB Information Collection No. 0524–0042, CSREES Current Research Information System (CRIS); No. 0524–0041, CSREES Application Review Process; and No. 0524–0026, Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance and Organizational Information.

Catalog of Federal Domestic Assistance

This final regulation applies to the following Federal assistance programs administered by CSREES including 10.200, Grants for Agricultural Research—Special Research Grants; 10.206, Grants for Agricultural Research—Competitive Research Grants; 10.210, Food and Agricultural Sciences National Needs Graduate Fellowship Grants; 10.215, Sustainable Agriculture Research and Education; 10.216, 1890 Institution Capacity Building Grants; 10.217, Higher Education Challenge Grants; 10.219, Biotechnology Risk Assessment Research; 10.220, Higher Education Multicultural Scholars Program; 10.221, Tribal Colleges Education Equity Grants; 10.223, Hispanic Serving Institutions Education Grants; 10.225, Community Food Projects; 10.226, Secondary and Two-Year Postsecondary Agriculture Education Challenge Grants; 10.227, 1994 Institutions Research Program; 10.228, Alaska Native Serving and Native Hawaiian Serving Institutions Education Grants; 10.303, Integrated Programs; 10.304, Homeland Security—Agricultural; 10.305, International Science and Education Grants; 10.306, Biodiesel; 10.307, Organic Agriculture Research and Extension Initiative; 10.308, Resident Instruction for Insular Area Activities; 10.309, Specialty Crop Research Initiative; 10.310, Agriculture and Food Research Initiative; 10.311, Beginning Farmer and Rancher Development Initiative; 10.312, Biomass Research and Development Initiative; 10.314, New Era Rural Technology Program; and 10.500, Cooperative Extension Service.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this final rule in accordance with the requirements of Executive Order No. 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or 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 there is no Federal mandate contained herein that could result in increased expenditures by State, local, or tribal governments or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this final rule in accordance with Executive Order 13175 and has determined that it does not have ''tribal implications.'' The final rule does not ''have substantial direct effects 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.''

Clarity of This Regulation

Executive Order 12866 and the President's Memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this final rule easier to understand.

List of Subjects

Administrative practice and procedure, Agricultural research, Education, Extension, Federal assistance.

■ For the reasons discussed in the preamble, the Cooperative State Research, Education, and Extension Service is amending Chapter XXXIV of Title 7 of the Code of Federal Regulations to revise part 3430 to read as follows:

PART 3430—COMPETITIVE AND NONCOMPETITIVE NON-FORMULA FEDERAL ASISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROVISIONS

Subpart A—General Information

Sec.

3430.1 Applicability of regulations.
3430.2 Definitions.
3430.3 Deviations.
3430.4 Other applicable statutes and regulations.

Subpart B—Pre-award: Solicitation and Application

3430.11 Competition.
3430.12 Requests for applications.
3430.13 Letter of intent to submit an application.
3430.14 Types of applications; types of award instruments.
3430.15 Stakeholder input.
3430.16 Eligibility requirements.
3430.17 Content of an application.
3430.18 Submission of an application.
3430.19 Resubmission of an application.
3430.20 Acknowledgment of an application.
3430.21 Confidentiality of applications and awards.

Subpart C—Pre-award: Application Review and Evaluation

3430.31 Guiding principles.
3430.32 Preliminary application review.
3430.33 Selection of reviewers.
3430.34 Evaluation criteria.
3430.35 Review of noncompetitive applications.
3430.36 Procedures to minimize or eliminate duplication of effort.
3430.37 Feedback to applicants.

Subpart D—Award

3430.41 Administration.
3430.42 Special award conditions.

Subpart E—Post-award and Closeout

3430.51 Payment.
3430.52 Cost sharing and matching.
3430.53 Program income.
3430.54 Indirect costs.
3430.55 Technical reporting.
3430.56 Financial reporting.
3430.57 Project meetings.
3430.58 Prior approvals.
3430.59 Review of disallowed costs.
3430.60 Suspension, termination, and withholding of support.
3430.61 Debt collection.
3430.62 Award appeals procedures.
3430.63 Expiring appropriations.

Subpart F—Specialty Crop Research Initiative

3430.200 Applicability of regulations.
3430.201 Purpose.
3430.202 Definitions.
3430.203 Eligibility.
3430.204 Project types and priorities.

3430.205 Funding restrictions.
3430.206 Matching requirements.
3430.207 Other considerations.

Authority: 7 U.S.C. 3316; Pub. L. 106–107 (31 U.S.C. 6101 note)

Subpart A—General Information

§ 3430.1 Applicability of regulations.

(a) *General.* This part provides agency specific regulations regarding the application for, and evaluation, award, and post-award administration of, Cooperative State Research, Education, and Extension Service (CSREES) awards, and is supplementary to the USDA uniform assistance regulations at 7 CFR parts 3016 (State, local, and tribal governments), 3019 (institutions of higher education, hospitals, and nonprofits), and 3015 (all others), as applicable. These regulations apply to the following types of Federal assistance awards: Grants and cooperative agreements.

(b) *Competitive programs.* This part applies to all agricultural research, education, and extension competitive and related programs for which CSREES has administrative or other authority, as well as any other Federal assistance program delegated to the CSREES Administrator. In cases where regulations of this part conflict with existing regulations of CSREES in Title 7 (*i.e.,* 7 CFR parts 3400 through 3499) of the Code of Federal Regulations, regulations of this part shall supersede. This part does not apply to the Small Business Innovation Research (SBIR) Program (7 CFR part 3403) and the Veterinary Medicine Loan Repayment Program (VMLRP) authorized under section 1415A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) (7 U.S.C. 3151a).

(c) *Noncompetitive programs.* Subparts A, B, D, and E, as well as § 3430.35 of subpart C, apply to all noncompetitive agricultural research, education, and extension programs administered by CSREES, as well as any other Federal assistance program delegated to the CSREES Administrator.

(d) *Federal assistance programs administered on behalf of other agencies.* Subparts A through E, as appropriate, apply to competitive and noncompetitive grants and cooperative agreements administered on behalf of other agencies of the Federal Government. Requirements specific to these Federal assistance programs will be included in the program solicitations or requests for applications (RFAs).

(e) *Federal assistance programs administered jointly with other agencies.* Subparts A through E, as appropriate, apply to competitive and noncompetitive grants and cooperative agreements administered jointly with other agencies of the Federal Government. Requirements specific to these Federal assistance programs will be included in the appropriate program solicitations or RFAs published by both or either agency.

(f) *Formula fund grants programs.* This part does not apply to any of the formula grant programs administered by CSREES. Formula funds are the research funds provided to 1862 Land-Grant Institutions and agricultural experiment stations under the Hatch Act of 1887 (7 U.S.C. 361a, *et seq.*); extension funds provided to 1862 Land-Grant Institutions under sections 3(b) and 3(c) of the Smith-Lever Act (7 U.S.C. 343(b) and (c)) and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Public Law 93–471; agricultural extension and research funds provided to 1890 Land-Grant Institutions under sections 1444 and 1445 of NARETPA (7 U.S.C. 3221 and 3222); expanded food and nutrition education program funds authorized under section 3(d) of the Smith-Lever Act (7 U.S.C. 343(d)) to the 1862 Land-Grant Institutions and the 1890 Land-Grant Institutions; extension funds under the Renewable Resources Extension Act of 1978 (16 U.S.C. 1671, *et seq.*) for the 1862 Land-Grant institutions and the 1890 Land-Grant Institutions; research funds provided to the 1862 Land-Grant Institutions, 1890 Land-Grant Institutions, and forestry schools under the McIntire-Stennis Cooperative Forestry Act (16 U.S.C. 582a, *et seq.*); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA (7 U.S.C. 3195).

§ 3430.2 Definitions.

As used in this part:

1862 Land-Grant Institution means an institution eligible to receive funds under the Act of July 2, 1862, as amended (7 U.S.C. 301, *et seq.*). Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

1890 Land-Grant Institution means one of those institutions eligible to receive funds under the Act of August 30, 1890, as amended (7 U.S.C. 321, *et seq.*), including Tuskegee University and West Virginia State University. Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

1994 Land-Grant Institution means one of those institutions as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994, as amended (7 U.S.C. 301 note). These institutions are commonly referred to as Tribal Colleges or Universities.

Administrator means the Administrator of CSREES and any other officer or employee of the CSREES to whom the authority involved is delegated.

Advisory Board means the National Agricultural Research, Extension, Education, and Economics Advisory Board (as established under section 1408 of NARETPA (7 U.S.C. 3123).

Agricultural research means research in the food and agricultural sciences.

Applied research means research that includes expansion of the findings of fundamental research to uncover practical ways in which new knowledge can be advanced to benefit individuals and society.

Authorized Departmental Officer or *ADO* means the Secretary or any employee of the Department with delegated authority to issue or modify award instruments on behalf of the Secretary.

Authorized Representative or *AR* means the President or Chief Executive Officer of the applicant organization or the official, designated by the President or Chief Executive Officer of the applicant organization, who has the authority to commit the resources of the organization to the project.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards may be grants or cooperative agreements.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by non-Federal third parties.

College or *university* means, unless defined in a separate subpart, an educational institution in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a bachelor's degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association. Unless otherwise stated for a specific program, this term includes a research foundation maintained by such an institution.

Cooperative agreement means the award by the Authorized Departmental Officer of funds to an eligible awardee to assist in meeting the costs of conducting for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in the program solicitation or RFA, and where substantial involvement is expected between CSREES and the awardee when carrying out the activity contemplated in the agreement.

Department means the United States Department of Agriculture.

Education activity or *teaching activity* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and other related matters such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies.

Established and demonstrated capacity means that an organization has met the following criteria:

(1) Conducts any systematic study directed toward new or fuller knowledge and understanding of the subject studied; or,

(2) Systematically relates or applies the findings of research or scientific experimentation to the application of new approaches to problem solving, technologies, or management practices; and

(3) Has facilities, qualified personnel, independent funding, and prior projects and accomplishments in research or technology transfer.

Extension means informal education programs conducted in the States in cooperation with the Department.

Extension activity means an act or process that delivers science-based knowledge and informal educational programs to people, enabling them to make practical decisions.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in food and fiber, agricultural, renewable energy and natural resources, forestry, and physical and social sciences, including activities relating to the following:

(1) Animal health, production, and well-being.

(2) Plant health and production.

(3) Animal and plant germ plasm collection and preservation.

(4) Aquaculture.

(5) Food safety.

(6) Soil, water, and related resource conservation and improvement.

(7) Forestry, horticulture, and range management.

(8) Nutritional sciences and promotion.

(9) Farm enhancement, including financial management, input efficiency, and profitability.

(10) Home economics.

(11) Rural human ecology.

(12) Youth development and agricultural education, including 4–H clubs.

(13) Expansion of domestic and international markets for agricultural commodities and products, including agricultural trade barrier identification and analysis.

(14) Information management and technology transfer related to agriculture.

(15) Biotechnology related to agriculture.

(16) The processing, distributing, marketing, and utilization of food and agricultural products.

Fundamental research means research that increases knowledge or understanding of the fundamental aspects of phenomena and has the potential for broad application, and has an effect on agriculture, food, nutrition, or the environment.

Graduate degree means a Master's or doctoral degree.

Grant means the award by the Authorized Departmental Officer of funds to an eligible grantee to assist in meeting the costs of conducting for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in the program solicitation or RFA.

Grantee means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

Insular area means the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands of the United States.

Integrated project means a project incorporating two or three components of the agricultural knowledge system (research, education, and extension) around a problem area or activity.

Land-grant Institutions means the 1862 Land-Grant Institutions, 1890 Land-Grant Institutions, and 1994 Land-Grant Institutions.

Matching or cost sharing means that portion of allowable project or program costs not borne by the Federal Government, including the value of in-kind contributions.

Merit review means an evaluation of a proposed project or elements of a proposed program whereby the technical quality and relevance to regional or national goals are assessed.

Merit reviewers means peers and other individuals with expertise appropriate to conduct merit review of a proposed project.

Methodology means the project approach to be followed.

Mission-linked research means research on specifically identified agricultural problems which, through a continuum of efforts, provides information and technology that may be transferred to users and may relate to a product, practice, or process.

National laboratories include Federal laboratories that are government-owned contractor-operated or government-owned government-operated.

Non-citizen national of the United States means a person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States. When eligibility is claimed solely on the basis of permanent allegiance, documentary evidence from the U.S. Citizenship and Immigration Services as to such eligibility must be made available to CSREES upon request.

Peer reviewers means experts or consultants qualified by training and experience to give expert advice on the scientific and technical merit of applications or the relevance of those applications to one or more of the application evaluation criteria. Peer reviewers may be adhoc or convened as a panel.

Prior approval means written approval by an Authorized Departmental Officer evidencing prior consent.

Private research organization means any non-governmental corporation, partnership, proprietorship, trust, or other organization.

Private sector means all non-public entities, including for-profit and nonprofit commercial and non-commercial entities, and including private or independent educational associations.

Program announcement (PA) means a detailed description of the RFA without the associated application package(s). CSREES will not solicit or accept applications in response to a PA.

Program Officer means a CSREES individual (often referred to as a National Program Leader) who is responsible for the technical oversight

of the award on behalf of the Department.

Project means the particular activity within the scope of the program supported by an award.

Project Director or *PD* means the single individual designated by the awardee in the application and approved by the Authorized Departmental Officer who is responsible for the direction and management of the project, also known as a Principal Investigator (PI) for research activities.

Project period means the total length of time, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Research means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

Scientific peer review means an evaluation of the technical quality of a proposed project and its relevance to regional or national goals, performed by experts with the scientific knowledge and technical skills to conduct the proposed research work.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved is delegated.

State means any one of the fifty States, the District of Columbia, and the insular areas.

Third party in-kind contributions means the value of non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

Under Secretary means the Under Secretary for Research, Education, and Economics.

United States means the several States, the District of Columbia, and the insular areas.

Units of State government means all State institutions, including the formal divisions of State government (*i.e.*, the official State agencies such as departments of transportation and education), local government agencies (*e.g.*, a county human services office), and including State educational institutions (*e.g.*, public colleges and universities).

§ 3430.3 Deviations.

Any request by the applicant or awardee for a waiver of or deviation from any provision of this part shall be submitted to the ADO identified in the agency specific requirements. CSREES shall review the request and notify the applicant/awardee, within 30 calendar days from the date of receipt of the deviation request, whether the request to deviate has been approved. If the deviation request is still under consideration at the end of 30 calendar days, CSREES shall inform the applicant/awardee in writing of the date when the applicant/awardee may expect the decision.

§ 3430.4 Other applicable statutes and regulations.

Several Federal statutes and regulations apply to Federal assistance applications considered for review and to project grants and cooperative agreements awarded under CSREES Federal assistance programs. These include, but are not limited to:

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129, regarding debt management.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 331 and 9 CFR Part 121—USDA implementation of the Agricultural Bioterrorism Protection Act of 2002.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, OMB Circular Nos. A–21, A–87, and A–122, now relocated at 2 CFR Parts 220, 225, and 230) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016—USDA implementation of Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular No. A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (now relocated at 2 CFR part 215).

7 CFR Part 3021—USDA implementation of Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-Profit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, promoting the utilization of inventions arising from federally supported research or development; encouraging maximum participation of small business firms in federally supported research and development efforts; and promoting collaboration between commercial concerns and nonprofit organizations, including universities, while ensuring that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions (implementing regulations are contained in 37 CFR Part 401).

Subpart B—Pre-award: Solicitation and Application

§ 3430.11 Competition.

(a) *Standards for competition.* Except as provided in paragraph (b) of this section, CSREES will enter into grants and cooperative agreements, unless restricted by statute, only after competition.

(b) *Exception.* The CSREES ADO and the designated Agency approving official may make a determination in writing that competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Federal Government and necessary to the goals of the program.

§ 3430.12 Requests for applications.

(a) *General.* For each competitive and noncompetitive non-formula program, CSREES will prepare a program solicitation (also called a request for applications (RFA)), in accordance with the Office of Management and Budget

(OMB) policy directive, 68 FR 37370–37379 (June 23, 2003), establishing a standard format for Federal agency announcements (*i.e.*, program solicitations or RFAs) of funding opportunities under programs that award discretionary grants or cooperative agreements. This policy directive requires the content of the RFA to be organized in a sequential manner beginning with overview information followed by the full text of the announcement and will apply unless superseded by statute or another OMB policy directive. The RFA may include all or a portion of the following items:

(1) Contact information.

(2) Directions for interested stakeholders or beneficiaries to submit written comments in a published program solicitation or RFA.

(3) Catalog of Federal Domestic Assistance (CFDA) number.

(4) Legislative authority and background information.

(5) Purpose, priorities, and fund availability.

(6) Program-specific eligibility requirements.

(7) Program-specific restrictions on the use of funds, if Applicable.

(8) Matching requirements, if applicable.

(9) Acceptable types of applications.

(10) Types of projects to be given priority consideration, including maximum anticipated awards and maximum project lengths, if applicable.

(11) Program areas, if applicable.

(12) Funding restrictions, if applicable.

(13) Directions for obtaining additional requests for applications and application forms.

(14) Information about how to obtain application forms and the instructions for completing such forms.

(15) Instructions and requirements for submitting applications, including submission deadline(s).

(16) Explanation of the application evaluation Process.

(17) Specific evaluation criteria used in the review Process.

(18) Type of Federal assistance awards (*i.e.*, grants and/or cooperative agreements).

(b) *RFA variations.* Where program-specific requirements differ from the requirements established in this part, program solicitations will also address any such variation(s). Variations may occur in the following:

(1) Award management guidelines.

(2) Restrictions on the delegation of fiscal responsibility.

(3) Required approval for changes to project plans.

(4) Expected program outputs and reporting requirements, if applicable.

(5) Applicable Federal statutes and regulations.

(6) Confidential aspects of applications and awards, if applicable.

(7) Regulatory information.

(8) Definitions.

(9) Minimum and maximum budget requests, and whether applications outside of these limits will be returned without further review.

(c) *Program announcements.* Occasionally, CSREES will issue a program announcement (PA) to alert potential applicants and the public about new and ongoing funding opportunities. These PAs may provide tentative due dates and are released without associated application packages. Hence, no applications are solicited under a PA. PAs are announced in the **Federal Register** or on the CSREES Web site.

§ 3430.13 Letter of intent to submit an application.

(a) *General.* CSREES may request or require that prospective applicants notify program staff of their intent to submit an application, identified as ''letter of intent''. If applicable, the request or requirement will be included in the RFA, along with directions for the preparation and submission of the letter of intent, the type of letter of intent, and any relevant deadlines. There are two types of letters of intent: optional and required.

(b) *Optional letter of intent.* Entities interested in submitting an application for a CSREES award should complete and submit a ''Letter of Intent to Submit an Application'' by the due date specified in the RFA. This does not obligate the applicant in any way, but will provide useful information to CSREES in preparing for application review. Applicants that do not submit a letter of intent by the specified due date are still allowed to submit an application by the application due date specified in the RFA, unless otherwise specified in the RFA.

(c) *Required letter of intent.* Certain programs may require that the prospective applicants submit a letter of intent for specific programs. This type of letter is evaluated by the program staff for suitability to the program and in regard to program priorities, needs, and scope. Invitations to submit a full application will be issued by the Program Officer or his or her representative. For programs requiring a letter of intent, applications submitted without prior approval of the letter of intent by the program staff will be returned without review. Programs requiring a specific letter of intent will be specified in the RFA.

§ 3430.14 Types of applications; types of award instruments.

(a) *Types of applications.* The type of application acceptable may vary by funding opportunity. The RFA will stipulate the type of application that may be submitted to CSREES in response to the funding opportunity. Applicants may submit the following types of applications as specified in the RFA.

(1) *New.* An application that is being submitted to the program for the first time.

(2) *Resubmission.* This is a project application that has been submitted for consideration under the same program previously but has not been approved for an award under the program. For competitive programs, this type of application is evaluated in competition with other pending applications in the area to which it is assigned. Resubmissions are reviewed according to the same evaluation criteria as new applications. In addition, applicants must respond to the previous panel review summaries, unless waived by CSREES.

(3) *Renewal.* An application requesting additional funding for a period subsequent to that provided by a current award. For competitive programs, a renewal application competes with all other applications. Renewal applications must be developed as fully as though the applicant is applying for the first time. Renewal applicants also must have filed a progress report via Current Research Information System (CRIS), unless waived by CSREES.

(4) *Continuation.* A noncompeting application for an additional funding/budget period within a previously approved project.

(5) *Revision.* An application that proposes a change in the Federal Government's financial obligations or contingent liability from an existing obligation; or, any other change in the terms and conditions of the existing award.

(6) *Resubmitted renewal.* This is a project application that has been submitted for consideration under the same program previously. This type of application has also been submitted for renewal under the same program but was not approved. For competitive programs, this type of application is evaluated in competition with other pending applications in the area to which it is assigned. Resubmitted renewal applications are reviewed according to the same evaluation criteria

as new applications. Applicants must respond to the previous panel review summaries and file a progress report via CRIS, unless waived by CSREES.

(b) *Types of award instruments.* The following is a list of corresponding categories of award instruments issued by CSREES.

(1) *Standard.* This is an award instrument by which CSREES agrees to support a specified level of effort for a predetermined project period without the announced intention of providing additional support at a future date.

(2) *Renewal.* This is an award instrument by which CSREES agrees to provide additional funding under a standard award as specified in paragraph (b)(1) of this section for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed any statutory time limitation of the award.

(3) *Continuation.* This is an award instrument by which CSREES agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interest of the Federal Government and the public.

(4) *Supplemental.* This is an award instrument by which CSREES agrees to provide small amounts of additional funding under a standard, renewal, or continuation award as specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period of the project, including short term extensions, exceed any statutory time limitation of the award.

(c) *Obligation of the Federal Government.* Neither the acceptance of any application nor the award of any project shall commit or obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 3430.15 Stakeholder input.

Section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7613(c)(2)) requires the Secretary to solicit and consider input on each program RFA from persons who conduct agricultural research, education, and extension for use in formulating future RFAs for competitive programs. CSREES will provide instructions for submission of stakeholder input in the RFA. CSREES will consider any comments received within the specified timeframe in the development of the future RFAs for the program.

§ 3430.16 Eligibility requirements.

(a) *General.* Program-specific eligibility requirements appear in the subpart applicable to each program and in the RFAs.

(b) *Foreign entities*—(1) *Awards to institutions.* Unless specifically allowed, foreign commercial and non-profit institutions are not considered eligible to apply for and receive CSREES awards.

(2) *Awards to individuals.* Unless otherwise specified, only United States citizens, non-citizen nationals of the United States, and lawful permanent residents of the United States are eligible to apply for and receive CSREES awards.

(c) *Responsibility determination.* In addition to program-specific eligibility requirements, awards will be made only to responsible applicants. Specific management information relating to an applicant shall be submitted on a one-time basis, with updates on an as-needed basis, as part of the responsibility determination prior to an award being made under a specific CSREES program, if such information has not been provided previously under this or another CSREES program. CSREES will provide copies of forms recommended for use in fulfilling these requirements as part of the pre-award process. Although an applicant may be eligible based on its status as one of these entities, there are factors that may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under a CSREES program (*e.g.,* debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information).

§ 3430.17 Content of an application.

The RFA provides instructions on how to access a funding opportunity. The funding opportunity contains the application package, which includes the forms necessary for completion of an application in response to the RFA, as well as the application instructions. The application instructions document, ''CSREES Grants.gov Application Guide: A Guide for Preparation and Submission of CSREES Applications via Grants.gov,'' is intended to assist applicants in the preparation and submission of applications to CSREES. It is also the primary document for use in the preparation of CSREES applications via Grants.gov.

§ 3430.18 Submission of an application.

(a) *When to submit.* The RFA will provide deadlines for the submission of letters of intent, if requested and required, and applications. CSREES may issue separate RFAs and/or establish separate deadlines for different types of applications, different award instruments, or different topics or phases of the Federal assistance programs. If applications are not received by applicable deadlines, they will not be considered for funding. Exceptions will be considered only when extenuating circumstances exist, as determined by CSREES, and justification and supporting documentation are provided to CSREES.

(b) *What to submit.* The contents of the applicable application package, as well as any other information, are to be submitted by the due date.

(c) *Where to submit.* The RFA will provide addresses for submission of letters of intent, if requested or required, and applications. It also will indicate permissible methods of submission (*i.e.,* electronic, e-mail, hand-delivery, U.S. Postal Service, courier). Conformance with preparation and submission instructions is required and will be strictly enforced unless a deviation had been approved. CSREES may establish additional requirements. CSREES may return without review applications that are not consistent with the RFA instructions.

§ 3430.19 Resubmission of an application.

(a) *Previously unfunded applications.* (1) Applications that are resubmitted to a program, after being previously submitted but not funded by that program, must include the following information:

(i) The CSREES-assigned proposal number of the previously submitted application.

(ii) Summary of the previous reviewers' comments.

(iii) Explanation of how the previous reviewers' comments or previous panel summary have been addressed in the current application.

(2) Resubmitting an application that has been revised based on previous reviewers' critiques does not guarantee the application will be recommended for funding.

(b) *Previously funded applications.* (1) CSREES competitive programs are generally not designed to support multiple Federal assistance awards

activities that are essentially repetitive in nature. PDs who have had their projects funded previously are discouraged from resubmitting relatively identical applications for further funding. Applications that are sequential continuations or new stages of previously funded projects must compete with first-time applications, and should thoroughly demonstrate how the proposed project expands substantially on previously funded efforts and promotes innovation and creativity beyond the scope of the previously funded project.

(2) An application may be submitted only once to CSREES. The submission of duplicative or substantially similar applications concurrently for review by more than one program will result in the exclusion of the redundant applications from CSREES consideration.

§ 3430.20 Acknowledgment of an application.

The receipt of all letters of intent and applications will be acknowledged by CSREES. Applicants who do not receive an acknowledgement within a certain number of days (as established in the RFA, *e.g.,* 15 and 30 days) of the submission deadline should contact the program contact. Once the application has been assigned a proposal number by CSREES, that number should be cited on all future correspondence.

§ 3430.21 Confidentiality of applications and awards.

(a) *General.* Names of submitting institutions and individuals, as well as application contents and evaluations, will be kept confidential, except to those involved in the review process, to the extent permissible by law.

(b) *Identifying confidential and proprietary information in an application.* If an application contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided that the information is clearly marked by the proposer with the term ''confidential and proprietary information'' and that the following statement is included at the bottom of the project narrative or any other attachment included in the application that contains such information: ''The following pages (specify) contain proprietary information which (name of proposing organization) requests not to be released to persons outside the Government, except for purposes of evaluation.''

(c) *Disposition of applications.* By law, the Department is required to make the final decisions as to whether the information is required to be kept in confidence. Information contained in unsuccessful applications will remain the property of the proposer. However, the Department will retain for three years one file copy of each application received; extra copies will be destroyed. Public release of information from any application submitted will be subject to existing legal requirements. Any application that is funded will be considered an integral part of the award and normally will be made available to the public upon request, except for designated proprietary information that is determined by the Department to be proprietary information.

(d) *Submission of proprietary information.* The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the application. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items that, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information that could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Applications or reports that attempt to restrict dissemination of large amounts of information may be found unacceptable by the Department and constitute grounds for return of the application without further consideration. Without assuming any liability for inadvertent disclosure, the Department will limit dissemination of such information to its employees and, where necessary for the evaluation of the application, to outside reviewers on a confidential basis. An application may be withdrawn at any time prior to the final action thereon.

Subpart C—Pre-award: Application Review and Evaluation

§ 3430.31 Guiding principles.

The guiding principle for Federal assistance application review and evaluation is to ensure that each proposal is treated in a consistent and fair manner regardless of regional and institutional affiliation. After the evaluation process by the review panel, CSREES, through the program officer, ensures that applicants receive appropriate feedback and comments on their proposals, and processes the awards in as timely a manner as possible.

§ 3430.32 Preliminary application review.

Prior to technical examination, a preliminary review will be made of all applications for responsiveness to the administrative requirements set forth in the RFA. Applications that do not meet the administrative requirements may be eliminated from program competition. However, CSREES retains the right to conduct discussions with applicants to resolve technical and/or budget issues, as deemed necessary by CSREES.

§ 3430.33 Selection of reviewers.

(a) *Requirement.* CSREES is responsible for performing a review of applications submitted to CSREES competitive award programs in accordance with section 103(a) of AREERA (7 U.S.C. 7613(a)). Reviews are undertaken to ensure that projects supported by CSREES are of high quality and are consistent with the goals and requirements of the funding program. Applications submitted to CSREES undergo a programmatic evaluation to determine the worthiness of Federal support. The scientific peer review or merit review is performed by peer or merit reviewers and also may entail an assessment by Federal employees.

(b) *CSREES Peer Review System.* The CSREES Application Review Process is accomplished through the use of the CSREES Peer Review System (PRS), a Web-based system which allows reviewers and potential reviewers to update personal information and to complete and submit reviews electronically to CSREES.

(c) *Relevant training and experience.* Reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields taking into account the following factors:

(1) Level of relevant formal scientific, technical education, and extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities.

(2) Need to include as reviewers experts from various areas of specialization within relevant scientific, education, and extension fields.

(3) Need to include as reviewers other experts (*e.g.,* producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs.

(4) Need to include as reviewers experts from a variety of organizational types (*e.g.,* colleges, universities, industry, State and Federal agencies, private profit and nonprofit organizations) and geographic locations.

(5) Need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution.

(6) Need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

(d) *Confidentiality.* The identities of reviewers will remain confidential to the maximum extent possible. Therefore, the names of reviewers will not be released to applicants. If it is possible to reveal the names of reviewers in such a way that they cannot be identified with the review of any particular application, this will be done at the end of the fiscal year or as requested. Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. Reviewers are expected to be in compliance with CSREES Confidentiality Guidelines. Reviewers provide this assurance through PRS.

(e) *Conflicts of interest.* During the evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. For the purpose of determining conflicts of interest, the academic and administrative autonomy of an institution shall be determined. Reviewers are expected to be in compliance with CSREES Conflict-of-Interest Guidelines. Reviewers provide this assurance through PRS.

§ 3430.34 Evaluation criteria.

(a) *General.* To ensure any project receiving funds from CSREES is consistent with the broad goals of the funding program, the content of each proposal/application submitted to CSREES will be evaluated based on a pre-determined set of review criteria. It is the responsibility of the Program Officer to develop, adopt, adapt, or otherwise establish the criteria by which proposals are to be evaluated. It may be appropriate for the Program Officer to involve other scientists or stakeholders in the development of criteria, or to extract criteria from legislative authority or appropriations language. The review criteria are described in the RFA and shall not include criteria concerning any cost sharing or matching requirements per section 103(a)(3) of AREERA (7 U.S.C. 7613(a)(3)).

(b) *Guidance for reviewers.* In order that all potential applicants for a program have similar opportunities to compete for funds, all reviewers will receive from the Program Officer a description of the review criteria. Reviewers are instructed to use those same evaluation criteria, and only those criteria, to judge the merit of the proposals they review.

§ 3430.35 Review of noncompetitive applications.

(a) *General.* Some projects are directed by either authorizing legislation and/or appropriations to specifically support a designated institution or set of institutions for particular research, education, or extension topics of importance to the nation, a State, or a region. Although these projects may be awarded noncompetitively, these projects or activities are subject to the same application process, award terms and conditions, Federal assistance laws and regulations, reporting and monitoring requirements, and post-award administration and closeout policies and procedures as competitive Federal assistance programs. The only difference is these applications are not subject to a competitive peer or merit review process at the Agency level.

(b) *Requirements.* All noncompetitive applications recommended for funding are required to be reviewed by the program officer and, as required, other Departmental and CSREES officials; and the review documented by the CSREES program officer. For awards recommended for funding at or greater than $10,000, an independent review and a unit review by program officials are required.

§ 3430.36 Procedures to minimize or eliminate duplication of effort.

CSREES may implement appropriate business processes to minimize or eliminate the awarding of CSREES Federal assistance that unnecessarily duplicates activities already being sponsored under other awards, including awards made by other Federal agencies. Business processes may include the review of the Current and Pending Support Form; documented CRIS searches prior to award; the conduct of PD workshops, conferences, meetings, and symposia; and agency participation in Federal Government-wide and other committees, taskforces, or groups that seek to solve problems related to agricultural research, education, and extension and other activities delegated to the CSREES Administrator.

§ 3430.37 Feedback to applicants.

Copies of individual reviews and/or summary reviews, not including the identity of reviewers, will be sent to the applicant PDs after the review process has been completed.

Subpart D—Award

§ 3430.41 Administration.

(a) *General.* Within the limit of funds available for such purpose, the CSREES ADO shall make Federal assistance awards to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in the RFA. The date specified by the CSREES ADO as the effective date of the award shall be no later than September 30th of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the award effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds awarded by CSREES shall be expended solely for the purpose for which the funds are awarded in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (*e.g.,* parts 3015, 3016, and 3019 of 7 CFR).

(b) *Notice of Award.* The notice of award document (*i.e.,* Form CSREES–2009, Award Face Sheet) will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant or cooperative agreement.

(2) Title of project.

(3) Name(s) and institution(s) of Project Director(s).

(4) Identifying award number assigned by CSREES or the Department.

(5) Project period.

(6) Total amount of CSREES financial assistance approved.

(7) Legal authority(ies) under which the grant or cooperative agreement is awarded.

(8) Appropriate CFDA number.

(9) Approved budget plan (that may be referenced).

(10) Other information or provisions (including the Terms and Conditions) deemed necessary by CSREES to carry out its respective awarding activities or to accomplish the purpose of a particular grant or cooperative agreement.

§ 3430.42 Special award conditions.

(a) *General.* CSREES may, with respect to any award, impose additional conditions prior to or at the time of any award when, in the judgment of CSREES, such conditions are necessary

to ensure or protect advancement of the approved project, the interests of the public, or the conservation of grant or cooperative agreement funds. CSREES may impose additional requirements if an applicant or recipient has a history of poor performance; is not financially stable; has a management system that does not meet prescribed standards; has not complied with the terms and conditions of a previous award; or is not otherwise responsible.

(b) *Notification of additional requirements.* When CSREES imposes additional requirements, CSREES will notify the recipient in writing as to the following: The nature of the additional requirements; the reason why the additional requirements are being imposed; the nature of the corrective actions needed; the time allowed for completing the corrective actions; and the method for requesting reconsideration of the additional requirements imposed.

(c) *Form CSREES–2009, Award Face Sheet.* These special award conditions, as applicable, will be added as a special provision to the award terms and conditions and identified on the Form CSREES–2009, Award Face Sheet, for the award.

(d) *Removal of additional requirements.* CSREES will promptly remove any additional requirements once the conditions that prompted them have been corrected.

Subpart E—Post-Award and Closeout

§ 3430.51 Payment.

(a) *General.* All payments will be made in advance unless a deviation is accepted (see § 3430.3) or as specified in paragraph (b) of this section. All payments to the awardee shall be made via the U.S. Department of Health and Human Services' Payment Management System (DHHS–PMS), U.S. Department of the Treasury's Automated Standard Application for Payments (ASAP) system, or another electronic funds transfer (EFT) method, except for awards to other Federal agencies. Awardees are expected to request funds via DHHS–PMS, ASAP, or other electronic payment system for reimbursement basis in a timely manner.

(b) *Reimbursement method.* CSREES shall use the reimbursement method if it determines that advance payment is not feasible and that the awardee does not maintain or demonstrate the willingness to maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the awardee, and financial management systems that meet the standards for fund control and accountability.

§ 3430.52 Cost sharing and matching.

(a) *General.* Awardees may be required to match the Federal funds received under a CSREES award. The required percentage of matching, type of matching (*e.g.*, cash and/or in-kind contributions), sources of match (*e.g.*, non-Federal), and whether CSREES has any authority to waive the match will be specified in the subpart applicable to the specific Federal assistance program, as well as in the RFA.

(b) *Indirect Costs as in-kind matching contributions.* Indirect costs may be claimed under the Federal portion of the award budget or, alternatively, indirect costs may be claimed as a matching contribution (if no indirect costs are requested under the Federal portion of the award budget). However, unless explicitly authorized in the RFA, indirect costs may not be claimed on both the Federal portion of the award budget and as a matching contribution, unless the total claimed on both the Federal portion of the award budget and as a matching contribution does not exceed the maximum allowed indirect costs or the institution's negotiated indirect cost rate, whichever is less. An awardee may split the allocation between the Federal and non-Federal portions of the budget only if the total amount of indirect costs charged to the project does not exceed the maximum allowed indirect costs or the institution's negotiated indirect cost rate, whichever is less. For example, if an awardee's indirect costs are capped at 22 percent pursuant to section 1462(a) of NARETPA (7 U.S.C. 3310(a)), the awardee may request 11 percent of the indirect costs on both the Federal portion of the award and as a matching contribution. Or, the awardee may request any similar percentage that, when combined, does not exceed the maximum indirect cost rate of 22 percent.

§ 3430.53 Program income.

(a) *General.* CSREES shall apply the standards set forth in this subpart in requiring awardee organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) *Addition method.* Unless otherwise provided in the authorizing statute, in accordance with the terms and conditions of the award, program income earned during the project period shall be retained by the awardee and shall be added to funds committed to the project by CSREES and the awardee and used to further eligible project or program objectives. Any specific program deviations will be identified in the individual subparts.

(c) *Award terms and conditions.* Unless the program regulations identified in the individual subpart provide otherwise, awardees shall follow the terms and conditions of the award.

§ 3430.54 Indirect costs.

Indirect cost rates for grants and cooperative agreements shall be determined in accordance with the applicable assistance regulations and cost principles, unless superseded by another authority. Use of indirect costs as in-kind matching contributions is subject to § 3430.52(b).

§ 3430.55 Technical reporting.

(a) *Requirement.* All projects supported with Federal funds under this part must be documented in the Current Research Information System (CRIS).

(b) *Initial Documentation in the CRIS Database.* Information collected in the ''Work Unit Description'' (Form AD–416) and ''Work Unit Classification'' (Form AD–417) is required upon project initiation for all new awards in CRIS (*i.e.*, prior to award).

(c) *Annual CRIS Reports.* Unless stated differently in the award terms and conditions, an annual ''Accomplishments Report'' (Form AD–421) is due 90 calendar days after the award's anniversary date (*i.e.*, one year following the month and day on which the project period begins and each year thereafter up until a final report is required). An annual report covers a one-year period. In addition to the Form AD–421, the following information, when applicable, must be submitted to the programmatic contact person identified in block 14 of the Award Face Sheet (Form CSREES–2009): a comparison of actual accomplishments with the goals established for the reporting period (where the output of the project can be expressed readily in numbers, a computation of the cost per unit of output should be considered if the information is considered useful); the reasons for slippage if established goals were not met; and additional pertinent information including, when appropriate, analysis and explanation of cost overruns or unexpectedly high unit costs. The annual report of ''Funding and Staff Support'' (Form AD–419) is due February 1 of the year subsequent to the Federal fiscal year being reported.

(d) *CRIS Final Report.* The CRIS final report, ''Accomplishments Report'' (Form AD–421), covers the entire period of performance of the award. The report should encompass progress made

during the entire timeframe of the project instead of covering accomplishments made only during the final reporting segment of the project. In addition to providing the information required under paragraph (c) of this section, the final report must include the following when applicable: a disclosure of any inventions not previously reported that were conceived or first actually reduced to practice during the performance of the work under the award; a written statement on whether or not the awardee elects (or plans to elect) to obtain patent(s) on any such invention; and an identification of equipment purchased with any Federal funds under the award and any subsequent use of such equipment.

(e) *CRIS Web Site Via Internet.* The CRIS database is available to the public on the worldwide web. CRIS project information is available via the Internet CRIS Web site at *http://cris.csrees.usda.gov*. To submit forms electronically, the CRIS forms Web site can be accessed through the CRIS Web site or accessed directly at *http://cwf.uvm.edu/cris*.

(f) *Additional reporting requirements.* Awardees may be required to submit other technical reports or submit the CRIS reports more frequently than annually. Additional requirements for a specific Federal assistance program are described in the applicable subpart after subpart E and are identified in the RFA. The Award Face Sheet (Form CSREES–2009) also will specify these additional reporting requirements as a special provision to the award terms and conditions.

§ 3430.56 Financial reporting.

(a) *SF–269, Financial Status Report.* Unless stated differently in the award terms and conditions, a final SF–269, Financial Status Report, is due 90 days after the expiration of the award and should be submitted to the Awards Management Branch (AMB) at Awards Management Branch; Office of Extramural Programs, CSREES; U.S. Department of Agriculture; STOP 2271; 1400 Independence Avenue, SW.; Washington, DC 20250–2271. The awardee shall report program outlays and program income on the same accounting basis (*i.e.*, cash or accrual) that it uses in its normal accounting system. When submitting a final SF–269, Financial Status Report, the total matching contribution, if required, should be shown in the report. The final SF–269 must not show any unliquidated obligations. If the awardee still has valid obligations that remain unpaid when the report is due, it shall request an extension of time for submitting the report pursuant to paragraph (c) of this section; submit a provisional report (showing the unliquidated obligations) by the due date; and submit a final report when all obligations have been liquidated, but no later than the approved extension date. SF–269, Financial Status Reports, must be submitted by all awardees, including Federal agencies and national laboratories.

(b) *Awards with Required Matching.* For awards requiring a matching contribution, an annual SF–269, Financial Status Report, is required and this requirement will be indicated on the Award Face Sheet, Form CSREES–2009, in which case it must be submitted no later than 45 days following the end of the budget or reporting period.

(c) *Requests for an extension to submit a final SF–269, Financial Status Report*—(1) *Before the due date.* Awardees may request, prior to the end of the 90-day period following the award expiration date, an extension to submit a final SF–269, Financial Status Report. This request should include a provisional report pursuant to paragraph (a) of this section, as well as an anticipated submission date and a justification for the late submission. Subject to § 3430.63 or other statutory or agency policy limitations, funds will remain available for drawdown during this period.

(2) *After the due date.* Requests are considered late when they are submitted after the 90-day period following the award expiration date. Requests to submit a final SF–269, Financial Status Report, will only be considered, up to 30 days after the due date, in extenuating circumstances. This request should include a provisional report pursuant to paragraph (a) of this section, as well as an anticipated submission date, a justification for the late submission, and a justification for the extenuating circumstances. However, such requests are subject to § 3430.63 or any other statutory or agency policy limitations. If an awardee needs to request additional funds, procedures in paragraph (d) of this section apply.

(d) *Overdue SF–269, Financial Status Reports.* Awardees with overdue SF–269, Financial Status Reports, or other required financial reports (as identified in the award terms and conditions), will have their applicable balances at DHHS–PMS, ASAP, or other electronic payment system restricted or placed on ''manual review,'' which restricts the awardee's ability to draw funds, thus requiring prior approval from CSREES. If any remaining available balances are needed by the awardee (beyond the 90-day period following the award expiration date) and the awardee has not requested an extension to submit a final SF–269, Financial Status Report, the awardee will be required to contact AMB to request permission to draw any additional funds and will be required to provide justification and documentation to support the draw. Awardees also will need to comply with procedures in paragraph (c) of this section. AMB will approve these draw requests only in extenuating circumstances, as determined by CSREES.

(e) *SF–272, Federal Cash Transactions Report.* Awardees receiving electronic payments through DHHS–PMS are required to submit their SF–272, Federal Cash Transactions Report, via the DHHS–PMS by the specified dates. Failure to submit this quarterly report by the due date may result in funds being restricted by DHHS–PMS. Awardees not receiving payments through DHHS–PMS may be exempt from this reporting requirement.

(f) *Additional reporting requirements.* CSREES may require additional financial reporting requirements as follows: CSREES may require forecasts of Federal cash requirements in the ''Remarks'' section of the report; and when practical and deemed necessary, CSREES may require awardees to report in the ''Remarks'' section the amount of cash advances received in excess of three days (*i.e.*, short narrative with explanations of actions taken to reduce the excess balances). When CSREES needs additional information or more frequent reports, a special provision will be added to the award terms and conditions and identified on the Form CSREES–2009, Award Face Sheet. Should CSREES determine that an awardee's accounting system is inadequate, additional pertinent information to further monitor awards may be requested from the awardee until such time as the system is brought up to standard, as determined by CSREES. This additional reporting requirement will be required via a special provision to the award terms and conditions and identified on the Form CSREES–2009, Award Face Sheet.

§ 3430.57 Project meetings.

In addition to reviewing (and monitoring the status of) progress and final technical reports and financial reports, CSREES Program Officers may use regular and periodic conference calls to monitor the awardee's performance as well as PD conferences, workshops, meetings, and symposia to not only monitor the awards, but to facilitate communication and the sharing of project results. These

opportunities also serve to eliminate or minimize CSREES funding unneeded duplicative project activities. Required attendance at these conference calls, conferences, workshops, meetings, and symposia will be identified in the RFA and the awardee should develop a proposal accordingly.

§ 3430.58 Prior approvals.

(a) *Subcontracts.* No more than 50 percent of the award may be subcontracted to other parties without prior written approval of the ADO except contracts to other Federal agencies. Any subcontract awarded to a Federal agency under an award must have prior written approval of the ADO. To request approval, a justification for the proposed subcontractual arrangements, a performance statement, and a detailed budget for the subcontract must be submitted to the ADO.

(b) *No-cost extensions of time*—(1) *General.* Awardees may initiate a one-time no-cost extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply: the terms and conditions of the award prohibit the extension; the extension requires additional Federal funds; and the extension involves any change in the approved objectives or scope of the project. For the first no-cost extension, the awardee must notify CSREES in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award.

(2) *Additional requests for no-cost extensions of time before expiration date.* When more than one no-cost extension of time or an extension of more than 12 months is required, the extension(s) must be approved in writing by the ADO. The awardee should prepare and submit a written request (which must be received no later than 10 days prior to the expiration date of the award) to the ADO. The request must contain, at a minimum, the following information: the length of the additional time required to complete the project objectives and a justification for the extension; a summary of the progress to date; an estimate of the funds expected to remain unobligated on the scheduled expiration date; a projected timetable to complete the portion(s) of the project for which the extension is being requested; and signature of the AR and the PD.

(3) *Requests for no-cost extensions of time after expiration date.* CSREES may consider and approve requests for no-cost extensions of time up to 120 days following the expiration of the award. These will be approved only for extenuating circumstances, as determined by CSREES. The awardee's AR must submit the requirements identified under paragraph (b)(2) of this section as well as an ''extenuating circumstance'' justification and a description of the actions taken by the awardee to minimize these requests in the future.

(4) *Other requirements.* No-cost extensions of time may not be exercised merely for the purpose of using unobligated balances. All extensions are subject to any statutory term limitations as well as any expiring appropriation limitations under § 3430.63.

§ 3430.59 Review of disallowed costs.

(a) *Notice.* If the CSREES Office of Extramural Programs (OEP) determines that there is a basis for disallowing a cost, CSREES OEP shall provide the awardee written notice of its intent to disallow the cost. The written notice shall state the amount of the cost and the factual and legal basis for disallowing it.

(b) *Awardee response.* Within 60 days of receiving written notice of CSREES OEP's intent to disallow the cost, the awardee may respond with written evidence and arguments to show the cost is allowable, or that CSREES, for equitable, practical, or other reasons, shall not recover all or part of the amount, or that the recovery should be made in installments. The 60-day time period may be extended for an additional 30 days upon written request by the awardee; however, such request for an extension of time must be made before the expiration of the 60-day time period specified in this paragraph. An extension of time will be granted only in extenuating circumstances.

(c) *Decision.* Within 60 days of receiving the awardee's written response to the notice of intent to disallow the cost, CSREES OEP shall issue a management decision stating whether or not the cost has been disallowed, the reasons for the decision, and the method of appeal that has been provided under this section. If the awardee does not respond to the written notice under paragraph (a) of this section within the time frame specified in paragraph (b) of this section, CSREES OEP shall issue a management decision on the basis of the information available to it. The management decision shall constitute the final action with respect to whether the cost is allowed or disallowed. In the case of a questioned cost identified in the context of an audit subject to 7 CFR part 3052, the management decision will constitute the management decision under 7 CFR 3052.405(a).

(d) *Demand for payment.* If the management decision under paragraph (c) of this section constitutes a finding that the cost is disallowed and, therefore, that a debt is owed to the Government, CSREES OEP shall provide the required demand and notice pursuant to 7 CFR 3.11.

(e) *Review process.* Within 60 days of receiving the demand and notice referred to in paragraph (d) of this section, the awardee may submit a written request to the CSREES OEP Deputy Administrator for a review of the final management decision that the debt exists and the amount of the debt. Within 60 days of receiving the written request for a review, the CSREES OEP Deputy Administrator (or other senior CSREES official designated by the CSREES OEP Deputy Administrator) will issue a final decision regarding the debt. Review by the CSREES OEP Deputy Administrator or designee constitutes, and will be in accordance with, the administrative review procedures provided for debts under 7 CFR part 3, subpart F.

§ 3430.60 Suspension, termination, and withholding of support.

(a) *General.* If an awardee has failed to materially comply with the terms and conditions of the award, CSREES may take certain enforcement actions, including, but not limited to, suspending the award pending corrective action, terminating the award for cause, and withholding of support.

(b) *Suspension.* CSREES generally will suspend (rather than immediately terminate) an award to allow the awardee an opportunity to take appropriate corrective action before CSREES makes a termination decision. CSREES may decide to terminate the award if the awardee does not take appropriate corrective action during the period of suspension. CSREES may terminate, without first suspending, the award if the deficiency is so serious as to warrant immediate termination. Termination for cause may be appealed under the CSREES award appeals procedures specified in § 3430.62.

(c) *Termination.* An award also may be terminated, partially or wholly, by the awardee or by CSREES with the consent of the awardee. If the awardee decides to terminate a portion of the award, CSREES may determine that the remaining portion of the award will not accomplish the purposes for which the award was originally made. In any such case, CSREES will advise the awardee of the possibility of termination of the entire award and allow the awardee to

withdraw its termination request. If the awardee does not withdraw its request for partial termination, CSREES may initiate procedures to terminate the entire award for cause.

(d) *Withholding of support.* Withholding of support is a decision not to make a non-competing continuation award within the current competitive segment. Support may be withheld for one or more of the following reasons: Adequate Federal funds are not available to support the project; an awardee failed to show satisfactory progress in achieving the objectives of the project; an awardee failed to meet the terms and conditions of a previous award; or for whatever reason, continued funding would not be in the best interests of the Federal Government. If a non-competing continuation award is denied (withheld) because the awardee failed to comply with the terms and conditions of a previous award, the awardee may appeal that determination under § 3430.62.

§ 3430.61 Debt collection.

The collection of debts owed to CSREES by awardees, including those resulting from cost disallowances, recovery of funds, unobligated balances, or other circumstances, are subject to the Department's debt collection procedures as set forth in 7 CFR part 3, and, with respect to cost disallowances, § 3430.59.

§ 3430.62 Award appeals procedures.

(a) *General.* CSREES permits awardees to appeal certain post-award adverse administrative decisions made by CSREES. These include: termination, in whole or in part, of an award for failure of the awardee to carry out its approved project in accordance with the applicable law and the terms and conditions of award or for failure of the awardee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the award; denial (withholding) of a non-competing continuation award for failure to comply with the terms of a previous award; and determination that an award is void (*i.e.,* a decision that an award is invalid because it was not authorized by statute or regulation or because it was fraudulently obtained). Appeals of determinations regarding the allowability of costs are subject to the procedures in § 3430.59.

(b) *Appeal Procedures.* The formal notification of an adverse determination will contain a statement of the awardee's appeal rights. As the first level in appealing an adverse determination, the awardee must submit a request for review to the CSREES official specified in the notification, detailing the nature of the disagreement with the adverse determination and providing supporting documents in accordance with the procedures contained in the notification. The awardee's request to CSREES for review must be received within 60 days after receipt of the written notification of the adverse determination; however, an extension may be granted if the awardee can show good cause why an extension is warranted.

(c) *Decision.* If the CSREES decision on the appeal is adverse to the awardee or if an awardee's request for review is rejected, the awardee then has the option of submitting a request to the CSREES OEP Deputy Administrator for further review. The decision of the CSREES OEP Deputy Administrator is considered final.

§ 3430.63 Expiring appropriations.

(a) *CSREES awards supported with agency appropriations.* Most CSREES awards are supported with annual appropriations. On September 30th of the 5th fiscal year after the period of availability for obligation ends, the funds for these appropriations accounts expire per 31 U.S.C. 1552 and the account is closed, unless otherwise specified by law. Funds that have not been drawn through DHHS–PMS, ASAP, or other electronic payment system by the awardee or disbursed through any other system or method by August 31st of that fiscal year are subject to be returned to the U.S. Department of the Treasury after that date. The August 31st requirement also applies to awards with a 90-day period concluding on a date after August 31st of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the CSREES award terms and conditions.

(b) *CSREES awards supported with funds from other Federal agencies (reimbursable funds).* CSREES may require that all draws and reimbursements for awards supported with reimbursable funds (from other Federal agencies) be completed prior to June 30th of the 5th fiscal year after the period of availability for obligation ends to allow for the proper billing, collection, and close-out of the associated interagency agreement before the appropriations expire. The June 30th requirement also applies to awards with a 90-day period concluding on a date after June 30th of that fifth year. Appropriations cannot be restored after expiration of the accounts. More specific instructions are provided in the CSREES award terms and conditions.

Subpart F—Specialty Crop Research Initiative

§ 3430.200 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 412 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7632).

§ 3430.201 Purpose.

(a) *Focus areas.* The purpose of this program is to address the critical needs of the specialty crop industry by developing and disseminating science-based tools to address needs of specific crops and their regions, including the following five focus areas:

(1) Research in plant breeding, genetics, and genomics to improve crop characteristics, such as—

(i) Product, taste, quality, and appearance;

(ii) Environmental responses and tolerances;

(iii) Nutrient management, including plant nutrient uptake efficiency;

(iv) Pest and disease management, including resistance to pests and diseases resulting in reduced application management strategies; and

(v) Enhanced phytonutrient content.

(2) Efforts to identify and address threats from pests and diseases, including threats to specialty crop pollinators.

(3) Efforts to improve production efficiency, productivity, and profitability over the long term (including specialty crop policy and marketing).

(4) New innovations and technology, including improved mechanization and technologies that delay or inhibit ripening.

(5) Methods to prevent, detect, monitor, control, and respond to potential food safety hazards in the production and processing of specialty crops, including fresh produce.

(b) *Other.* CSREES will award research and extension, including integrated, grants to eligible institutions listed in § 3430.203. In addition to the focus areas identified in this section, CSREES may include additional activities or focus areas that will further address the critical needs of the specialty crop industry. Some of these activities or focus areas may be identified by stakeholder groups or by CSREES in response to emerging critical needs of the specialty crop industry.

§ 3430.202 Definitions.

The definitions applicable to the program under this subpart include:

Integrated project means a project that incorporates the research and extension components of the agricultural knowledge system around a problem area or activity.

Specialty crop means fruits and vegetables, tree nuts, dried fruits, and horticulture and nursery crops (including floriculture).

Trans-disciplinary means a multi-discipline approach that brings biological and physical scientists together with economists and social scientists to address challenges in a holistic manner.

§ 3430.203 Eligibility.

Eligible applicants for the grant program implemented under this subpart include: Federal agencies, national laboratories; colleges and universities (offering associate's or higher degrees); research institutions and organizations; private organizations or corporations; State agricultural experiment stations; individuals; and groups consisting of 2 or more entities identified in this sentence.

§ 3430.204 Project types and priorities.

For each RFA, CSREES may develop and include the appropriate project types and focus areas (in addition to the five focus areas identified in § 3430.201) based on the critical needs of the specialty crop industry as identified through stakeholder input and deemed appropriate by CSREES. Of the funds made available each fiscal year, not less than 10 percent of these funds shall be allocated for each of the five focus areas identified in § 3430.201. In making awards for this program, CSREES will give higher priority to projects that are multistate, multi-institutional, and multidisciplinary; and include explicit mechanisms to communicate the results to producers and the public.

§ 3430.205 Funding restrictions.

(a) *Prohibition against construction.* Funds made available under this subpart shall not be used for the construction of a new building or facility or the acquisition, expansion, remodeling, or alteration of an existing facility (including site grading and improvement, and architect fees).

(b) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable.

§ 3430.206 Matching requirements.

(a) *Requirement.* Grantees are required to provide funds or in-kind support from non-Federal sources in an amount that is at least equal to the amount provided by the Federal government. The matching contribution must be provided from non-Federal sources except when authorized by statute. The matching requirements under this subpart cannot be waived.

(b) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52.

§ 3430.207 Other considerations.

The term of a grant under this subpart shall not exceed 10 years.

Signed at Washington, DC, on August 28, 2009.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. E9–21264 Filed 9–3–09; 8:45 am]

BILLING CODE 3410–22–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120, 121, 124, 126 and 134

RIN 3245–AF64

Agency Titling Procedure Revision; Nomenclature Changes

AGENCY: U.S. Small Business Administration.

ACTION: Notice of correcting amendments.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its regulations to correct omissions and errors in its final rule titled Agency Titling Procedure Revision; Nomenclature Changes which appeared in the **Federal Register** on August 30, 2007. In the Agency Titling Procedure Revision rule SBA amended its regulations to change the titles of certain SBA officials to conform to titles that are commonly used across the Federal Government. However, several references to SBA titles were inadvertently excluded in the original rule and there were some name changes that were not properly made. This notice will correct the improperly made changes and include the omitted title changes.

DATES: *Effective Dates:* These corrections are effective on September 4, 2009.

FOR FURTHER INFORMATION CONTACT: Napoleon Avery, Chief Human Capital Officer, Office of Human Capital Management, Office of Management and Administration, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. Tel: (202) 205–6780 and e-mail: *napolean.avery@sba.gov.*

SUPPLEMENTARY INFORMATION: The SBA published a final rule in the **Federal Register** on August 30, 2007, (72 FR 50037), which amended its regulations to reflect the new titles of certain SBA officials. The new titles conform SBA's management titles with those commonly used across the Federal Government. No changes were made to the responsibilities, reporting relationship, or other regulatory duties of the SBA officials whose titles are changed.

However, several SBA titles were inadvertently left unchanged. In addition, several title changes were improperly made and need to be corrected. This Notice of Correction will incorporate these additional title changes and will correct the improperly made changes.

Savings Provision

This Notice of Correcting Amendment shall constitute notice that all references to the old titles cited in SBA rules affected by this Notice in any documents, statements, or other communications, in any form or media, and whether made before, on, or after the effective date of this Notice, shall be deemed to be references to the new titles. Any actions undertaken in the name of or on behalf of these SBA officials under the old title, whether taken before, on, or after the effective date of this Notice, shall be deemed to have been taken in the name of the SBA official under the new title.

List of Subjects

13 CFR Part 120

Community development, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Minority businesses, Reporting and recordkeeping requirements, Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 134

Administrative practice and procedure, Claims, Organization and functions (Government agencies).

■ For the reasons set forth in the preamble, 13 CFR parts 120, 121, 124, 126, and 134 are amended as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3), and 697(a) and (e); Pub. L. 111–5, 123 Stat. 115.

§ 120.211 [Amended]

■ 2. Section 120.211 is amended in paragraph (b) by removing ''Director, Office of Business Development'' and adding in its place ''Associate Administrator for Business Development''.

§ 120.376 [Amended]

■ 3. Section 120.376 is amended in paragraph (a) by removing ''Director, Office of Business Development (MED)'' and adding in its place ''Associate Administrator for Business Development''.

§ 120.433 [Amended]

■ 4. Section 120.433 is amended in paragraph (a) by removing ''AA/FA'' and adding in its place ''D/FA''.

§ 120.472 [Amended]

■ 5. Section 120.472, introductory text, is amended by removing ''AA/FA'' and adding in its place ''D/FA''.

§ 120.473 [Amended]

■ 6. Section 120.473 is amended in paragraphs (a) and (b) by removing ''AA/FA'' and adding in its place ''D/FA''.

§ 120.540 [Amended]

■ 7. Section 120.540 is amended in paragraph (g) by removing ''AA/FA'' each time it appears, and adding in its place ''D/FA''.

§ 120.542 [Amended]

■ 8. Section 120.542 is amended in paragraphs (d) and (e) by removing ''AA/FA'' each time it appears, and adding in its place ''D/FA''.

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, sec. 401 et seq., 111 Stat. 2592.

§ 121.1001 [Amended]

■ 9. Section 121.1001 is amended as follows:

■ a. in paragraphs (b)(2)(i)(B) and (b)(7)(ii) by removing ''Assistant Administrator of the Division of Program Certification and Eligibility'' and adding in its place ''Director of the Division of Program Certification and Eligibility''.

■ b. in paragraphs (a)(2)(iii), (a)(5)(iii), (a)(7)(iii), (b)(2)(i)(B), (b)(2)(ii)(C), and (b)(7)(ii) by removing ''Director, Office of Business Development'' and adding in its place ''Associate Administrator for Business Development''.

§ 121.1008 [Amended]

■ 10. Section 121.1008 is amended in paragraph (a) by removing ''Director, Office of Business Development'' and adding in its place ''Associate Administrator for Business Development''.

§ 121.1103 [Amended]

■ 11. Section 121.1103 is amended in paragraph (a) by removing ''Director, Office of Business Development'' and adding in its place ''Associate Administrator for Business Development''.

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 12. The authority citation for Part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, sec 1207, Pub. L. 100–656, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

§ 124.103 [Amended]

■ 13. Section 124.103 is amended in paragraph (b)(3) by removing ''Director, Office of Business Development'' and adding in its place ''Associate Administrator for Business Development (AA/BD)''.

§ 124.105 [Amended]

■ 14. Section 124.105 is amended in paragraph (i)

■ a. by removing ''Director, Office of Business Development'' each time it appears, and adding in its place ''AA/BD''.

■ b. by removing ''AA/8(a)BD'' and adding in its place ''AA/BD''.

§ 124.106 [Amended]

■ 15. Section 124.106 is amended in paragraphs (e)(2) and (3) by removing ''Director, Office of Business Development'' each time it appears, and adding in its place ''AA/BD''.

§ 124.108 [Amended]

■ 16. Section 124.108 is amended in paragraphs (a)(1) and (2)

■ a. by removing ''Director, Office of Business Development'' each time it appears, and adding in its place ''AA/BD''.

■ b. by removing ''AA/8(a)BD'' and adding in its place ''AA/BD''.

§ 124.109 [Amended]

■ 17. Section 124.109 is amended in paragraph (b) by removing ''Director, Office of Business Development'' and adding in its place ''AA/BD''.

§ 124.204 [Amended]

■ 18. Section 124.204 is amended in paragraphs (a), (e), and (f) by removing ''Director, Office of Business Development'' each time it appears, and adding in its place ''AA/BD''.

§ 124.205 [Amended]

■ 19. Section 124.205 is amended in paragraph (a), (b) and (c) by removing ''AA/8(a)BD'' each time it appears, and adding in its place ''AA/BD''.

§ 124.206 [Amended]

■ 20. Section 124.206 is amended in paragraphs (b) and (d) by removing ''Director, Office of Business Development'' each time it appears, and adding in its place ''AA/BD''.

§ 124.304 [Amended]

■ 21. Section 124.304 is amended in paragraphs (c), (d), and (e) by removing ''Director, Office of Business Development'' and adding in its place ''AA/BD''.

§ 124.305 [Amended]

■ 22. Section 124.305 is amended in paragraphs (a), (d), and (e) by removing ''Director, Office of Business Development'' each time it appears, and adding in its place ''AA/BD''.

§ 124.503 [Amended]

■ 23. Section 124.503 is amended in paragraph (a)(5) by removing ''Director, Office of Business Development'' each time it appears, and adding in its place ''AA/BD''.

§ 124.504 [Amended]

■ 24. Section 124.504 is amended in paragraph (a) by removing ''Director, Office of Business Development'' and adding in its place ''AA/BD''.

§ 124.506 [Amended]

■ 25. Section 124.506 is amended in paragraph (c) introductory text, and in paragraphs (c), (c)(2), (c)(3) and (d) by removing ''Director, Office of Business Development'' and adding in its place ''AA/BD''.

§ 124.509 [Amended]

■ 26. Section 124.509 is amended in paragraph (e)(1) by removing ''Director, Office of Business Development'' and adding in its place ''AA/BD''.

§ 124.517 [Amended]

■ 27. Section 124.517 is amended in paragraph (d)(1) by removing ''Director, Office of Business Development'' and adding in its place ''AA/BD''.

§ 124.520 [Amended]

■ 28. Section 124.520 is amended in paragraphs (b)(2) and (e)(2) by removing ''Director, Office of Business Development'' and adding in its place ''AA/BD''.

§ 124.1008 [Amended]

■ 29. Section 124.1008 is amended in paragraph (a) by removing ''Associate Administrator for Government and Business Development'' and adding in its place ''Associate Administrator for Government Contracting and Business Development''.

§ 124.1009 [Amended]

■ 30. Section 124.1009 is amended by removing ''AA/SDBCE'' and adding in its place ''DC/SDBCE''.

§ 124.1013 [Amended]

■ 31. Amend § 124.1013 as follows:
■ a. in paragraphs (h)(1) and (2) by removing ''AA/SDBCE'' and adding in its place ''DC/SDBCE''; and
■ b. in paragraphs (h)(1) and (2) by removing ''AA/GC&BD'' each time it appears, and adding in its place ''DAA/GC&BD''.

PART 126—HUBZONE PROGRAM

■ 32. The authority citation for Part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p) and 657a.

§ 126.103 [Amended]

■ 33. Amend Section 126.103 as follows:
■ a. by removing the definition ADA/GC&BD and replacing with ''DAA/GC&BD means SBA's Deputy Associate Administrator for Government Contracting and Business Development''.
■ b. by removing the definition of ''D/BD'' and replacing with ''AA/BD means SBA's Associate Administrator for Business Development''.
■ c. by removing ''AA/HUB'' in the last sentence of the definition of ''County unemployment rate'' and adding in its place ''D/HUB''.
■ d. by removing ''AA/HUB'' in the last sentence of the definition of ''Statewide average unemployment rate'' and adding in its place ''D/HUB''.

§ 126.606 [Amended]

■ 34. Section 126.606 is amended by removing ''D/BD'' and adding in its place ''AA/BD''.

§ 126.803 [Amended]

■ 35. Section 126.803 is amended in paragraph (d) by removing ''AA/GC&BD'' and adding in its place ''AA/GC&BD, or designee''.

§ 126.805 [Amended]

■ 36. Amend § 126.805 as follows:

■ a. in paragraphs (a), (b) and (h) by removing ''ADA/GC&BD'' each time it appears, and adding in its place ''AA/GC&BD, or designee''; and

■ b. in paragraphs (e)(1), (e)(2) and (f) by removing ''AA/HUB'' and adding in its place ''D/HUB''.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 37. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

§ 134.302 [Amended]

■ 38. Section 134.302 is amended in paragraph (b) by removing ''Director, Office of Business Development'' and adding in its place ''Associate Administrator for Business Development''.

§ 134.403 [Amended]

■ 39. Section 134.403 is amended in paragraphs (a) and (b) by removing ''Director, Office of Business Development'' and adding in its place ''Associate Administrator for Business Development''.

§ 134.406 [Amended]

■ 40. Section 134.406 is amended in paragraph (e) by removing ''Director, Office of Business Development'' each time it appears, and adding in its place ''Associate Administrator for Business Development''.

Darryl Hairston,

Associate Administrator, Office of Management and Administration.

[FR Doc. E9–21363 Filed 9–3–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0804; Directorate Identifier 2008–SW–56–AD; Amendment 39–16013; AD 2009–18–17]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model AB412 and AB412 EP Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the specified Agusta S.p.A. (Agusta) Model AB412 and AB412 EP helicopters. This AD results from mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI establishes a life limit for certain rescue hoist cable assemblies and introduces the term ''hoist lift'' for determining cable life instead of the term ''hoist cycle.'' The MCAI also establishes a replacement time for each affected rescue hoist cable assembly (hoist cable assembly) for which the accumulated number of ''hoist cycles'' cannot be determined. The actions are intended to prevent failure of a hoist cable and inadvertent loss of a load.

DATES: This AD becomes effective on September 21, 2009.

We must receive comments on this AD by November 3, 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 your comments electronically.
- *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.

You may get the service information identified in this AD from Agusta, Via Giovanni Agusta, 520 21017 Cascina

Costa di Samarate (VA), Italy, telephone 39 0331–229111, fax 39 0331–229605/222595, or at *http://customersupport.agusta.com/technical_advice.php.*

Examining the 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 AD, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is stated in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2008–0142–E, dated July 30, 2008, to correct an unsafe condition associated with hoist cable assemblies installed on Agusta Model AB412 and AB412 EP helicopters. The MCAI establishes a life limit for certain hoist cable assemblies and introduces the term ''hoist lift'' for determining cable life instead of the term ''hoist cycle.'' The MCAI also establishes a replacement time for each affected hoist cable assembly for which the accumulated number of ''hoist cycles'' cannot be determined. The actions are intended to prevent failure of a hoist cable assembly and inadvertent loss of a hoist load.

You may obtain further information by examining the MCAI and any related service information in the AD docket.

Related Service Information

Agusta has issued Alert Bollettino Tecnico No. 412–126, dated July 28, 2008 (ABT). The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

The Agusta Model AB412 and AB412 EP helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, Italy's Technical Agent, has notified us of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other Model AB412 and AB412 EP helicopters of these same type designs.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Registry in the future.

Differences Between This AD and the MCAI AD

We use the term ''before further flight'' rather than ''before next flight. Also, we are using ''before further flight'' rather than October 31, 2008, for replacing a hoist cable assembly if you cannot determine the ''hoist cycles'' or the date of hoist cable installation.

Costs of Compliance

There are no costs of compliance since there are no helicopters of this type design on the U.S. Registry.

FAA's Determination of the Effective Date

Since there are currently no affected U.S. registered helicopters, we have determined that notice and opportunity for prior public comment before issuing this AD are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. However, we invite you to send us any written data, views, or arguments concerning this AD. Send your comments to an address listed under the **ADDRESSES** section of this AD. Include ''Docket No. FAA–2009–0804; Directorate Identifier 2008–SW–56–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

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 product(s) identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will 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.

Therefore, I certify this AD:

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

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

3. 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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2009–18–17 Agusta S.p.A.: Amendment 39–16013. Docket No. FAA–2009–0804; Directorate Identifier 2008–SW–56–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on September 21, 2009.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AB412 and AB412 EP helicopters, with internal hoist, part number (P/N) 214–070–300–1 (Goodrich P/N 42277–1); external hoist P/N BL–10300–60 (Breeze Eastern) or P/N BL–20200–SERIES (Breeze Eastern), installed, certificated in any category.

Reason

(d) The actions are intended to prevent failure of a hoist cable and inadvertent loss of a load.

Actions and Compliance

(e) Required as indicated, do the following:

(1) Before further flight, for rescue hoist cable assemblies, P/N 42305–179, 42277–178 (internal hoist cable assembly) and P/N BL–6260, BL–9149–3 (external hoist cable assembly), determine the number of accumulated ''hoist cycles'' for each hoist cable assembly and add that to the number of accumulated ''hoist lifts.'' A hoist lift is defined as an unreeling and recovery of the cable with a load attached to the hook, regardless of the length of the cable that is deployed or recovered. An unreeling or recovery of the cable with no load on the hook is not considered to be a lift.

(2) Before conducting the next hoist operation, replace any hoist cable assembly that has reached or exceeded 1,500 accumulated hoist lifts or 4 years from initial installation, whichever occurs first.

(3) If you cannot determine the ''hoist cycles'' or the date of the hoist cable assembly installation, before further flight, replace the hoist cable assembly with an airworthy hoist cable assembly.

(4) This AD revises the Airworthiness limitations section of the maintenance manual by adding a life limit of 1,500 hoist lifts or 4 years, whichever occurs first, for the affected hoist cable assemblies.

Differences Between This AD and the MCAI AD

(f) We use the term ''before further flight'' rather than ''before next flight. Also, we are using ''before further flight'' rather than October 31, 2008, for replacing a hoist cable if you cannot determine the ''hoist cycles'' or the date of hoist cable assembly installation.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, ATTN: Sharon Miles, Aerospace Engineer, Regulations and Policy Group, 2601 Meacham Blvd., Rotorcraft Directorate, Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961 has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

Related Information

(h) The European Aviation Safety Agency (EASA) MCAI Airworthiness Directive No. 2008–0142–E, dated July 30, 2008, and Agusta Alert Bollettino Tecnico No. 412–126, dated July 28, 2008, contain related information.

Joint Aircraft System/Component (JASC) Code

(i) JASC Code 1400: Miscellaneous Hardware.

Issued in Fort Worth, Texas, on August 26, 2009.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–21116 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 665

[Docket No. 080206127–91246–03]

RIN 0648–AS71

Fisheries in the Western Pacific; Pelagic Fisheries; Squid Jig Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; effectiveness of collection-of-information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in regulations implementing Amendment 15 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region, relating to squid jig fisheries. The intent of this final rule is to inform the public that the associated permitting and reporting requirements have been approved by OMB.

DATES: This rule is effective on October 5, 2009. The amendments to 50 CFR 665.13, 665.14, 665.21, and 665.22, published at 73 FR 70600 (November 21, 2008), have been approved by OMB and are effective on October 5, 2009.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William L. Robinson, Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700, and to David Rostker, OMB, by e-mail to *David__Rostker@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, Sustainable Fisheries Division, NMFS PIR, 808–944–2272.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is also accessible at *www.gpoaccess.gov/fr/*.

A final rule for Amendment 15 was published in the **Federal Register** on November 21, 2008 (73 FR 70600). The requirements of that final rule, other than the collection-of-information requirements, were effective on December 22, 2008. Because OMB approval of the collection-of-information requirements had not been received by the date that final rule was published, the effective date of the associated permitting and reporting requirements in that rule was delayed. OMB approved the collection-of-information requirements contained in the final rule on August 11, 2009.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This final rule contains new collection-of-information requirements subject to the PRA under OMB Control Number 0648–0589. The public reporting burden for these requirements is estimated to be 0.5 hr per permit applicant, with renewals requiring an additional 0.5 hr annually and approximately 10 min per vessel per fishing day to complete Federal catch reports. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to William L. Robinson (see **ADDRESSES**), or by e-mail to

David__Rostker@omb.eop.gov, or fax to 202–395–7285.

List of Subjects in 15 CFR Part 902

Reporting and recordkeeping requirements.

List of Subjects in 50 CFR Part 665

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

Dated: August 31, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, the amendments to 50 CFR 665.13, 665.14, 665.21, and 665.22, published at 73 FR 70600 (November 21, 2008), have been approved by OMB, and 15 CFR part 902 is amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, amend the table in paragraph (b), under the entry ''50 CFR'' by revising the entries for ''665.13'', ''665.14'', ''665.16'', and ''665.21(k)'' to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number the information (All numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
665.13	–0490, –0586, and –0589
665.14	–0214, –0586, and –0589
665.16	–0360, –0586, and –0589
* * * * *	
665.21 (k)	–0490 and –0589
* * * * *	

[FR Doc. E9–21405 Filed 9–3–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9458]

RIN 1545–BI72

Modification to Consolidated Return Regulation Permitting an Election To Treat a Liquidation of a Target, Followed by a Recontribution to a New Target, as a Cross-Chain Reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 1502 of the Internal Revenue Code (Code). The change to the consolidated return regulations is necessary in light of the regulations under section 368 that were issued in October 2007 addressing transfers of assets or stock following a reorganization. The temporary regulations modify the election under which a consolidated group can avoid immediately taking into account an intercompany item after the liquidation of a target corporation. The temporary regulations apply to corporations filing consolidated returns. The text of these temporary regulations also serves as the text of the proposed regulations (REG–139068–08) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on September 4, 2009.

Applicability Date: The changes reflected in these temporary regulations (§ 1.1502–13T(f)(5)(ii)(B)(*1*) and (*2*)) generally apply to transactions in which T's liquidation into B occurs on or after the effective date of the § 1.368–2(k) regulations, October 25, 2007. For transactions in which T's liquidation into B occurs before October 25, 2007, § 1.1502–13(f)(ii)(B)(*1*) and (*2*) in effect prior to October 25, 2007 as contained in 26 CFR part 1, revised April 1, 2009, continue to apply.

FOR FURTHER INFORMATION CONTACT: Concerning the temporary regulations, Mary W. Lyons, (202) 622–7930; concerning submission of comments and the hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1433. Responses to this collection of information are required in order for the parent of a consolidated group to make the election found in § 1.1502–13T(f)(5)(ii)(B). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Section 1.1502–13(f)(5) provides that S's (the selling member in an intercompany transaction) intercompany item from a transfer to B (the buying member in an intercompany transaction) of the stock of another corporation (T) is taken into account in certain circumstances even though the T stock is never held by a nonmember of the consolidated group after the intercompany transaction. For example, if S sells all of T's stock to B at a gain, and T subsequently liquidates into B in a separate transaction to which section 332 applies, S's gain is taken into account under the matching rule. This result would also be obtained in other transactions in which B's basis in its T stock is permanently eliminated in a nonrecognition transaction, including a merger of B into T under section 368(a), a distribution by B of its T stock in a transaction described in section 355, and a deemed liquidation of T resulting from an election under section 338(h)(10). However, an election to apply § 1.1502–13(f)(5)(ii)(B) is available that allows a taxpayer whose intercompany gain on subsidiary (T)

stock was taken into account upon the subsidiary's liquidation to reincorporate the subsidiary to prevent the intercompany gain from being taken into account at such time. Section 1.1502–13(f)(5)(ii)(B) provides:

> If section 332 applies to T's liquidation into B, and B transfers T's assets to a new member (new T) in a transaction not otherwise pursuant to the same plan or arrangement as the liquidation, the transfer is nevertheless treated for all Federal income tax purposes as pursuant to the same plan or arrangement as the liquidation. For example, if T liquidates into B, but B forms new T by transferring substantially all of T's former assets to new T, S's intercompany gain or loss generally is not taken into account solely as a result of the liquidation if the liquidation and transfer would qualify as a reorganization described in section 368(a). (Under [§ 1.1502–13(j)(1)], B's stock in new T would be a successor asset to B's stock in T, and S's gain would be taken into account based on the new T stock.)

1. Results Prior to the Issuance of § 1.368–2(k) Regulations

Prior to the issuance of the regulations under § 1.368–2(k) (the –2(k) regulations) in October 2007, the election to apply § 1.1502–13(f)(5)(ii)(B) triggered the application of the step transaction doctrine. Under the step transaction doctrine, the liquidation of a corporation followed by a contribution of substantially all its assets to a new corporation generally is recharacterized as a cross-chain reorganization. In a cross-chain reorganization, B's basis in the new T stock is determined by reference to its basis in the old T stock. Therefore, under § 1.1502–13(j), the new T stock is a successor asset to the old T stock, and S's gain on the old T stock is not taken into account upon the liquidation of old T, but instead is taken into account by reference to the new T stock. By not immediately taking the gain into account, the purpose of § 1.1502–13, that is, to provide rules that clearly reflect the income and tax liability of the group by preventing intercompany transactions from creating, accelerating, avoiding, or deferring consolidated taxable income or consolidated tax liability, is accomplished. See § 1.1502–13(a)(1)).

2. Results After the Issuance of § 1.368–2(k) Regulations

The issuance of the –2(k) regulations created a conflict with the language of § 1.1502–13(f)(5)(ii)(B). Section 1.368–2(k) provides, in general, that a transaction otherwise qualifying as a reorganization under section 368(a) shall not be disqualified or recharacterized as a result of one or more subsequent transfers (or successive transfers) of assets or stock, provided that the requirements of § 1.368–1(d) are satisfied and the transfer(s) are described in either § 1.368–2(k)(1)(i) or (ii). Under the –2(k) regulations, which are generally effective for transactions occurring on or after October 25, 2007, the liquidation of old T followed by the contribution of substantially all the old T assets to new T would now be characterized as an upstream C reorganization (if it so qualifies) followed by a section 368(a)(2)(C) drop of assets, and would no longer be recharacterized as a cross-chain reorganization. Thus, B's basis in its new T stock would not be determined by reference to B's basis in the old T stock, but by reference to the basis of old T's assets.

3. Reason for Change

Section 1.1502–13(j)(1) provides that an asset is a successor asset if its basis is determined by reference to the basis of the first asset. In a cross-chain reorganization, the result prior to the issuance of the –2(k) regulations, B's basis in the new T stock would be determined by reference to the basis of the old T stock, thus the new T stock would clearly fall within the meaning of successor asset in § 1.1502–13(j)(1). However, in an upstream reorganization followed by a drop of the assets to new T, the result after the issuance of the –2(k) regulations, B's basis in new T would be determined by reference to the basis of the old T assets, not the old T stock. Thus, the new T stock would not be a successor asset to the old T stock in an upstream reorganization.

Permitting an election to apply § 1.1502–13(f)(5)(ii)(B) while treating the transaction as an upstream reorganization would be inconsistent with the purposes of § 1.1502–13. For example, assume S sells its stock in T to B for $1,000,000 and T has a basis in its assets of $3,000,000. T then liquidates into B, which recontributes the assets to new T. If the transaction is treated as an upstream reorganization under section 368(a)(1)(C), followed by a drop of the assets under section 368(a)(2)(C), B would receive a basis in T's assets of $3,000,000 under section 362(b), and, on the drop of the assets to new T, would receive a basis in its new T stock of $3,000,000 under section 358(a). This increase in basis in the new T stock over the basis of the old T stock is inconsistent with allowing S's continued deferral of the gain on the old T stock and the purposes of § 1.1502–13.

Therefore, in order to satisfy the purposes of § 1.1502–13, these regulations provide that if the election to apply § 1.1502–13T(f)(5)(ii)(B) is made for a transaction in which old T liquidates into B on or after the effective date of the –2(k) regulations, followed by B's transfer of substantially all of old T's assets to new T, then, for all Federal income tax purposes, old T's liquidation into B and B's transfer of substantially all of old T's assets to new T will be disregarded and, instead, the transaction will be treated as if old T transferred substantially all of its assets to new T in exchange for new T stock in a reorganization described in section 368(a). This election is available only if a direct transfer of the old T assets to new T would qualify as a reorganization. Thus, S's gain from the sale of the T stock to B is not taken into account upon the liquidation of T but instead is taken into account with respect to the new T stock, the successor asset to the old T stock.

4. Previous Intercompany Transaction With Respect to the T Stock

Under current § 1.1502–13(f)(5) and these regulations, the election so described is available only if the old T stock had previously been transferred in an intercompany transaction. Comments are requested on whether the election should be available even when there has not been a previous intercompany transaction with respect to the old T stock.

5. Effective/Applicability Date

The changes reflected in these temporary regulations (§ 1.1502–13T(f)(5)(ii)(B)(*1*) and (*2*)) generally apply to transactions in which T's liquidation into B occurs on or after the effective date of the –2(k) regulations, October 25, 2007. For transactions in which T's liquidation into B occurs before October 25, 2007, § 1.1502–13(f)(ii)(B)(*1*) and (*2*) in effect prior to October 25, 2007 as contained in 26 CFR part 1, revised April 1, 2009, continue to apply. Generally, pursuant to § 1.1502–13T(f)(5)(ii)(B)(*2*) and § 1.1502–13(f)(5)(ii)(E), the election described in these temporary regulations is made by entering into a written plan to transfer the T assets from B to new T on or before the due date of the consolidated tax return for the tax year that includes the date of the liquidation and including the statement described in § 1.1502–13(f)(5)(ii)(E) on or with such timely filed return. However, consolidated groups for which the liquidation of the target corporation occurred on or after October 25, 2007, and whose tax return for the year of liquidation was filed before November 3, 2009 may make this election by entering into the written plan on or before November 3, 2009 and including

the statement on or with an original tax return or an amended tax return for the tax year that includes the liquidation filed before November 3, 2009. In either case, the transfer of substantially all of T's assets to new T must be made within 12 months of the filing of such original or amended return.

Special Analyses

It has been determined that this temporary regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations do not have a substantial economic impact because they merely provide for an election in the context of a taxpayer that has triggered deferred gain on subsidiary stock upon the liquidation of the subsidiary. Moreover, the regulations apply only to transactions involving consolidated groups which tend to be larger businesses. Accordingly a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Mary W. Lyons of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.1502–13T also issued under 26 U.S.C. 1502 * * *

■ **Par. 2.** Section 1.1502–13 is amended by revising paragraph (f)(5)(ii)(B) to read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(f) * * *

(5) * * *

(ii) * * *

(B)(*1*) [Reserved]. For further guidance, see § 1.1502–13T(f)(5)(ii)(B)(*1*).

(*2*) [Reserved]. For further guidance, see § 1.1502–13T(f)(5)(ii)(B)(*2*).

■ **Par. 3.** Section 1.1502–13T is amended by:

■ 1. Revising paragraphs (f)(5)(ii)(B)(*1*) and (B)(*2*).

■ 2. Adding paragraph (f)(5)(ii)(F).

The revisions and addition read as follows:

§ 1.1502–13T Intercompany transactions (temporary).

* * * * *

(c)(6)(ii)(D) through (f)(5)(ii)(A) [Reserved]. For further guidance, see § 1.1502–13(c)(6)(ii)(D) through (f)(5)(ii)(A).

(B) *Section 332*—(*1*) *In general.* If section 332 would otherwise apply to T's (old T's) liquidation into B, and B transfers substantially all of old T's assets to a new member (new T), and if a direct transfer of substantially all of old T's assets to new T would qualify as a reorganization described in section 368(a), then, for all Federal income tax purposes, T's liquidation into B and B's transfer of substantially all of old T's assets to new T will be disregarded and instead, the transaction will be treated as if old T transferred substantially all of its assets to new T in exchange for new T stock and the assumption of T's liabilities in a reorganization described in section 368(a). (Under § 1.1502–13(j)(1), B's stock in new T would be a successor asset to B's stock in old T, and S's gain would be taken into account based on the new T stock.)

(*2*) *Time limitation and adjustments.* The transfer of old T's assets to new T qualifies under paragraph (f)(5)(ii)(B)(*1*) of this section only if B has entered into a written plan, on or before the due date of the group's consolidated income tax return (including extensions), to transfer the T assets to new T, and the statement described in paragraph (f)(5)(ii)(E) of this section is included on or with a timely filed consolidated tax return for the tax year that includes the date of the liquidation (including extensions). However, see paragraph (f)(5)(ii)(F) of this section for certain situations in which the plan may be entered into after the due date of the return and the statement described in paragraph (f)(5)(ii)(E) of this section may be included on either an original tax return or an amended tax return filed after the due date of the return. In either case, the transfer of substantially all of T's assets to new T must be completed within 12 months of the filing of the return. Appropriate adjustments are made to reflect any events occurring before the formation of new T and to reflect any assets not transferred to new T, or liabilities not assumed by new T. For example, if B retains an asset of old T, the asset is treated under § 1.1502–13(f)(3) as acquired by new T but distributed to B immediately after the reorganization.

(f)(5)(ii)(B)(*3*) through (f)(5)(ii)(E) [Reserved]. For further guidance, see § 1.1502–13(f)(5)(ii)(B)(*3*) through (f)(5)(ii)(E).

(F) *Effective/Applicability date*—(*1*) *General rule.* Paragraphs (f)(5)(ii)(B)(*1*) and (*2*) of this section apply to transactions in which old T's liquidation into B occurs on or after October 25, 2007.

(*2*) *Prior periods.* For transactions in which old T's liquidation into B occurs before October 25, 2007, see § 1.1502–13(f)(5)(ii)(B)(*1*) and (*2*) in effect prior to October 25, 2007 as contained in 26 CFR part 1, revised April 1, 2009.

(*3*) *Special rule for tax returns filed before November 3, 2009* In the case of a liquidation on or after October 25, 2007, by a taxpayer whose original tax return for the year of liquidation was filed on or before November 3, 2009 then, notwithstanding paragraph (f)(5)(ii)(B)(*2*) of this section and § 1.1502–13(f)(5)(ii)(E), the election to apply paragraph (f)(5)(ii)(B) of this section may be made by entering into the written plan described in paragraph (f)(5)(ii)(B) of this section on or before November 3, 2009, including the statement described in § 1.1502–13(f)(5)(ii)(E) on or with an original tax return or an amended tax return for the tax year that includes the liquidation filed on or before November 3, 2009, and transferring substantially all of T's assets to new T within 12 months of the filing of such original or amended return.

(f)(6) through (f)(7)(i) *Example 6* [Reserved]. For further guidance, see § 1.1502–13(f)(6) through (f)(7)(i) *Example 6.*

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1502–13	1545–1433
* * * * *	

Approved: August 27, 2009.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Michael Mundaca,

(Acting) Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–21324 Filed 9–3–09; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 20

U.S. Census Bureau Electronic Export Information Requirements When Sending Shipments Internationally

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: New Foreign Trade Regulations (FTR) issued by the U.S. Census Bureau require Postal Service revisions to its mailing standards and customs label requirements for customers mailing items internationally.

DATES: Effective November 2, 2009.

FOR FURTHER INFORMATION CONTACT: Rick Klutts, 813–877–0372.

SUPPLEMENTARY INFORMATION: On September 30, 2008, the U.S. Census Bureau implemented statutory requirements for the electronic filing of export information through the Census Bureau's Automated Export System (AES) or its AES*Direct* Web site for various international shipments where a Shipper's Export Declaration (SED) was previously required. The new Foreign Trade Regulations mandate that Electronic Export Information (EEI) be filed when any type of goods contained in a shipment (per Schedule B Export Codes at *http://www.census.gov/foreign-trade/schedules/b*) is valued at more than $2,500 or requires an export license under U.S. law, subject to certain exceptions.

These Postal Service standards are consistent with the Foreign Trade Regulations (15 CFR part 30) and 13 U.S.C. Chapter 9, as amended by the Foreign Relations Authorization Act of 2002, Public Law 107–228.

In addition, items mailed as gift parcels or humanitarian donations to certain countries designated as State Sponsors of Terrorism must comply with the conditions for License Exception ''GFT'', or else customers may be required to obtain an export license from the U.S. Department of Commerce, Bureau of Industry and Security. The definitions and limitations on such gift parcels and humanitarian donations are set forth in the Commerce Department's Export Administration Regulations at 15 CFR 740.12 and part 746. The Postal Service standards for endorsing qualifying items as gift parcels or humanitarian donations are consistent with the Export Administration Regulations (15 CFR 740.12(a)(3)(ii) and 758.1(d)).

Requirements for Sending an International Shipment

Effective November 2, 2009, customers mailing outbound international shipments containing goods are responsible for providing an Exemption and Exclusion Legend, Proof of Filing Citation (PFC), or AES Downtime Citation. Goods mailed to APO/FPO/DPO (DMM 703.2) addresses are not subject to this standard. Section 30.71 of the Federal Trade Regulations establishes civil and criminal penalties for customers who fail to electronically file their export information when required, or to comply with the Foreign Trade Regulations in any other way.

Electronic Export Information Filing; Proof of Filing Citation

Subject to exemptions and exclusions, as set forth below, electronic filing of export information and a Proof of Filing Citation (PFC) are required when:

1. Any type of goods contained in a shipment (per Schedule B Export Codes at *http://www.census.gov/foreign-trade/schedules/b*) is valued at more than $2,500.

2. The package is shipped to certain countries designated as State Sponsors of Terrorism (see Country Group E:1 in the Export Administration Regulations, 15 CFR Part 740, Supplement No. 1) and does not qualify as a ''gift parcel or humanitarian donation'' under 15 CFR 740.12. As of August, 2009, these countries are:

a. Cuba.

b. Iran.

c. People's Democratic Republic of Korea (North Korea).

d. Sudan.

e. Syrian Arab Republic (Syria).

3. The package requires an export license. To determine if an export license is required, go to *http://www.export.gov/regulation/index.asp* or call: 1–800–USA–TRAD(E).

When any of these three circumstances apply, it is the mailer's responsibility to electronically file export information before mailing; a paper Shipper's Export Declaration (SED) is no longer accepted. Electronic export information is filed through the U.S. Census Bureau's Automated Export System (AES) or AES*Direct* Web site utilizing the following steps:

- Log on to *http://www.aesdirect.gov* and follow the instructions for registering and completing the AES Certification Quiz.
- The ''Port of Export'' code for shipping through the Postal Service is ''8000''.
- The ''Mode of Transport'' is ''Mail''.
- The carrier should be left as ''SCAC/IATA,'' and the conveyance name fields should remain blank.
- After the mailer has successfully filed the electronic export information, the mailer will be provided with an alphanumeric Internal Transaction Number as confirmation. When mailing, the PFC will consist of the letters ''AES'' followed by the Internal Transaction Number (ITN): for example, ''AES X20080930987654''.

Note: If the AES system is down, call 1–800–549–0595, option 1.

AES Downtime Citation

If export information filing is required but AES or AES*Direct* is unavailable, the goods may be shipped but the mailer is responsible for providing the appropriate AES Downtime Citation. This citation includes the word ''AESDOWN,'' the mailer's AES filer identification number, and the date: for example, ''AESDOWN 123456789 09/30/2009''.

Exemption and Exclusion Legends

If no class of goods within the package is valued at more than $2,500 and an export license is not required, the customer should enter the exemption code ''NOEEI 30.37(a)'' on the customs declaration form, unless the goods are being shipped to Cuba, Iran, North Korea, Sudan, or Syria. If one or

more classes of goods within the package is valued at more than $2,500, another exemption code might apply, such as ''NOEEI 30.36'' (goods shipped to Canada, subject to certain exceptions). For a complete listing, see Appendix C to 15 CFR Part 30.

Exemption and Exclusion Legends cannot be applied to packages that require an export license. In such cases, customers are responsible for filing, or attempting to file, electronic export information through the AES Web site and apply a PFC or AES Downtime Citation to the customs declaration form. For gift parcels and humanitarian donations, as defined in 15 CFR 740.12, mailed to certain countries designated as State Sponsors of Terrorism (see Country Group E:1 in the Export Administration Regulations, 15 CFR Part 740, Supplement No. 1), customers may use exemption code ''NOEEI 30.37(h).'' In addition, the item must be endorsed with the marking ''GIFT—Export License Not Required'' on the addressee side of the package, and the symbol ''GFT'' must be written in the same block as the Exemption and Exclusion Legend on the applicable required customs declaration, as described below.

Entering Required, PFC, AES Downtime Citation, or Exemption and Exclusion Legend

The PFC, AES Downtime Citation, or Exemption and Exclusion Legend can be marked on the applicable customs declaration form as follows:

- On PS Form 2976–A, *Customs Declaration and Dispatch Note—CP72* (large white form) customers should write one PFC, AES Downtime Citation, or applicable Exemption and Exclusion Legend in Block 11.
- On older versions of PS Form 2976–A printed prior to January 2009, customers should write one PFC, AES Downtime Citation, or applicable Exemption and Exclusion Legend at the top of the form or in any clear space. Avoid writing over the barcode on the form.
- On PS Form 2976, *Customs Declaration—CN22* (September 2009, version) customers should check ''30.37(a)'' or ''30.37(h)'' in Block 7 of the form, depending on the applicable Exemption and Exclusion Legend.
- On older versions of PS Form 2976, *Customs Declaration—CN22* (small green form) customers should write one applicable Exemption and Exclusion Legend (''30.37(a)'' or ''30.37(h)'') on the green portion of the form.
- On Label 11FGG1, Global Express Guaranteed (GXG), *International Air Waybill (Mailing Label)*, printed prior to August 2008, customers should write ''30.37(a)'' next to the sender's signature. Current versions have this Exemption and Exclusion Legend included on the GXG mailing label.

Note: These standards also apply to mailers who produce privately printed customs declaration forms.

Responding to Customer Questions

Customers needing further assistance with AES filing requirements should contact the U.S. Census Bureau on its toll-free hotline at 1–800–549–0595:

Option 1—AES Assistance

Option 2—Commodity Classification Assistance

Option 3—Regulatory Assistance

Customers may also obtain a copy of Publication 613, *New U.S. Census Bureau Regulations: What Mailers Need to Know When Shipping an International Package*, from any U.S. Postal Service retail unit.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 20.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ Accordingly, 39 CFR part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM) as follows:

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

1 International Mail Services

* * * * *

120 Preparation for Mailing

* * * * *

123 Customs Declaration Forms and Online Shipping Labels

* * * * *

123.7 Completing Customs Declaration Forms

123.71 PS Form 2976, Customs Declaration CN 22—Sender's Declaration (Green Label)

* * * * *

123.712 Postal Service Employee's Acceptance of PS Form 2976

* * * * *

[Add new item e as follows:]

e. To comply with U.S. Census Bureau requirements, it is the customer's responsibility to ensure an appropriate Exemption and Exclusion Legend is selected or displayed on the PS Form 2976.

* * * * *

123.72 PS Form 2976–A, Customs Declaration and Dispatch Note—CP 72

* * * * *

123.722 Postal Service Employee's Acceptance of PS Form 2976–A

* * * * *

[Insert new item c as follows and redesignate existing items c through g as new items d through h]

c. To comply with U.S. Census Bureau requirements, it is the customer's responsibility to ensure that an appropriate Exemption and Exclusion Legend, Proof of Filing Citation, or AES Downtime Citation is displayed on the PS Form 2976–A. If this information is not entered, remind the customer that he or she may be subject to civil and criminal penalties for noncompliance.

* * * * *

5 Nonpostal Export Regulations

* * * * *

[Delete current 521 through 524. Insert new 520–527 to read as follows:]

520 Foreign Trade Regulations—U.S. Census Bureau

521 General

This section describes the various U.S. Department of Commerce, U.S. Bureau of the Census requirements when shipping goods internationally. In certain circumstances, customers are responsible for entering information on the PS Form 2976 or 2976–A. Customers may be subject to civil and criminal penalties if they fail to electronically file their export information when required, or if they fail to comply with the Foreign Trade Regulations in any other way.

522 Additional Assistance

Customers needing further assistance with filing requirements should contact

the U.S. Census Bureau on its toll-free hotline at 1–800–549–0595:

- Option 1—AES Assistance
- Option 2—Commodity Classification Assistance
- Option 3—Regulatory Assistance

523 Mailpieces Sent To APOs, FPOs, and DPOs

Goods mailed to APO/FPO/DPO addresses are not subject to the Foreign Trade Regulations. Accordingly, customers are not required to file electronic export information via the U.S. Census Bureau's Automated Export System or AES*Direct* Web site for such mailings, and they do not need to present a Proof of Filing Citation, AES Downtime Citation, or Exemption and Exclusion Legend.

524 Proof of Filing Citation (PFC)

524.1 General

Under the authority of 13 U.S.C. Chapter 9, as amended by the Foreign Relations Authorization Act of 2002, Public Law 107–228, U.S. Census Bureau regulations require electronic filing of export information through the Census Bureau's Automated Export System (AES) or AES*Direct* Web site for certain outbound international shipments of goods. Before mailing, customers subject to this filing requirement are responsible for presenting a Proof of Filing Citation (PFC) or AES Downtime Citation as evidence of compliance.

The Census Bureau's regulations mandate that electronic export information be filed when any type of goods contained in a shipment (per Schedule B Export Codes at *http://www.census.gov/foreign-trade/schedules/b*) is valued at more than $2,500, requires an export license under U.S. law, or is being sent to certain countries designated as State Sponsors of Terrorism, subject to certain exceptions. Following are three examples to illustrate the value criterion:

• Example 1:

An insured Priority Mail International package contains one *mechanically* operated watch (Schedule B item # 9101.11.0000) valued at $2600. The total value of goods to be mailed is $2600, and the value of all items within the same Schedule B number is over $2500. Consequently, electronic filing and a PFC *would* be required (unless an exemption or exclusion applies).

• Example 2:

An insured Priority Mail International package contains one *mechanically* operated watch (Schedule B item # 9101.11.0000) valued at $2400, and one *electronically* operated watch (Schedule B item# 9101.91.0000) valued at $2400. The total value of goods to be mailed is $4800, but no group of items within the same Schedule B number is valued over $2500. Consequently, electronic filing and a PFC *would not* be required because the mechanical watch and electronic watch are in different Schedule B groups.

• Example 3:

An insured Priority Mail International package contains two mechanically operated watches (Schedule B item # 9101.11.0000) one valued at $1400 and one valued at $1500. The total value of goods to be mailed is $2900 and the value of all items within the same Schedule B number is over $2500. Consequently, electronic filing and a PFC *would* be required (unless an exemption or exclusion applies).

524.2 Filing Requirements

524.21 Mandatory Filing

Electronic filing of export information is required when any of the following applies:

a. One or more classes of goods (per Schedule B Export Codes at *http://www.census.gov/foreign-trade/schedules/b)* within the item is valued at more than $2,500, unless the shipment falls under an exemption or exclusion. See 520.6.

b. The item requires an export license under U.S. law.

c. The shipment is destined to a designated State Sponsor of Terrorism country (per Country Group E:1 in the Export Administration Regulations, 15 CFR Part 740, Supplement No. 1) and the shipment does not qualify as a ''gift parcel or humanitarian donation'' as defined by 15 CFR 740.12. See 520.6.

Note: Currently, the State Sponsors of Terrorism countries are:

1. Cuba.
2. Iran.
3. The Democratic People's Republic of Korea (North Korea).
4. Sudan.
5. The Syrian Arab Republic (Syria).

524.22 How to File Electronic Export Information and Obtain a Proof of Filing Citation

To file electronic export information through AES*Direct* and obtain a PFC, customers should use the following steps:

a. Go to *http://www.aesdirect.gov*.

b. Register for an AES*Direct* account or log into your existing account.

c. Follow the instructions for the AES Certification Quiz.

d. The ''Port of Export'' code for shipping through the Postal Service is ''8000''.

e. The ''Mode of Transport'' is ''Mail''.

f. Leave the carrier as 'SCAC/IATA' and the conveyance name fields blank.

g. After successfully filing electronic export information, AES*Direct* will provide an alphanumeric Internal Transaction Number (ITN) as confirmation. The PFC consists of the letters ''AES'' followed by the ITN: for example, ''AES X20080930987654''.

For additional information on electronic filing, call the U.S. Census Bureau's toll-free information hotline at 800–549–0595, option #3.

525 AES Downtime Citation

If electronic information filing is required but AES or AES*Direct* is unavailable, the goods may be shipped but the customer is responsible for providing the appropriate AES Downtime Citation instead of a PFC. This citation includes the word ''AESDOWN,'' the customer's AES filer identification number, and the date: for example, ''AESDOWN 123456789 09/30/2009.''

526 Exemption and Exclusion Legend

526.1 General

In many circumstances, electronic export information filing and a PFC may not be required when mailing goods internationally. In these circumstances, customers are directed to apply an applicable Exemption and Exclusion Legend on the customs declaration form upon mailing. The following conditions apply:

a. One Exemption and Exclusion Legend may be entered per addressed mailpiece. When multiple exemptions may apply, the mailer may select any one that applies.

b. Exemption and Exclusion Legends cannot be applied to shipments if an export license is required.

526.2 When Applicable

Customers with shipments not meeting the mandatory filing requirements under 520.41 may apply the exemption legends such as the following on the customs declaration form:

1. ''NOEEI 30.37(a)'' for shipments when the value of each class of goods is $2,500 or less, when an export license is not required. This exemption cannot be applied to shipments to designated State Sponsors of Terrorism countries.

2. ''NOEEI 30.36'' for shipments to Canada, when an export license is not required.

3. ''NOEEI 30.37(h)'' for shipments of gift parcels and humanitarian donations as defined in 15 CFR 740.12. This exemption may apply to qualifying shipments to the designated State

Sponsors of Terrorism countries identified in 520.41(c). In addition, the item must be endorsed with the marking ''GIFT—Export License Not Required'' on the addressee side of the package, and the symbol ''GFT'' must be written in the same block as the Exemption and Exclusion Legend on the applicable required customs declaration, as described in 527.

Note: For more information and a complete listing of these and other exemption and exclusion legends, see Appendix C of the Foreign Trade Regulations, 15 CFR Part 30.

527 Placement of PFC, AES Downtime Citation, or Exemption and Exclusion Legend

When shipments require a PFC, AES Downtime Citation, or Exemption and Exclusion Legend, it is the customer's responsibility to legibly write the PFC, AES Downtime Citation, or Exemption and Exclusion Legend on the applicable customs declaration form as follows:

a. On PS Form 2976–A, *Customs Declaration and Dispatch Note—CP72* (large white form), customers should write one PFC, AES Downtime Citation, or Exemption and Exclusion Legend in Block 11.

b. On older versions of PS Form 2976–A printed prior to January 2009, customers should write one PFC, AES Downtime Citation, or Exemption and Exclusion Legend at the top of the form or in any clear space. Avoid writing over the barcode on the form.

c. On PS Form 2976, *Customs Declaration—CN22* (September 2009 version), customers should check ''30.37(a)'' or ''30.37(h)'' in Block 7 of the form, depending on the applicable Exemption and Exclusion Legend.

d. On older versions of PS Form 2976, *Customs Declaration—CN22* (small green form), customers should write one applicable Exemption and Exclusion Legend (''30.37(a)'' or ''30.37(h)'') in the margin on the green portion of the form.

e. On Label 11FGG1, Global Express Guaranteed (GXG), *International Air Waybill (Mailing Label)* printed prior to August 2008, customers should write ''NOEEI 30.37(a)'' next to the sender's signature. Current versions have this exemption legend included on the GXG mailing label.

Note: These standards also apply to mailers who produce privately printed customs declaration forms under 123.3.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–21307 Filed 9–3–09; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

U.S. Census Bureau Electronic Export Information Requirements When Sending Shipments Between or to U.S. Territories, Possessions, and Freely Associated States

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: New Foreign Trade Regulations (FTR) issued by the U.S. Census Bureau require the Postal Service to revise its standards and customs label requirements for customers mailing items between the United States, Puerto Rico, and the U.S. Virgin Islands, and from the United States to the Freely Associated States (Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau).

DATES: Effective November 2, 2009.

FOR FURTHER INFORMATION CONTACT: Rick Klutts, 813–877–0372.

SUPPLEMENTARY INFORMATION: On September 30, 2008, the U.S. Census Bureau implemented statutory requirements for the electronic filing of export information through the Census Bureau's Automated Export System (AES) or its AES*Direct* Web site for various international shipments where a Shipper's Export Declaration (SED) was previously required. The new Foreign Trade Regulations mandate that Electronic Export Information (EEI) be filed when any type of goods contained in a shipment (per Schedule B Export Codes at *http://www.census.gov/foreign-trade/schedules/b*) is valued at more than $2,500 or requires an export license under U.S. law, subject to certain exceptions.

The Postal Service standards are consistent with the Foreign Trade Regulations (15 CFR part 30) and 13 U.S.C. Chapter 9, as amended by the Foreign Relations Authorization Act of 2002, Public L. 107–228.

Requirements for Sending Shipments Between or to U.S. Territories, Possessions, and Freely Associated States

Effective November 2, 2009, customers mailing certain shipments containing goods between the United States, Puerto Rico, and the U.S. Virgin Islands, or from the United States to the Freely Associated States (Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau), are responsible for filing electronic export information with the Census Bureau, and for providing a Proof of Filing Citation (PFC) or AES Downtime Citation. In addition, in circumstances where a customs declaration form is used today on certain parcels, an Exemption or Exclusion Legend should appear, provided a PFC or AES Downtime Citation is not applicable. Goods mailed to APO/FPO/DPO addresses are not subject to these standards. Section 30.71 of the Federal Trade Regulations establishes civil and criminal penalties for customers who fail to electronically file their export information when required, or to comply with their regulations in any other way.

Electronic Export Information Filing; Proof of Filing Citation

The Census Bureau's requirements for electronic filing of export information apply to certain shipments:

1. From the United States to Puerto Rico or the U.S. Virgin Islands.

2. From Puerto Rico to the United States or U.S. Virgin Islands.

3. From any U.S. location to the Freely Associated States. Subject to exemptions and exclusions, as set forth below, electronic filing of export information and a Proof of Filing Citations (PFC) are required when:

1. Any type of goods in the package (per Schedule B Export Codes at *http://www.census.gov/foreign-trade/schedules/b*) is valued at more than $2,500.

2. The package requires an export license, if sent to one of the Freely Associated States. To determine if an export license is required, go to *http://www.export.gov/regulation/index.asp* or call: 1–800–USA–TRAD(E).

In these circumstances, it is the mailer's responsibility to electronically file export information before mailing; a paper Shipper's Export Declaration (SED) is no longer accepted. Electronic export information is filed through the U.S. Census Bureau's Automated Export System (AES) or AES*Direct* Web site utilizing the following steps:

■ Log on to *http://www.aesdirect.gov* and follow the instructions for registering and completing the AES Certification Quiz.

■ The ''Port of Export'' code for shipping through the Postal Service is ''8000''.

■ The ''Mode of Transport'' is ''Mail''.

■ The carrier should be left as ''SCAC/IATA,'' and the conveyance name fields should remain blank.

■ After the mailer has successfully filed the electronic export information, the mailer will be provided with an alphanumeric Internal Transaction Number (ITN) as confirmation. When

mailing, the Proof of Filing Citation will consist of the letters ''AES'' followed by the ITN: for example, ''AES X20080930987654''.

Note: If the AES system is down, call 1–800–549–0595, option 1.

AES Downtime Citation

If export information filing is required but AES or AESDirect is unavailable, the goods may be shipped but the mailer is responsible for providing the appropriate AES Downtime Citation. This citation includes the word ''AESDOWN,'' the mailer's AES filer identification number, and the date: for example, ''AESDOWN 123456789 09/30/2009''.

Exemption and Exclusion Legends

For items that bear a customs declaration form as defined in *Domestic Mail Manual* 608.2.4 and when a PFC or an export license is not required, customers should enter one of following exemption codes on the customs declaration form:

- Regardless of value, for all goods shipped to, from, or between the following U.S. Territories, use ''NOEEI 30.2(d)(2)'':
  - American Samoa.
  - Guam Island.
  - Northern Mariana Islands.
- For items destined to the Freely Associated States, customers may apply ''NOEEI 30.37(a)'' if the value of each class of goods is $2,500 or less.

Exemption or Exclusion Legends cannot be applied to packages that require an export license. In such cases, customers mailing goods are responsible for filing or attempting to file, electronic export information through the AES Web site and apply a PFC or AES Downtime Citation to the customs declaration form. For more information on these and other exemptions and exclusions, customers should consult Appendix C of the Foreign Trade Regulations, 15 CFR part 30.

Entering Required PFC, AES Downtime Citation Placement, or Exemption and Exclusion Legend

When required, customers should legibly write the PFC, AES Downtime Citation, or Exemption and Exclusion Legend as follows when a customs declaration form is used on a package under DMM 608.2.4:

- On PS Form 2976–A, *Customs Declaration and Dispatch Note—CP72* (large white form), customers should write one Exemption or Exclusion Legend, PFC, or AES Downtime Citation in Block 11.
- On older versions of PS Form 2976–A printed prior to January 2009, customers should write one Exemption or Exclusion Legend, PFC, or AES Downtime Citation at the top of the form or in any clear space. Avoid writing over the barcode on the form.
- If no customs declaration form is required (*e.g.,* items sent between the United States, Puerto Rico, and the U.S. Virgin Islands), no other action for recording the Exemption or Exclusion Legend, PFC or AES Downtime Citation on the package is required.

Responding to Customer Questions

Customers needing further assistance with AES filing requirements should contact the U.S. Census Bureau on its toll-free hotline at 1–800–549–0595:

Option 1—AES Assistance;

Option 2—Commodity Classification Assistance;

Option 3—Regulatory Assistance.

Customers may also obtain a copy of Publication 613, *New U.S. Census Bureau Regulations: What Mailers Need to Know When Shipping an International Package,* from any U.S. Postal Service retail unit.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

600 Basic Standards For All Mailing Services

* * * * *

608 Postal Information and Resources

* * * * *

608.2 Domestic Mail

* * * * *

608.2.4 Customs Declaration Form Required

[Redesignate the text in existing 2.4 as 2.4.1 and title as ''Priority Mail Weighing 16 Ounces or More'' and insert new 2.4.2 as follows:]

2.4.2 Freely Associated States—Items Requiring an Export License

Items sent to the Freely Associated States listed in DMM 608.2.2 that require an export license under 608.2.5.8, regardless of weight or class of mail, always require a PS Form 2976–A.

[Insert new DMM 608.2.5 to read as follows:]

608.2.5 Foreign Trade Regulations—U.S. Department of Commerce, U.S. Bureau of the Census

This section describes the various U.S. Department of Commerce, U.S. Bureau of the Census requirements when shipping goods to, from, and between U.S. territories, possessions, and Freely Associated States. Shipments to APO/FPO/DPO addresses are not subject to these requirements. Customers may be subject to civil and criminal penalties if they fail to electronically file their export information when required, or if they fail to comply with the Foreign Trade Regulations in any other way. Refer to IMM 520 for additional standards about the Census Bureau's requirements.

608.2.5.1 Mandatory Electronic Filing—U.S. Territories, Possessions, and Freely Associated States

Under the authority of 13 U.S.C. Chapter 9, as amended by the Foreign Relations Authorization Act of 2002, Public Law 107–228, U.S. Census Bureau regulations require electronic filing of export information through the U.S. Census Bureau's Automated Export System (AES) or AES*Direct* Web site for certain shipments of goods. Electronic filing of export information is required when any of the following applies, subject to certain exemptions and exclusions (see DMM 608.2.5.4):

a. The item requires an export license under U.S. law when sent to the Freely Associated States. See DMM 608.2.5.5 and DMM 608.2.5.6.

b. One or more classes of goods (per Schedule B Export Codes at *http://www.census.gov/foreign-trade/schedules/b*) within the item is valued at more than $2,500 and the item is mailed as follows:

1. From Puerto Rico to the United States or U.S. Virgin Islands.

2. From the United States to Puerto Rico or the U.S. Virgin Islands.

3. From the United States, Puerto Rico, or the U.S. Virgin Islands to the Freely Associated States.

608.2.5.2 Value Criterion

Following are three examples to illustrate the value criterion defined in 2.5.1:

a. A package contains one *mechanically* operated watch (Schedule B item # 9101.11.0000) valued at $2600. The total value of goods to be mailed is $2600, and the value of all items within the same Schedule B number is over $2500. Consequently, electronic filing and a PFC *would* be required (unless an exemption or exclusion applies).

b. A package contains one *mechanically* operated watch (Schedule B item # 9101.11.0000) valued at $2400, and one *electronically* operated watch (Schedule B item# 9101.91.0000) valued at $2400. The total value of goods to be mailed is $4800, but no group of items within the same Schedule B number is valued over $2500. Consequently, electronic filing and a PFC *would not* be required, because the mechanical watch and electronic watch are in different Schedule B groups,

c. A package contains two *mechanically* operated watches (Schedule B item # 9101.11.0000) one valued at $1400 and one valued at $1500. The total value of goods to be mailed is $2900 and the value of all items within the same Schedule B number is over $2500. Consequently, electronic filing and a PFC *would* be required, unless an exemption or exclusion applies.

608.2.5.3 How to File Electronic Export Information and Obtain a Proof of Filing Citation

For additional information on electronic filing, call the U.S. Census Bureau's toll-free information hotline at 800–549–0595, option #3. To file electronic export information through AES*Direct* and obtain a PFC, customers should use the following steps:

a. Go to *http://www.aesdirect.gov*.

b. Register for an AES*Direct* account or log into your existing account.

c. Follow the instructions for the AES Certification Quiz.

d. The ''Port of Export'' code for shipping through the Postal Service is ''8000''.

e. The ''Mode of Transport'' is ''Mail''.

f. Leave the carrier as 'SCAC/IATA' and the conveyance name fields blank.

g. After successfully filing electronic export information, AES*Direct* will provide an alphanumeric Internal Transaction Number (ITN) as confirmation. The PFC consists of the letters ''AES'' followed by the ITN: for example, ''AES X20080930987654''.

608.2.5.4 AES Downtime Citation

If electronic information filing is required but AES or AES*Direct* is unavailable, the goods may be shipped but the customer is responsible for providing the appropriate AES Downtime Citation instead of a PFC. This citation includes the word ''AESDOWN,'' the customer's AES filer identification number, and the date: for example, ''AESDOWN 123456789 09/30/2009.''

608.2.5.5 Exclusion and Exemption Legends

In many circumstances, electronic export information filing and a Proof of Filing Citation (PFC) may not be required. In these circumstances, and only when a customs declaration form is required under 608.2.4, customers are responsible for presenting an applicable Exemption or Exclusion Legend on the customs declaration form upon mailing. Customers may forgo this requirement if no customs declaration form is required. When a customs declaration form is used, customers should enter the applicable Exemption or Exclusion Legend on the customs declaration form. Customers must only enter one Exemption or Exclusion Legend per addressed mailpiece. When multiple Exemption or Exclusion Legends may apply, the mailer may select any one that applies. For more information on these and other exemptions and exclusions, customers should consult Appendix C of the Foreign Trade Regulations, 15 CFR Part 30. The following is a list of the most commonly applicable Exemption or Exclusion Legends for items mailed to from or between destinations under 608.2.

a. Regardless of value, for all goods shipped to, from, or between the following U.S. Territories, use ''NOEEI 30.2(d)(2)'':

1. American Samoa.
2. Guam Island.
3. Northern Mariana Islands.

b. For items destined to the Freely Associated States listed in DMM 608.2.2, customers may apply ''NOEEI 30.37(a)'' if the value of each class of goods is $2,500 or less, provided an export license is not required (see 608.2.5.7 and 608.2.5.8).

608.2.5.6 Placement of PFC, AES Downtime Citation Placement, or Exemption and Exclusion Legend

If no customs declaration form is required (e.g., items sent between the United States, Puerto Rico, and the U.S. Virgin Islands), no other action for recording the PFC or AES Downtime Citation on the package is required. However, when a shipment requires a PFC, or AES Downtime Citation, or Exemption and Exclusion Legend, and a PS Form 2976–A is used under DMM 608.2.4; it is the customer's responsibility to legibly write the PFC, AES Downtime Citation, or Exemption or Exclusion Legend as follows:

a. On PS Form 2976–A, *Customs Declaration and Dispatch Note*—CP72 (large white form) customers should write one PFC, AES Downtime Citation, or Exemption or Exclusion Legend in Block 11.

b. On older versions of PS Form 2976–A printed prior to January 2009 customers should write one PFC, AES Downtime Citation, or Exemption or Exclusion Legend at the top of the form or in any clear space. Avoid writing over the barcode on the form.

608.2.5.7 Additional Standards for the Freely Associated States

The Freely Associated States listed in DMM 608.2.2 are foreign destinations for the purposes of the Foreign Trade Regulations and other laws and regulations governing imports and exports. As such, certain goods shipped to these destinations from the United States, Puerto Rico, the U.S. Virgin Islands, or other U.S. territories may require an export license. To determine if an export license is required, go to *http://www.export.gov/regulation/index.asp* or call: 1–800–USA–TRAD(E) (1–800–872–8723).

608.2.5.8 When an Export License Is Required

When an export license is required under 608.2.5.7, a PS Form 2976–A is always required. The electronically generated License Number must appear in Block 13, and a PFC or AES Downtime Citation must appear in Block 11 of the customs declaration form. See IMM 520 and 530 for complete requirements. In addition, it is the mailer's responsibility to comply with the U.S. Census Bureau's requirements for filing electronic export information, as described in DMM 608.2.5.1 and 608.2.5.2. A PFC or AES Downtime Citation should appear on the customs declaration form as described in DMM 608.2.5.6.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–21306 Filed 9–3–09; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0520; FRL–8953–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Opacity Variance for Rocket Testing Operations Atlantic Research Corporation's Orange County Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Virginia State Implementation Plan (SIP). The revisions pertain to the addition of 9 VAC 5 Chapter 220, ''Variance for Rocket Motor Test Operations at Atlantic Research Corporation Orange County Facility'' and an opacity variance for the rocket motor test operations at Aerojet Corporation's Orange County Facility, in lieu of the opacity limits established in the Virginia SIP. EPA is approving these revisions to the Commonwealth of Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on November 3, 2009 without further notice, unless EPA receives adverse written comment by October 5, 2009. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0520 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail:* *fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2009–0520, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2009–0520. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 26, 2004, the Commonwealth of Virginia submitted an opacity variance for the rocket motor test operations at Aerojet Corporation's Orange County Facility as a revision to its SIP. The variance is included in Title 9 of the Virginia Administrative Code (9 VAC Chapter 220). Virginia established a variance that requires the facility to limit total particulate matter (PM) emissions from its rocket motor test operations to 714 pounds per hour (9 VAC 5–220–30.B), in lieu of opacity limits set forth in regulation 9 VAC 5–50–80.

On February 19, 2009, Virginia Department of Environmental Quality (VADEQ) submitted additional information to support the variance for the rocket motor test operations, which included a comprehensive technical support document (TSD) that provides additional air dispersion modeling information.

II. Description of SIP Revision

This SIP revision consists of the addition of the ''Variance for Rocket Motor Test Operations at Atlantic Research Corporation Orange County Facility'' (9 VAC 5 Chapter 220) in order to add regulations 9 VAC 5–220–10—Applicability and designation of affected facility, 9 VAC 5–220–20—Definitions, 9 VAC 5–220–30—Applicability of standard for visible emissions and standard for particulate matter, 9 VAC 5–220–40—Compliance determination, monitoring, recordkeeping, and reporting, 9 VAC 5–220–50—Transfer of ownership and 9 VAC 5–220–60—Applicability of future regulation amendments.

The addition of the ''Variance for Rocket Motor Test Operations at Atlantic Research Corporation Orange County Facility'' (9 VAC 5 Chapter 220) pertains to Atlantic Research Corporation Orange County Facility in terms of applicability and designation, definitions, compliance determination, monitoring, recordkeeping, and recording, transfer of ownership, and applicability of future regulation amendments. This revision does not change the substance of the SIP and consequently, does not interfere with the timely attainment or progress towards attainment of a national ambient air quality standard (NAAQS), nor interfere with any other provision of the CAA, 42 U.S.C. 7401 *et seq.*

The addition of regulation 9 VAC 5–220–30—''Applicability of standard for visible emissions and standard for particulate matter'' is to establish PM emission limits for Aerojet Corporation's rocket test operations, in lieu of opacity standards established in regulation 9 VAC 5–50–80. As part of this SIP revision, VADEQ included a modeling analysis titled ''Technical

Support Documentation for Opacity Variance for Rocket Test Facility'' which demonstrates that emissions from Aerojet Corporation's Orange County Facility will not cause or significantly contribute to violations of the PM NAAQS. Further details of VADEQ and EPA's modeling analysis can be found in EPA's TSD for this rulemaking.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving Virginia's SIP revision to add the ''Variance for Rocket Motor Test Operations at Atlantic Research Corporation Orange County Facility'' (9 VAC 5 Chapter 220), which includes regulation 9 VAC 5–220–30—''Applicability of standard for visible emissions and standard for particulate matter'' to establish PM emission limits for Aerojet Corporation's rocket test operations in lieu of opacity standards established in regulation 9 VAC 5–50–80. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 3, 2009 without further notice unless EPA receives adverse comment by October 5, 2009. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the Commonwealth of Virginia's opacity variance for rocket testing operations at Atlantic Research Corporation's Orange County Facility, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 26, 2009.

James W. Newsom,

Acting, Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding an entry for Chapter 220 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5 Chapter 220	**Opacity Variance for Rocket Testing Operations Atlantic Research Corporation's Orange County Facility**			
5–220–10	Applicability and designation of affected facility	12/1/02	09/4/09 [Insert page number where the document begins].	
5–220–20	Definitions	12/1/02	09/4/09 [Insert page number where the document begins].	
5–220–30	Applicability of standard for visible emissions and standard for particulate matter.	12/1/02	09/4/09 [Insert page number where the document begins].	
5–220–40	Compliance determination, monitoring, recordkeeping, and reporting.	12/1/02	09/4/09 [Insert page number where the document begins].	
5–220–50	Transfer of ownership	12/1/02	09/4/09 [Insert page number where the document begins].	
5–220–60	Applicability of future regulations	12/1/02	09/4/09 [Insert page number where the document begins].	
*	*	*	*	*

* * * * *

[FR Doc. E9–21399 Filed 9–3–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R07–RCRA–2009–0646; FRL–8953–3]

Adequacy of Kansas Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves Kansas' Research, Development and Demonstration (RD&D) permit program and updates to the approved Municipal Solid Waste Landfill Permit (MSWLP) program. On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued to certain municipal solid waste landfills by approved States. On December 11, 2008, Kansas submitted an application to the EPA seeking Federal approval of its RD&D requirements and to update Federal approval of its MSWLP program.

DATES: This direct final determination is effective November 3, 2009, without further notice unless EPA receives adverse comments by October 5, 2009. If adverse comments are received, EPA will publish a timely response or withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will or will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–RCRA–2009–0646, by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.

2. *E-mail: cruise.nicole@epa.gov*.

3. *Mail:* Send written comments to Nicole Cruise, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to Nicole Cruise, EPA Region 7, Solid waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–RCRA–2009–0646. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding Federal holidays. The interested persons wanting to examine these documents should make at appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Nicole Cruise at (913) 551–7641, or by e-mail at *cruise.nicole@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued at certain municipal solid waste landfills (69 FR 13242). This new provision may only be implemented by an approved State. While States are not required to seek approval for this new provision, those States that are interested in providing RD&D permits to municipal solid waste landfills must seek approval from EPA before issuing such permits. Kansas received final approval for 40 CFR part 258 provisions on June 24, 1996 (61 FR 32434). This request incorporates the November 27, 1996, final rule (61 FR 60328) for financial assurance mechanisms for local governments; the July 29, 1997, final rule (62 FR 40708) for revisions to criteria for small municipal solid waste landfills; and the April 10, 1998, final rule (63 FR 17706) for financial test and corporate guarantee to financial assurance mechanisms. Approval procedures for new provisions of 40 CFR part 258 are outlined in 40 CFR 239.12. On December 11, 2008, Kansas submitted an application for approval of its RD&D permit provisions and update of the approved MSWLP program.

B. Decision

After a thorough review, EPA determined that Kansas' RD&D permit provisions and its updated rules for its Municipal Solid Waste Landfill Permit Program, as defined under Kansas Statutes Annotated (KSA) Chapter 65—Public Health, Article 34—Solid Waste, Kansas Administrative Regulations (KAR), Agency 28—Kansas Department of Health and Environment, Article 29—Solid Waste Management are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

C. Statutory and Executive Order Reviews

This action approves State solid waste requirements pursuant to Resource Conservation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866:* Regulatory Planning Review—The Office of Management and Budget has exempted this action from its review under Executive Order (EO) 12866;

2. *Paperwork Reduction Act:* This action does not impose an information collection burden under the Paperwork Reduction Act;

3. *Regulatory Flexibility Act:* After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities;

4. *Unfunded Mandates Reform Act:* Because this action approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, this action does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act;

5. *Executive Order 13132:* Federalism—EO 13132 does not apply to this action because this action will not have federalism implications (*i.e.,* there are no substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities between Federal and State governments);

6. *Executive Order 13175:* Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this action because it will not have Tribal implications (*i.e.,* there are no substantial direct effects 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);

7. *Executive Order 13045:* Protection of Children from Environmental Health and Safety Risks—This action is not subject to EO 13045 because it is not economically significant and is not based on health or safety risks;

8. *Executive Order 13211:* Actions that Significantly Affect Energy Supply, Distribution, or Use—This action is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866;

9. *National Technology Transfer Advancement Act:* This provision directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards and bodies. EPA approves State programs so long as the State programs meet the criteria delineated in 40 CFR part 258. It would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets 40 CFR part 258 requirements. Thus, the National Technology Transfer Advancement Act does not apply to this action;

10. *Congressional Review Act:* EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register.**

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

Authority: This action is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: August 27, 2009.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. E9–21403 Filed 9–3–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1970; MB Docket No. 09–129; RM–11549]

Television Broadcasting Services; Hutchinson and Wichita, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Sunflower Broadcasting, Inc. (''Sunflower''), the licensee of stations KWCH–DT, Hutchinson, Kansas, channel 12, and KSCW–DT, Wichita, Kansas, channel 19, substituting channel 19 for KWCH–DT's assigned channel 12 at Hutchinson and channel 12 for KSCW–DT's assigned channel 19 at Wichita.

DATES: This rule is effective September 4, 2009.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–129, adopted August 31, 2009, and released August 31, 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 Kansas is amended by adding DTV channel 19 and removing DTV channel 12 at Hutchinson and by adding

DTV channel 12 and removing DTV channel 19 at Wichita.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau, Federal Communications Commission.

[FR Doc. E9–21392 Filed 9–3–09; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 74, No. 171
Friday, September 4, 2009

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AMS–FV–09–0031; FV09–983–1 PR]

Pistachios Grown in California; Changes to Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changes to the handling regulations prescribed under Marketing Agreement and Order No. 983 (order), which regulates the handling of pistachios. The changes were recommended by the Administrative Committee for Pistachios (committee), which is responsible for local administration of the order. The changes would bring the current handling regulations into conformance with proposed amendments to the order by including certain regulatory language currently contained in the order's provisions in the order's administrative rules and regulations, lifting the suspension of certain language, removing obsolete language, and revising references to renumbered order provisions.

DATES: Comments must be received by September 14, 2009.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or Internet: *http://www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**, and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; Telephone: (559) 487–5110, Fax: (559) 487–5906, or E-mail: *Martin.Engeler@ams.usda.gov*; or Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 205–2830, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, E-mail: *Jay.Guerber@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 983, both as amended (7 CFR part 987), regulating the handling of pistachios. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, or any obligation imposed in connection with the order, is not in accordance with law and may request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule invites comments on proposed changes to the administrative rules and regulations contained in the order. The changes would bring the current handling regulations into conformance with proposed amendments to the order by including certain regulatory language currently contained in the order's provisions in the order's administrative rules and regulations, lifting the suspension of certain language, removing obsolete language, and revising references to renumbered order provisions. These changes were recommended by the committee and submitted to USDA on May 28, 2008.

A Secretary's decision, which describes the proposed amendments to the order, was published in the **Federal Register** on August 6, 2009 (74 FR 39230). A copy of the Secretary's decision may be viewed at: *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a02766*.

Proposed amendments to the order's provisions would expand the production area subject to regulation under the order to include the states of California, Arizona, and New Mexico. Additional amendments to the order would modify existing provisions regarding aflatoxin and quality regulations, revise various administrative procedures under the order, authorize the committee to recommend research projects, and make other related changes. A referendum of pistachio producers who would be affected by the amended order will be conducted to determine support for such changes. If the amendments are approved by producers participating in the referendum, conforming changes to the order's administrative rules and regulations would be necessary.

Among other things, specific regulatory language currently contained

in the order's aflatoxin and quality provisions would be removed if the amendments are approved. To avoid a lapse in regulation, the committee recommended that specific order provisions concerning aflatoxin tolerance levels and testing procedures be added to the order's administrative rules and regulations section at the same time the amendments are effectuated. This would provide a seamless transition and would assure that pistachios continue to be handled under the same regulations currently in place under the order. This rule addresses those conforming changes. If the proposed amendments are not approved by producers, this rule regarding conforming changes to the order's administrative rules and regulations would be withdrawn. It is intended that finalization of this rule would correspond with the issuance of the order amending order, both of which would be published in a future issue of the **Federal Register**, as appropriate.

Section 983.38 of the order currently specifies the maximum aflatoxin tolerance level for domestic shipments of pistachios for human consumption. This section also specifies aflatoxin testing and certification procedures. Section 983.39 of the order, which was suspended on December 10, 2007 (72 FR 69141), specifies minimum quality levels for domestic shipments of pistachios for human consumption. Testing and certification procedures to verify pistachio quality are also specified in this section. Section 983.46(c) of the order authorizes the committee to recommend administrative rules and regulations implementing the provisions of §§ 983.38 and 983.39.

The formal rulemaking proceeding includes amendments to §§ 983.38 and 983.39 that would remove specific regulatory language from those provisions and replace it with general authority to recommend and establish aflatoxin and quality regulations through the informal rulemaking process. Sections 983.38 and 983.39 would also be redesignated as §§ 983.50 and 983.51, respectively. Such changes would require the addition of new regulatory sections to the order's current administrative rules and regulations, render certain other sections obsolete, and require the revision of other sections to reflect changes to the order provisions, including references to renumbered sections.

If § 983.38 is amended, certain specific handling requirements concerning aflatoxin levels and testing procedures currently provided in that section would be moved to a new § 983.150—Aflatoxin Regulations, which would be added to the order's rules and regulations. Section 983.150 would specify an aflatoxin tolerance level of 15 ppb, which is the aflatoxin tolerance currently provided under the order. Section 983.150 would also specify the same aflatoxin sampling, testing, and certification procedures currently contained in the order, with some modifications. For instance, the regulation would require that at least eight members of the committee recommend, and the Secretary approve, any alternative aflatoxin analysis methods. The regulation would also require accredited laboratories performing aflatoxin testing to certify that every lot of production area pistachios shipped domestically does not exceed the maximum aflatoxin tolerance level specified under the order. Additionally, handlers would be required to maintain testing and shipping records for three years beyond the production year of their applicability. Finally, section references throughout the section would be updated to reflect renumbered order provisions.

Section 983.138 of the order's administrative rules and regulations concerns the drawing of samples for aflatoxin testing in accordance with requirements in § 983.38. Because updated sampling procedures would be contained in new § 983.150, this section would be obsolete under the amended order. Therefore, the committee recommended removing this section.

If § 983.39 is amended, the order would no longer contain specific regulations regarding minimal pistachio quality or testing. The committee would have general authority to consider and recommend minimal quality regulations and testing procedures. Certain references to the provisions of § 983.39 would be obsolete. Therefore, the committee recommended that affected sections be revised to reflect proposed amendments to that section.

Section 983.141 outlines procedures for exempting handlers from minimum quality testing. This section has been suspended since December 10, 2007 (72 FR 69141), when the minimum quality provision of the order was also suspended. This section would be obsolete under the amended order. Therefore, the committee recommended lifting the suspension of § 983.141 and removing the section.

The formal rulemaking proceeding includes amendments to § 983.40 that would remove specific regulations regarding rework procedures for lots of pistachios failing aflatoxin and minimum quality testing. Those regulations would be replaced with general authority to recommend rework procedures for failed lots. Specific regulations describing rework provisions for lots failing aflatoxin testing would be moved to a new § 983.152—Failed lots/rework procedure. Conforming changes to the text of the current regulations would be made in § 983.152 to reference aflatoxin regulations in the amended order provisions, and would revise references to renumbered sections.

The formal rulemaking proceeding includes an amendment to § 983.41 that would remove a quality testing exemption for handlers handling fewer than 1,000,000 pounds of pistachios annually and replace it with general authority to recommend testing procedures for minimum quantities. Section 983.41 would also be redesignated as § 983.53. Section 983.47 currently provides for the collection of necessary reports from regulated handlers. If the proposed amendments are approved by producers, § 983.47 would be redesignated as § 983.64. Paragraph (d) of § 983.147 describes Form ACP–5—''Minimal Testing Form,'' for use by handlers handling fewer than 1,000,000 pounds of pistachios annually. That paragraph has been suspended since December 10, 2007 (72 FR 69141), when the minimum quality provision of the order was also suspended. The committee recommended revising that paragraph to specify that handlers may use Form ACP–5 to request permission to handle minimum quantities of pistachios according to the provisions of redesignated § 983.53. To remain consistent with the redesignation of § 983.47 as § 983.64, this rule would redesignate § 983.147 as § 983.164.

The formal rulemaking proceeding includes amendments to § 983.70, which currently provides an exemption from certain handling regulations under the order for handlers of fewer than 1,000 pounds of pistachios and authorizes the committee to recommend revised exemption levels. The amendment would raise the exemption level to 5,000 pounds. The section would also be redesignated as § 983.92. As authorized under § 983.70, § 983.170 of the order's administrative rules and regulations currently provides an exemption for handlers of fewer than 5,000 pounds. If the proposed amendment to § 983.70 is approved by producers, § 983.170 would be redundant. Therefore, the committee recommended that § 983.170 be removed. Additionally, a reference to § 983.170 in § 983.143 would be revised to reference the exemption level in redesignated § 983.92. Finally, proposed

amendments to § 983.43 would redesignate that section as § 983.55. To remain consistent with that redesignation, this rule would redesignate § 983.143 as § 983.155.

Section 983.53 of the order authorizes the collection of assessments from handlers on receipts of pistachios. Such assessments are used to fund expenses of the committee. Section 983.253 specifies the current assessment rate established for California pistachios. As explained above, the formal rulemaking proceeding includes an amendment to the order that would expand the production area to include California, Arizona, and New Mexico. Therefore, the committee recommended that paragraph (b) of § 983.253 be revised to establish an assessment rate applicable to all production area pistachios. To conform to the definition of the committee's ''production year'' contained in the order, the language of paragraph (b) of § 983.253 would also be revised to specify that assessments are due to the committee by December 15 of the applicable production year.

Initial Regulatory Flexibility Analysis

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

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

Small business firms, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000. Small agricultural producers have been defined as those with annual receipts of less than $750,000.

There are approximately 24 handlers and 800 producers of pistachios in California, the production area currently regulated under the order. If proposed amendments to the order are approved by producers, the production area could expand to include the states of Arizona and New Mexico. According to information provided by the industry, there are two handlers and approximately 45 pistachio producers in Arizona, and there are three handlers and approximately 30 producers in New Mexico.

The committee has estimated that approximately 50 per cent of California handlers would be considered small businesses, as defined by SBA. The industry has estimated that one of the Arizona handlers and all three New Mexico handlers would also be considered small businesses.

Data provided by the committee regarding the size of the 2007 crop, as well as data reported by the National Agricultural Statistics Service (NASS), suggests that the average California producer revenue for the 2007 crop was $733,200. It is estimated that 85 percent of California producers had receipts of less than $750,000 and would thus be considered small businesses according to the SBA definition. Although there is no official data available, the industry estimates that the majority of producers in Arizona and New Mexico would also be considered small businesses.

Currently, the order regulates pistachios produced in California. The formal rulemaking proceeding includes amendments to the order that would expand the regulated production area to include Arizona and New Mexico, at the request of producers in those two states. Additional proposed amendments to the order would remove specific aflatoxin and quality regulations and testing procedures from the order's provisions and replace them with general authority for the committee to recommend aflatoxin and quality regulations. This proposed rule would make changes to the order's administrative rules and regulations by adding the specific aflatoxin regulations currently found in the order's provisions and clarifying that the regulations pertain to handlers throughout the expanded production area. Certain language in the administrative rules and regulations section that is currently suspended, or that would be redundant or obsolete if the amendments are approved, would be removed or revised. References to order sections that have been redesignated would be revised to reference the renumbered sections. These changes were recommended by the committee to ensure a seamless transition in aflatoxin regulation if the amendments are approved and to conform to various changes to the order's provisions. If the proposed amendments to the order are not approved by pistachio producers, this proposed rule would be withdrawn.

Specifically, this proposed rule would remove § 983.138—Samples for testing, § 983.141—Procedures for exempting handlers from minimum quality testing, and § 983.170—Handler exemption, from the order's administrative rules and regulations. Conforming changes would be made to the language and references in §§ 983.143, 983.147, 983.253 to reflect amendments to the order, such as the expansion of the production area to include Arizona and New Mexico and the redesignation of several order sections. Sections 983.143 and 983.147 would be redesignated as §§ 983.155 and 983.164, respectively. Finally, two new sections, § 983.150—Aflatoxin regulations, and § 983.152—Failed lots/rework procedure, would be added to incorporate specific regulations concerning aflatoxin tolerance levels and testing procedures that would be removed from the order's provisions if the amendments are approved.

The impact of proposed amendments to the order on producers and handlers has been analyzed in the Secretary's Decision published in the **Federal Register** on August 6, 2009, at 74 FR 39230. It may be generally concluded from the final regulatory impact analysis that the order amendments would improve the operation and functioning of the marketing order program and that all producers and handlers would benefit regardless of size. The analysis examined the benefits and costs to producers and handlers as a result of the expansion of the production area to include Arizona and New Mexico and the regulation of handlers under the marketing order program, including aflatoxin certification requirements.

Many of the amendments proposed in this rule simply change the location of the regulatory provisions concerning aflatoxin levels and testing from the order provisions to the regulations. Therefore, these proposed changes should have no effect upon California pistachio handlers of any size since they are currently required to comply with those requirements. With regard to application of aflatoxin certification requirements on Arizona and New Mexico handlers, that impact is fully considered in the previously referenced final regulatory flexibility analysis. The minimum quality provisions of the order have been suspended since December 10, 2007 (72 FR 69141), so there would be no effect on handlers if those provisions are removed. The revision of certain language, redesignation of some sections, and references to redesignated sections of the order that would be made to conform to the amended order are administrative in nature and would have no effect on producers or handlers of any size.

The changes in this proposed rule are necessary to conform to proposed amendments to the order. With regard to alternatives, if the amendments are approved by producers voting in the referendum, these changes should be made. As explained above, if the amendments are not approved by voters, this proposed rule would be withdrawn.

This action would not impose any additional reporting or recordkeeping requirements on either small or large date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

These proposed changes in this action were recommended by the committee on March 6, 2008, and submitted to AMS on May 28, 2008. The committee's meeting was widely publicized throughout the pistachio industry and all interested persons were invited to attend and participate. All entities, both large and small, were able to express their views on the effects of the proposed amendments contained herein.

Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 10-day comment period is provided to allow interested persons to respond to this proposal. Ten days is deemed appropriate because the proposed changes need to be made concurrently with any amendments made to the order itself. All written comments timely received will be considered before a final determination is made on this matter.

A referendum is to be conducted on proposed amendments to the order on August 10–22, 2009.

List of Subjects in 7 CFR Part 983

Pistachios, Marketing agreements and orders, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 983 is proposed to be amended as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 983 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 983.138 [Removed]

2. Section 983.138 is removed.

§ 983.141 [Removed]

3. Lift the December 10, 2007 (published on Dec. 7, 2007, 72 FR 69141), suspension of § 983.141, and remove the section.

§ 983.143 [Redesignated as § 983.155 and Amended]

4. Redesignate § 983.143 as § 983.155, and amend paragraph (b) by removing the reference ''§ 983.170'' and adding in their place the reference ''§ 983.92.''

§ 983.147 [Redesignated as § 983.164]

5. Lift the December 10, 2007 (published on Dec. 7, 2007, 72 FR 69142), suspension of § 983.147(d), redesignate § 983.147 as § 983.164, and revise paragraph (d) of that section to read as follows:

§ 983.164 Reports.

* * * * *

(d) ACP–5, Minimal Testing Form. Each handler who handles less than 1,000,000 pounds of dried weight pistachios in a production year and who wishes to request permission to handle under the minimal quantities provisions (§ 983.53) of the order shall furnish this report to the committee office no later than August 1 of each production year.

* * * * *

6. Add new § 983.150 to read as follows:

§ 983.150 Aflatoxin regulations.

(a) *Maximum level.* No handler shall ship for domestic human consumption, pistachios that exceed an aflatoxin level of 15 ppb. All shipments must also be covered by an aflatoxin inspection certificate. Pistachios that fail to meet the aflatoxin requirements shall be disposed in such manner as described in the Failed Lots/Rework Procedure of this part (§ 983.152).

(b) *Change in level.* The committee may recommend to the Secretary changes in the aflatoxin level specified in this section. If the Secretary finds, on the basis of such recommendation or other information, that such an adjustment of the aflatoxin level would tend to effectuate the declared policy of the Act, such change shall be made accordingly.

(c) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the aflatoxin regulation of this section.

(d) *Aflatoxin testing procedures.* To obtain an aflatoxin inspection certificate, each lot to be certified shall be uniquely identified, be traceable from testing through shipment by the handler, and be subjected to the following:

(1) *Samples for testing.* Prior to testing, a sample shall be drawn from each lot (''lot samples'') of sufficient weight to comply with Table 1 and Table 2 of this section.

(2) *Test samples for aflatoxin.* Prior to submission of samples to an accredited laboratory for aflatoxin analysis, three samples shall be created equally from the pistachios designated for aflatoxin testing in compliance with the requirements of Tables 1 and 2 of this paragraph (''test samples''). The test samples shall be prepared by, or under the supervision of, an inspector, or as approved under an alternative USDA-recognized inspection program. The test samples shall be designated by an inspector as Test Sample #1, Test Sample #2, and Test Sample #3. Each sample shall be placed in a suitable container, with the lot number clearly identified, and then submitted to an accredited laboratory. The gross weight of the in-shell lot sample for aflatoxin testing and the number of incremental samples required are shown in Table 1. The gross weight of the kernel (shelled) lot sample for aflatoxin testing and the number of incremental samples required is shown in Table 2.

TABLE 1 TO § 983.150—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of the test sample (kilograms)
220 or less	10	3.0	1.0
221–440	15	4.5	1.5
441–1,100	20	6.0	2.0
1,101–2,200	30	9.0	3.0
2,201–4,400	40	12.0	4.0
4,401–11,000	60	18.0	6.0
11,001–22,000	80	24.0	8.0
22,001–150,000	100	30.0	10.0

TABLE 2 TO § 983.150—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of the test sample (kilograms)
220 or less	10	1.5	0.5
221–440	15	2.3	0.75
441–1,100	20	3.0	1.0
1,101–2,200	30	4.5	1.5
2,201–4,400	40	6.0	2.0
4,401–11,000	60	9.0	3.0
11,001–22,000	80	12.0	4.0
22,001–150,000	100	15.0	5.0

(3) *Testing of pistachios.* Test samples shall be received and logged by an accredited laboratory and each test sample shall be prepared and analyzed using High Pressure Liquid Chromatograph (HPLC), Vicam Method (Aflatest), or other methods as recommended by not fewer than eight members of the committee and approved by the Secretary. The aflatoxin level shall be calculated on a kernel weight basis.

(4) *Certification of lots ''negative'' as to aflatoxin.* Lots will be certified as ''negative'' on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 5 ppb. If the aflatoxin level of Test Sample #1 is above 25 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.52. If the aflatoxin level of Test Sample #1 is above 5 ppb and below 25 ppb, the accredited laboratory may at the handler's discretion analyze Test Sample #2, and the test results of Test Samples #1 and #2 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, rework the lot, and resubmit it for testing after reworking. If the handler directs the laboratory to proceed with the analysis of Test Sample #2, the lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Sample #1 and Test Sample #2 are at or below 10 ppb. If the averaged aflatoxin level of Test Samples #1 and #2 is at or above 20 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.52. If the averaged aflatoxin level of Test Samples #1 and #2 is above 10 ppb and below 20 ppb, the accredited laboratory may, at the handler's discretion, analyze Test Sample #3, and the results of Test Samples #1, #2, and #3 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, rework the lot, and resubmit it for testing after reworking. If the handler directs the laboratory to proceed with the analysis of Test Sample #3, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Samples #1, #2, and #3 are at or below 15 ppb. If the averaged aflatoxin results of Test Samples #1, #2, and #3 are above 15 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.52. The accredited laboratory shall send a copy of the failed lot notification report to the committee and to the failed lot's owner within 10 working days of any failure described in this section. If the lot is certified as negative as described in this section, the aflatoxin inspection certificate shall certify the lot using a certification form identifying each lot by weight and date. The certification expires for the lot or remainder of the lot after 12 months.

(5) *Certification of aflatoxin levels.* Each accredited laboratory shall complete aflatoxin testing and reporting and shall certify that every lot of pistachios shipped domestically does not exceed the aflatoxin levels as required in paragraph (a) of this section or as provided under § 983.50. Each handler shall keep a record of each test, along with a record of final shipping disposition. These records must be maintained for three years beyond the production year of their applicability, and are subject to audit by the Secretary or the committee at any time.

(6) *Test samples that are not used for analysis.* If a handler does not elect to use Test Samples #2 or #3 for certification purposes, the handler may request that the laboratory return them to the handler.

7. Add new § 983.152 to read as follows:

§ 983.152 Failed lots/rework procedure.

(a) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin regulations of this part, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the

handling of pistachios. After the rework procedure has been completed, the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.150, except that the lot sample size and the test sample size shall be doubled. If, after the lot has been reworked and tested, it fails the aflatoxin test for a second time, the lot may be shelled and the kernels reworked, sampled, and tested in the manner specified for an original lot of kernels, or the failed lot may be used for non-human consumption or otherwise disposed of.

(b) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin regulations in § 983.150, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed, the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.150.

§ 983.170 [Removed]

8. Section 983.170 is removed.

9. Amend § 983.253 by removing the word ''California'' in paragraph (a), and by revising paragraph (b) to read as follows:

§ 983.253 Assessment rate.

* * * * *

(b) Each handler who receives pistachios for processing shall furnish the Receipts/Assessment Report and pay all due assessments to the committee by December 15 of the applicable production year.

Dated: August 31, 2009.

Rayne Pegg,

Administrator.

[FR Doc. E9–21352 Filed 9–3–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2009–0810; Notice No. 09–10]

RIN 2120–AJ21

Design Maneuvering Speed Limitation Statement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards applicable to transport category airplanes to clarify that flying at or below the design maneuvering speed does not allow a pilot to make multiple large control inputs in one airplane axis or single full control inputs in more than one airplane axis at a time without endangering the airplane's structure. This proposed regulation is the result of an accident investigation and responds to a National Transportation Safety Board recommendation. The results of the accident investigation indicate that many pilots might have a general misunderstanding of what the design maneuvering speed (V_A) is and the extent of structural protection that exists when an airplane is operated at speeds below its V_A. This action is being taken to prevent this misunderstanding from causing or contributing to a future accident.

DATES:

Send your comments on or before November 3, 2009.

ADDRESSES: You may send comments identified by Docket Number *[Insert docket number, for example, FAA–200X–XXXXX]* using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT:

Technical Information: Don Stimson, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, WA 98057–3356; telephone (425) 227–1129; facsimile (425) 227–1149, e-mail *don.stimson@faa.gov*.

Legal Information: Douglas Anderson, FAA, Office of the Regional Counsel, ANM–7, Northwest Mountain Region, 1601 Lind Avenue, SW., Renton, WA 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007, e-mail *douglas.anderson@faa.gov*.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it prescribes—

- New safety standards for the design and performance of transport category airplanes; and
- New safety requirements that are necessary for the design, production, operations, and maintenance of those airplanes, and for other practices, methods, and procedures relating to those airplanes.

Background

On November 12, 2001, American Airlines Flight 587, an Airbus Industrie Model A300–605R airplane, crashed shortly after takeoff from New York's John F. Kennedy International Airport. All 260 people aboard the airplane and 5 people on the ground were killed. The airplane was destroyed by impact forces and a post-crash fire. The National Transportation Safety Board (NTSB) determined ''that the probable cause of this accident was the in-flight separation of the vertical stabilizer as a result of the loads beyond ultimate design loads that were created by the first officer's unnecessary and excessive rudder pedal inputs.''

The NTSB's investigation revealed that many pilots might have a general misunderstanding of what the design maneuvering speed (V_A) is and the extent of structural protection that exists when an airplane is operated at speeds below its V_A. The NTSB found that many pilots of transport category airplanes believe that, as long as they are below the airplane's V_A, they can make any control input they desire without risking structural damage to the airplane.

V_A is a structural design airspeed used in determining the strength requirements for the airplane and its control surfaces. The structural loads resulting from certain movements of the control surfaces at or below V_A must be taken into account during the design of a transport category airplane. The structural design standards only consider a single full control input in any single axis. The design standards also consider an abrupt return of the rudder control to the neutral position. The standards do not address full control inputs in more than one axis at the same time or multiple inputs in the same axis. Therefore, the structural design requirements do not ensure the airplane structure can withstand multiple control inputs in one axis or control inputs in more than one axis at a time at any speed, even below V_A.

The NTSB investigation identified what appears to be a widespread misunderstanding among pilots about the degree of structural protection that exists when full or abrupt flight control inputs are made at airspeeds below an airplane's V_A. As a result, the NTSB recommended that the FAA amend all relevant regulatory and advisory materials to clarify that operating at or below maneuvering speed does not provide structural protection against multiple full control inputs in one axis or full control inputs in more than one axis at the same time. (See NTSB safety recommendation A–04–060, which is included in the docket for this rulemaking or can be found at *http://www.ntsb.gov/Recs/letters/2004/A04_56_62.pdf*.)

14 CFR 25.1583(a)(3) currently requires applicants to provide the V_A, along with the following statement, in the Airplane Flight Manual (AFM): ''Full application of rudder and aileron controls, as well as maneuvers that involve angles of attack near the stall, should be confined to speeds below this value.'' Although the required AFM statement warns pilots against making full rudder or aileron control inputs at speeds above V_A, it is silent on what control inputs can safely be made below V_A. Pilots may misinterpret the AFM statement to imply that any control input can safely be made below V_A.

At the FAA's request, manufacturers of transport category airplanes voluntarily revised the AFMs for all major transport category airplane types currently in service to include a statement similar to the following:

Avoid rapid and large alternating control inputs, especially in combination with large changes in pitch, roll, or yaw (*e.g.*, large sideslip angles) as they may result in structural failures at any speed, including below V_A.

General Discussion of Proposal

For future airplane designs, this NPRM proposes to amend § 25.1583(a)(3) to change the requirement associated with the statement to be provided in the AFM. The proposed amendment would clarify that flying at or below V_A does not allow a pilot to make multiple large control inputs in one airplane axis or single full control inputs in more than one airplane axis at a time without endangering the airplane's structure.

Instead of specifying the exact wording of the statement or set of statements to be included in the AFM, the proposed rule would require statements, as applicable to the particular design, explaining that:

(1) Full application of pitch, roll, or yaw controls should be confined to speeds below V_A; and

(2) Rapid and large alternating control inputs, especially in combination with large changes in pitch, roll, or yaw, and full control inputs in more than one axis at the same time should be avoided as they may result in structural failures at any speed, including below V_A.

This proposed language would give applicants the flexibility to provide the required safety information in a way that would best fit their airplane design. The proposed revision would only require that the warning statement be included in the AFM if it is applicable. A warning statement would be unnecessary if the airplane is protected from structural damage against all types of control inputs at any speed.

The terms ''rudder and aileron controls'' in the existing requirement would be replaced by ''pitch, roll, and/or yaw controls.'' Rudders and ailerons are airplane control surfaces commonly used to provide control in the yaw and roll axes, respectively. However, other control surfaces may be used to either provide or augment control in any given axis. The pilot may not always know which control surface is being moved for any given control input. Since the statement required by § 25.1583(a)(3) is an operating limitation that must be observed by the pilot, the proposed text refers to the pilot control inputs by control axis rather than by control surface.

In addition, the existing text ''as well as maneuvers that involve angles of attack near the stall'' would be removed. The existing text assumes that, for high angle of attack maneuvers below V_A, the airplane will always stall before structural failure can occur. However, this is not always the case. In a pitch-up maneuver, if the pitch rate is rapidly increased through an abrupt pitch input, a phenomenon known as dynamic overshoot may occur. A dynamic overshoot can result in exceeding the airplane's structural limits before the airplane stalls. Also, the airplane manufacturer may choose to select a

higher V_A than the minimum value required by 14 CFR part 25 certification requirements. This results in a structurally stronger airplane, but does not ensure the airplane will stall before structural failure occurs. The proposed revision addresses these concerns by making the limitation against full application of the roll and yaw controls also applicable to the pitch axis and by removing the words ''as well as maneuvers that involve angles of attack near the stall.''

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows: Since this proposed rule would merely require a clarifying change to a statement that manufacturers are currently required to provide in the AFM, and there are no changes required to airplane design, test, or analysis, the expected outcome will be minimal costs. The clarification addresses an identified safety issue, so the proposed rule has benefits. Because the outcome of the proposed rule is expected to have minimal costs with positive benefits, a regulatory evaluation was not prepared. The FAA requests comments with supporting justification about the FAA determination of minimal impact.

FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes this proposed rule would not have a significant impact on a substantial number of small entities because all United States transport-aircraft category manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees.

Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it ensures the safety of the American public. As a result, this rule is not considered as creating an unnecessary obstacle to foreign commerce.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and, therefore, would not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 4(j) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the Addresses section of this preamble.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

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

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

Availability of Rulemaking Documents

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

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

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

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations part 25, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

2. Amend § 25.1583 by revising paragraph (a)(3) to read as follows:

§ 25.1583 Operating limitations.

(a) * * *

(3) The maneuvering speed V_A and statements, as applicable to the particular design, explaining that:

(i) Full application of pitch, roll, or yaw controls should be confined to speeds below V_A; and

(ii) Rapid and large alternating control inputs, especially in combination with large changes in pitch, roll, or yaw, and full control inputs in more than one axis at the same time, should be avoided as they may result in structural failures at any speed, including below V_A.

* * * * *

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

Dorenda D. Baker,

Director, Aircraft Certification Service.

[FR Doc. E9–21478 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0782; Directorate Identifier 2009–NM–011–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 Series Airplanes; and Model A340–211, –212, –213, –311, –312, and –313 Series Airplanes; and A340–541 and –642 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:

During a scheduled maintenance inspection on the MLG [main landing gear], the bogie stop pad was found deformed and cracked. Upon removal of the bogie stop pad for replacement, the bogie beam was also found cracked.

* * * * *

A second bogie beam crack has subsequently been found on another aircraft, located under a bogie stop pad which only had superficial paint damage.

This condition, if not detected and corrected, could result in the aircraft departing the runway or to the bogie detaching from the aircraft or gear collapses, which would all constitute unsafe conditions at speeds above 30 knots.

* * * * *

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 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 W12–40, 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 Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 45 80; e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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–2009–0782; Directorate Identifier 2009–NM–011–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 European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0223, dated December 15, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During a scheduled maintenance inspection on the MLG [main landing gear], the bogie stop pad was found deformed and cracked. Upon removal of the bogie stop pad for replacement, the bogie beam was also found cracked.

Laboratory investigation indicates that an overload event has occurred and no fatigue propagation of the crack was evident. An investigation is still underway to establish the root cause of this overload.

A second bogie beam crack has subsequently been found on another aircraft, located under a bogie stop pad which only had superficial paint damage.

This condition, if not detected and corrected, could result in the aircraft departing the runway or to the bogie detaching from the aircraft or gear collapses, which would all constitute unsafe conditions at speeds above 30 knots.

As a precautionary measure, this AD requires detailed inspections under the bogie stop pad of both MLG bogie beams and, in case deformation or damage is detected, to apply the associated repair.

The one-time inspections consist of the following:

- Inspection for corrosion and damage to the paint and cadmium plate of the sliding piston subassembly.
- Inspection for cracking and deformation of the top and bottom

surfaces and bolt holes of the bogie stop pad subassembly and bracket.

• Inspection for cracking, corrosion, and damage to protective treatments, and deformation of the bogie beam surface of the bogie beam subassembly where the bogie stop pad subassembly has been removed, and a magnetic particle non-destructive test inspection of the bogie beam assembly where the bogie stop pad subassembly has been removed.

Corrective actions include repairing protective treatments, removing corrosion, and replacing the bogie stop pad if necessary. For airplanes on which a crack or deformation in the bogie beam is found, corrective actions include contacting Messier-Dowty Limited and/or Airbus for instructions for repair, and repairing before further flight.

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

Relevant Service Information

Airbus has issued the service bulletins identified in the following table:

TABLE—SERVICE INFORMATION

For model—	Use Airbus Mandatory Service Bulletin—	Dated—
A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, –343 series airplanes.	A330–32–3220	October 10, 2008.
A340–211, –212, –213, –311, –312, –313 series airplanes	A340–32–4264	October 10, 2008.
A340–541, –642 airplanes	A340–32–5087	October 10, 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 52 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. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $8,320, 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:

Airbus: Docket No. FAA–2009–0782; Directorate Identifier 2009–NM–011–AD.

Comments Due Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 series airplanes; and Model A340–211, –212, –213, –311, –312, –313 series airplanes; and

A340–541 and –642 airplanes; all serial numbers; certificated in any category.

Subject

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

Reason

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

''During a scheduled maintenance inspection on the MLG [main landing gear], the bogie stop pad was found deformed and cracked. Upon removal of the bogie stop pad for replacement, the bogie beam was also found cracked.

''Laboratory investigation indicates that an overload event has occurred and no fatigue propagation of the crack was evident. An investigation is still underway to establish the root cause of this overload.

''A second bogie beam crack has subsequently been found on another aircraft, located under a bogie stop pad which only had superficial paint damage.

''This condition, if not detected and corrected, could result in the aircraft departing the runway or to the bogie detaching from the aircraft or gear collapses, which would all constitute unsafe conditions at speeds above 30 knots.

''As a precautionary measure, this AD requires detailed inspections under the bogie stop pad of both MLG bogie beams and, in case deformation or damage is detected, to apply the associated repair.''

Actions and Compliance

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

(1) At the applicable compliance time specified in paragraph (f)(1)(i), (f)(1)(ii), (f)(1)(iii), (f)(1)(iv), (f)(1)(v), or (f)(1)(vi) of this AD, perform one-time detailed inspections of both main landing gear bogie beams in the region of the bogie stop pad for detection of deformation and damage, and apply the applicable corrective actions, in accordance with instructions defined in the Airbus mandatory service bulletins listed in Table 1 of this AD, as applicable. Do all applicable corrective actions before further flight.

(i) Airplanes with 22 months or less and 2,500 flight cycles or less from the first flight with the original bogie beam as of the effective date of this AD: Not earlier than 2,500 flight cycles or 22 months on the original bogie beam, whichever occurs first, but not later than 40 months from first flight.

(ii) Airplanes with 22 months or less and 2,500 flight cycles or less on a new bogie beam installed in service as of the effective date of this AD: Not earlier than 2,500 flight cycles or 22 months on the new bogie beam, whichever occurs first, but no later than 40 months from the installation of a new bogie beam in service.

(iii) Airplanes with 22 months or less and 2,500 flight cycles or less on an overhauled bogie beam as of the effective date of this AD: Not earlier than 2,500 flight cycles or 22 months on the overhauled bogie beam, whichever occurs first, but no later than 40 months from the last overhaul.

(iv) Airplanes with more than 22 months or more than 2,500 flight cycles from the first flight with the original bogie beam, as of the effective date of this AD: Within 18 months after the effective date of this AD.

(v) Airplanes with more than 22 months or more than 2,500 flight cycles on a new bogie beam installed in service, as of the effective date of this AD: Within 18 months after the effective date of this AD.

(vi) Airplanes with more than 22 months or more than 2,500 flight cycles on an overhauled bogie beam, as of the effective date of this AD: Within 18 months after the effective date of this AD.

TABLE 1—SERVICE BULLETINS

For model—	Use Airbus Mandatory Service Bulletin—	Dated—
A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, –343 series airplanes.	A330–32–3220	October 10, 2008.
A340–211, –212, –213, –311, –312, –313 series airplanes	A340–32–4264	October 10, 2008.
A340–541, –642 airplanes	A340–32–5087	October 10, 2008.

(2) Report the results, including no findings of the inspection required by paragraph (f)(1) of this AD, to Airbus, Customer Services Directorate,

1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; Attn: SEDCC1 Technical Data and Documentation Services; Fax (+33) 5 61 93 28 06; e-mail *sb.reporting@airbus.com*; at the applicable time specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD.

(i) If the inspection is 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: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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 EASA Airworthiness Directive 2008–0223, dated December 15, 2008, and the Airbus mandatory service bulletins listed in Table 1 of this AD, for related information.

Issued in Renton, Washington, on August 26, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–21317 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0784; Directorate Identifier 2009–NM–109–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series 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:

> Several operators have reported cases of inadvertent single spoiler deployment during flight on the DHC–8 Series 400 aircraft. Investigation has revealed that the probable cause for this deployment is internal contamination of the Lift/Dump (L/D) valve and moisture ingress into the L/D valve armature.
>
> This condition, if not corrected, could cause uncommanded deployment of the spoilers resulting in increased drag and in combination with a loss of aileron, could result in a significant reduction in aircraft roll control.

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 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 W12–40, 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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.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: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

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–2009–0784; Directorate Identifier 2009–NM–109–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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–26, dated May 21, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several operators have reported cases of inadvertent single spoiler deployment during flight on the DHC–8 Series 400 aircraft. Investigation has revealed that the probable cause for this deployment is internal contamination of the Lift/Dump (L/D) valve and moisture ingress into the L/D valve armature.
>
> This condition, if not corrected, could cause uncommanded deployment of the spoilers resulting in increased drag and in combination with a loss of aileron, could result in a significant reduction in aircraft roll control.

Corrective actions include upgrading, testing, and re-identifying the spoiler lift dump valves after replacing the pressure port inlet fitting. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–27–43, dated January 29, 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 61 products of U.S. registry. We also estimate that it would take about 6 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 $29,280, or $480 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:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2009–0784; Directorate Identifier 2009–NM–109–AD.

Comments Due Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400, DHC–8–401, and DHC–8–402 series airplanes, certificated in any category, serial numbers 4001 through 4237 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

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

Several operators have reported cases of inadvertent single spoiler deployment during flight on the DHC–8 Series 400 aircraft. Investigation has revealed that the probable cause for this deployment is internal contamination of the Lift/Dump (L/D) valve and moisture ingress into the L/D valve armature.

This condition, if not corrected, could cause uncommanded deployment of the spoilers resulting in increased drag and in combination with a loss of aileron, could result in a significant reduction in aircraft roll control.

Corrective actions include upgrading, testing, and re-identifying the spoiler lift dump valves after replacing the pressure port inlet fitting.

Actions and Compliance

(f) Unless already done, within 5,000 flight hours after the effective date of this AD, incorporate Bombardier Modsum 4–113554 to add a filter/restrictor fitting to the spoiler lift dump valve, in accordance with Bombardier Service Bulletin 84–27–43, dated January 29, 2009.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531. 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 Canadian Airworthiness Directive CF–2009–26, dated May 21, 2009; and Bombardier Service Bulletin 84–27–43, dated January 29, 2009; for related information.

Issued in Renton, Washington, on August 26, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–21337 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0783; Directorate Identifier 2009–NM–081–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all McDonnell Douglas Model MD–90–30 airplanes. This proposed AD would require repetitive inspections for cracking of the overwing frames at stations 883, 902, 924, 943, and 962, left and right sides, and corrective actions if necessary. This proposed AD results from reports of cracked overwing frames. We are proposing this AD to detect and correct such cracking, which could sever the frame, increase the loading of adjacent frames, and result in

damage to adjacent structure and loss of overall structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by October 19, 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: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; 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–2009–0783; Directorate Identifier 2009–NM–081–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

We have received reports of cracked overwing frames at stations 845, 864, 886, and 905 on the left and right sides in the upper radius of the frame tab on McDonnell Douglas Model MD–80 series airplanes that had accumulated between 19,876 and 41,166 total flight cycles. The cracks, which originate in the upper radius of the frame inboard tab just below the floor, were caused by fatigue. This condition, if not corrected, could result in damage to adjacent structure and loss of overall structural integrity of the airplane.

The cracked overwing frames on McDonnell Douglas Model MD–80 series airplanes have the same design as those installed on Model MD–90–30 airplanes. Therefore, Model MD–90–30 airplanes may be subject to the identified unsafe condition. AD 2008–13–29, Amendment 39–15592 (73 FR 38883, July 8, 2008), addresses cracked overwing frames on McDonnell Douglas Model MD–80 series airplanes.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin MD90–53A031, dated April 10, 2009. The service bulletin describes procedures for performing repetitive general visual and high frequency eddy current inspections to detect cracking of the overwing frames at stations 883, 902, 924, 943, and 962, left and right sides. Corrective actions include a blend-out repair or replacement of the cracked overwing frame, depending on the results of the inspection. The service bulletin specifies to repeat the inspections at intervals not to exceed 5,900 flight cycles, except that for airplanes on which a replacement is done, the service bulletin specifies that the next inspection be done within 20,000 flight cycles after the replacement.

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.

Costs of Compliance

We estimate that this proposed AD would affect 16 airplanes of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $12,800, or $800 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.

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–2009–0783; Directorate Identifier 2009–NM–081–AD.

Comments Due Date

(a) We must receive comments by October 19, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model MD–90–30 airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from reports of cracked overwing frames. We are issuing this AD to detect and correct such cracking, which could sever the frame, increase the loading of adjacent frames, and result in damage to adjacent structure and loss of overall structural integrity 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.

Inspections

(g) Before the accumulation of 20,000 total flight cycles, or within 60 months after the effective date of this AD, whichever occurs later: Do general visual and high frequency eddy current inspections for cracking of the overwing frames, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–53A031, dated April 10, 2009. Do the applicable corrective actions before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–53A031, dated April 10, 2009. Repeat the inspections thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD90–53A031, dated April 10, 2009.

Alternative Methods of Compliance (AMOCs)

(h)(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: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; 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 required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, 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 26, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–21338 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0785; Directorate Identifier 2009–NM–125–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series 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 that would supersede an existing AD. 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:

There has been one case reported of failure of a shaft (tailstock) on an elevator Power Control Unit (PCU), Part Number (P/N) 390600–1007. Continued actuation of the affected PCU caused damage to the surrounding structure. * * *

Each elevator surface has three PCUs, powered by separate independent hydraulic systems, and a single elevator PCU shaft failure may remain dormant. Such a dormant loss of redundancy, coupled with the potential for a failed shaft to produce collateral damage, including damage to hydraulic lines, could possibly affect the controllability of the aircraft.

* * * * *

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 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 W12–40, 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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.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: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

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–2009–0785; Directorate Identifier 2009–NM–125–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

On June 3, 2009, we issued AD 2009–12–13, Amendment 39–15936 (74 FR 27686, June 11, 2009). That AD required actions intended to address an unsafe condition on the products listed above.

When we issued AD 2009–12–13, the eventual replacement of all elevator PCUs identified in paragraph (f)(1) of that AD was not required. We have now determined that further rulemaking is necessary for this action, and this proposed AD follows from that determination. We are proposing to mandate the optional terminating action in paragraph (f)(3) of AD 2009–12–13 in this AD. You may obtain further information by examining the MCAI in the AD docket.

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 61 products of U.S. registry.

The actions that are required by AD 2009–12–13 and retained in this proposed AD take about 3 work-hours per product, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions is $240 per product.

We estimate that it would take about 13 work-hours per product to comply with the new 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 uncovered 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 new actions of this proposed AD on U.S. operators to be $63,440, or $1,040 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 removing Amendment 39–15936 (74 FR 27686, June 11, 2009) and adding the following new AD:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2009–0785; Directorate Identifier 2009–NM–125–AD.

Comments Due Date

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

Affected ADs

(b) The proposed AD supersedes AD 2009–12–13, Amendment 39–15936.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400, DHC–8–401, and DHC–8–402 airplanes, certificated in any category, serial numbers 4135 through 4149 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

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

There has been one case reported of failure of a shaft (tailstock) on an elevator Power Control Unit (PCU), Part Number (P/N) 390600–1007. Continued actuation of the affected PCU caused damage to the surrounding structure. Subsequent investigation determined that the failure was the result of a material defect and that the shafts installed on a total of 88 suspect PCUs * * * may contain a similar defect.

Each elevator surface has three PCUs, powered by separate independent hydraulic systems, and a single elevator PCU shaft failure may remain dormant. Such a dormant loss of redundancy, coupled with the potential for a failed shaft to produce collateral damage, including damage to hydraulic lines, could possibly affect the controllability of the aircraft.

This directive mandates an identification check for elevator PCU serial numbers, a daily check for correct operation of all suspect PCUs and, finally, replacement of all suspect PCUs.

Restatement of Requirements of AD 2009–12–13, Without Optional Terminating Action

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

(1) Within 30 days after June 26, 2009 (the effective date of AD 2009–12–13), inspect the serial number of each of the six installed elevator PCUs having P/N 390600–1007. If one or more of the six installed elevator PCUs, P/N 390600–1007, have any of the PCU serial numbers 238, 698, 783 through 788 inclusive, 790, 793, 795, 802, 806, 807, 810, 820 through 823 inclusive, 826 through 828 inclusive, 831, 835, 838, 840, 886 through 889 inclusive, or 898 through 955 inclusive; without a suffix ''A'' after the serial number: Within 30 days after June 26, 2009, perform a check for the correct operation of all installed elevator PCUs in accordance with the procedures detailed in Appendix A, B, or C of Bombardier Q400 All Operator Message 217B, dated April 26, 2007. Repeat the check thereafter before the first flight of each day until the replacement specified in paragraph (g) of this AD is done. The checks in Appendix A and B of Bombardier Q400 All Operator Message 217B, dated April 26, 2007, must be performed by the flight crew, while the check specified in Appendix C of the all operator message must be performed by certificated maintenance personnel.

Note 1: Suffix ''A'' after the serial number indicates that the PCU has already passed a magnetic particle inspection and is cleared for continued use.

(2) If incorrect operation of any elevator PCU is found during any check required by paragraph (f)(1) of this AD, before further flight, replace the elevator PCU with a PCU, P/N 390600–1007, having a serial number not specified in paragraph (f)(1) of this AD; or with a PCU, P/N 390600–1007, having the suffix ''A'' after the serial number; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–32, Revision A, dated January 18, 2008.

(3) Actions accomplished before June 26, 2009, according to Bombardier Service Bulletin 84–27–32, dated May 1, 2007, are considered acceptable for compliance with the corresponding action specified in this AD.

New Requirements of This AD: Actions and Compliance

(g) Unless already done, within 2,000 flight hours or 12 months after the effective date of this AD, whichever occurs later, replace all PCUs, P/N 390600–1007, having a serial number specified in paragraph (f)(1) of this AD, and not having suffix ''A'' after the serial number, with PCUs, P/N 390600–1007, having a serial number not specified in paragraph (f)(1) of this AD; or with PCUs, P/N 390600–1007, having the suffix ''A'' after the serial number; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–32, Revision A, dated January 18, 2008. This action terminates the requirements of paragraph (f)(1) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531. 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

(i) Refer to MCAI Canadian Airworthiness Directive CF–2009–16, dated April 20, 2009; Bombardier Service Bulletin 84–27–32, Revision A, dated January 18, 2008; and Bombardier Q400 All Operator Message 217B, dated April 26, 2007; for related information.

Issued in Renton, Washington, on August 26, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–21339 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–139068–08]

RIN 1545–BI31

Modification to Consolidated Return Regulation Permitting an Election To Treat a Liquidation of a Target, Followed by a Recontribution to a New Target, as a Cross-Chain Reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 1502 of the Internal Revenue Code (Code). The temporary regulations modify the election under which a consolidated group can avoid immediately taking into account an intercompany item after the liquidation of a target corporation. This modification was made necessary in light of the regulations under section 368 that were issued in October 2007 addressing transfers of assets or stock following a reorganization. The temporary regulations apply to corporations filing consolidated returns. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by December 4, 2009.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–139068–08), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–139068–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–139068–08).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mary W. Lyons, (202) 622–7930; concerning submission of comments and the hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by December 4, 2009. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.1502–13(f)(5)(ii)(E) as contained in 26 CFR part 1, revised April 1, 2009, and proposed § 1.1502–13(f)(5)(ii)(B)(*2*). This information is required by the IRS to allow certain parties to make an election to apply § 1.1502–13(f)(5)(ii)(B). The likely recordkeepers are corporations filing consolidated income tax returns. No additional burden is anticipated with respect to these proposed regulations over that already required in the regulations currently in effect (CO–11–91 Final and CO–24–95 Final).

Estimated total annual reporting burden: 100 hours.

Estimated average annual burden hours per respondent: 2 hours.

Estimated number of respondents: 50.

Estimated annual frequency of responses: Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 1502. The temporary regulations provide that if the election to apply § 1.1502–13(f)(5)(ii)(B) is made for a transaction in which old T liquidates into B on or after the effective date of the regulations under § 1.368–2(k), issued in October 2007, followed by B's transfer of substantially all of old T's assets to new T, then, for all Federal income tax purposes, old T's liquidation into B and B's transfer of substantially all of old T's assets to new T will be disregarded and, instead, the transaction will be treated as if old T transferred substantially all of its assets to new T in exchange for new T stock in a reorganization described in section 368(a). This election is available only if a direct transfer of the old T assets to new T would qualify as a reorganization. Thus, S's gain from the sale of the T stock to B is not taken into account upon the liquidation of T but instead is taken into account with respect to the new T stock, the successor asset to the old T stock.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the reasons for the modifications to the final regulations contained in the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations do not have a substantial economic impact because they merely provide for an election in the context of a taxpayer that has triggered deferred gain on subsidiary stock upon the liquidation of the subsidiary. Moreover, the regulations apply only to transactions involving consolidated groups which tend to be larger businesses. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. In addition to the specific requests for comments made elsewhere in this preamble or the preamble to the temporary regulations, the IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Mary W. Lyons of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.1502–13 also issued under 26 U.S.C. 1502 * * *

Par. 2. Section 1.1502–13 is amended by revising paragraphs (f)(5)(ii)(B) and adding paragraph (f)(5)(ii)(F) to read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(f) * * *

(5) * * *

(ii) * * *

(B)(*1*) [The text of the proposed amendments to § 1.1502–13(B)(1) is the same as the text of § 1.1502–13T(B)(1) published elsewhere in this issue of the **Federal Register.**

(*2*) [The text of the proposed amendments to § 1.1502–13(B)(2) is the same as the text of § 1.1502–13T(B)(2) published elsewhere in this issue of the **Federal Register.**

* * * * *

(F) [The text of the proposed amendments to § 1.1502–13(F) is the same as the text of § 1.1502–13T(F) published elsewhere in this issue of the **Federal Register**.

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–21323 Filed 9–3–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2560

RIN 1210–AB31

Civil Penalties Under ERISA Section 502(c)(8)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed regulation.

SUMMARY: This document contains a proposed regulation that, upon adoption, would establish procedures relating to the assessment of civil penalties by the Department of Labor under section 502(c)(8) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). Under section 502(c)(8) of ERISA, which was added by the Pension Protection Act of 2006, the Secretary of Labor is granted authority to assess civil penalties not to exceed $1,100 per day against any plan sponsor of a multiemployer plan for certain violations of section 305 of ERISA. The regulation would affect multiemployer plans that are in either endangered or critical status.

DATES: Written comments on the proposed regulation should be received by the Department of Labor no later than November 3, 2009.

ADDRESSES: You may submit comments, identified by RIN 1210–AB31, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail*: *e-ORI@dol.gov.* Include RIN 1210–AB31 in the subject line of the message.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Civil Penalties Under 502(c)(8).

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. Comments received will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, including any personal information provided. Persons submitting comments electronically are encouraged not to submit paper copies.

FOR FURTHER INFORMATION CONTACT: Michael Del Conte, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Section 202 and section 212 of the Pension Protection Act of 2006 (PPA), Public Law 109–280, respectively, amended ERISA by adding section 305 and amended the Internal Revenue Code (Code) by adding section 432, to provide additional rules for multiemployer defined benefit pension plans in endangered status or critical status. All references in this document to section 305 of ERISA should be read to include section 432 of the Code.[1]

In general, section 305(b)(3)(A) of ERISA provides that not later than the 90th day of each plan year, the actuary of a multiemployer defined benefit pension plan shall certify to the Secretary of the Treasury and to the plan sponsor—(i) Whether or not the plan is in endangered status for such plan year and whether or not the plan is or will be in critical status for such plan year, and (ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

Section 305(b)(3)(D)(i) of ERISA provides that, in any case in which it is certified under section 305(b)(3)(A) that a multiemployer plan is or will be in endangered or critical status for a plan year, the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor.[2]

Section 305(c)(1)(A) and section 305(e)(1)(A) provide that in the first year that a plan is certified to be in endangered or critical status, the plan sponsor generally has a 240-day period

[1] Pursuant to Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), the Department of the Treasury has interpretive authority over the minimum funding rules of Title I of ERISA, including section 305 of ERISA.

[2] Pursuant to section 305(b)(3)(D)(iii) of ERISA, the Department of Labor issued proposed 29 CFR 2540.305–1, which includes a model notice for plans in critical status. *See* 73 FR 15688 (Mar. 25, 2008). However, section 102(b)(1)(C) of the Worker, Retiree, and Employer Recovery Act of 2008, Public Law 110–458, signed into law on December 23, 2008, transferred the Secretary of Labor's obligation to prescribe a model notice to the Secretary of the Treasury, in consultation with the Secretary of Labor.

from the required date of the certification to adopt a funding improvement plan (in the case of a plan that is in endangered status) or a rehabilitation plan (in the case of a plan that is in critical status).[3] Section 305(c)(1) also requires multiemployer plans in endangered status to meet ''applicable benchmarks'' as defined under ERISA section 305(c)(3), as modified by ERISA section 305(c)(5).

Section 202(b)(3) of the PPA added section 502(c)(8)(A) to ERISA which gives the Secretary of Labor the authority to assess a civil penalty of not more than $1,100 a day against the plan sponsor for each violation by such sponsor of the requirement under section 305 to adopt by the deadline established in that section a funding improvement plan or rehabilitation plan with respect to a multiemployer plan which is in endangered or critical status.[4] Section 502(c)(8)(B) of ERISA provides the Secretary of Labor with the authority to assess a civil penalty of not more than $1,100 a day against the plan sponsor of a plan in endangered status, which is not in seriously endangered status, that fails to meet the applicable benchmarks under section 305 by the end of the funding improvement period with respect to the plan.[5] These provisions added by the PPA section 202(b)(3) are effective for plan years beginning on or after January 1, 2008.

B. Overview of Proposed 29 CFR 2560.502c–8

In general, this proposed regulation sets forth how the maximum penalty amounts are computed, identifies the circumstances under which a penalty may be assessed, sets forth certain procedural rules for service by the Department and filing by a plan sponsor, and provides a plan sponsor a means to contest an assessment by the Department by requesting an administrative hearing.

Paragraph (a) of the regulation addresses the general application of section 502(c)(8) of ERISA, under which the plan sponsor of an eligible plan shall be liable for civil penalties assessed by the Secretary of Labor in each case in which there are certain violations of section 305 of ERISA.

Paragraph (b) of the regulation sets forth the amount of penalties that may be assessed under section 502(c)(8) of ERISA and provides that the penalty assessed under section 502(c)(8) for each separate violation is to be determined by the Department, taking into consideration the degree or willfulness of the violation. Paragraph (b) provides that the maximum amount assessed for each violation shall not exceed $1,100 a day per violation or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.[6]

Paragraph (c) of the regulation provides that, prior to assessing a penalty under ERISA section 502(c)(8), the Department shall provide the plan sponsor with written notice of the Department's intent to assess a penalty, the amount of such penalty, the period to which the penalty applies, and the reason(s) for the penalty. The notice would indicate the specific provision violated. The notice is to be served in accordance with paragraph (i) of the regulation (service of notice provision).

Paragraph (d) of the regulation provides that the Department may decide not to assess a penalty, or to waive all or part of the penalty to be assessed, under ERISA section 502(c)(8), upon a showing by the plan sponsor, under paragraph (e) of the regulation, of compliance with section 305 of ERISA or that there were mitigating circumstances for noncompliance.

Under paragraph (e) of the regulation, the plan sponsor has 30 days from the date of service of the notice issued under paragraph (c) of the regulation within which to file a statement making such a showing. When the Department serves the notice under paragraph (c) by certified mail, service is complete upon mailing but five (5) days are added to the time allowed for the filing of the statement (*see* § 2560.502c–8(i)(2)).

Paragraph (f) of the regulation provides that a failure to file a timely statement under paragraph (e) shall be deemed to be a waiver of the right to appear and contest the facts alleged in the Department's notice of intent to assess a penalty for purposes of any adjudicatory proceeding involving the assessment of the penalty under section 502(c)(8) of ERISA, and to be an admission of the facts alleged in the notice of intent to assess. Such notice then becomes a final order of the Secretary 45 days from the date of service of the notice.

Paragraph (g)(1) of the regulation provides that, following a review of the facts alleged in the statement under paragraph (e), the Department shall notify the plan sponsor of its determination to waive the penalty, in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty. Under paragraph (g)(2) of the regulation, this notice becomes a final order 45 days after the date of service of the notice, except as provided in paragraph (h).

Paragraph (h) of the regulation provides that the notice described in paragraph (g) will become a final order of the Department unless, within 30 days of the date of service of the notice, the plan sponsor or representative files a request for a hearing to contest the assessment in administrative proceedings set forth in regulations issued under part 2570 of title 29 of the Code of Federal Regulations and files an answer, in writing, opposing the sanction. When the Department serves the notice under paragraph (g) by certified mail, service is complete upon mailing but five (5) days are added to the time allowed for the filing of the request for hearing and answer (*see* § 2560.502c–8(i)(2)).

Paragraph (i)(1) of the regulation describes the rules relating to service of the Department's notice of penalty assessment (§ 2560.502c–8(c)) and the Department's notice of determination on a statement of reasonable cause (§ 2560.502c–8(g)). Paragraph (i)(1) provides that service by the Department shall be made by delivering a copy to

[3] The Worker, Retiree, and Employer Recovery Act of 2008, Public Law 110–458 (WRERA), permits multiemployer plans to delay temporarily their endangered or critical status under section 305 of ERISA. Section 204 of WRERA provides that a multiemployer plan may, for its first plan year beginning during the period from October 1, 2008, through September 30, 2009, elect to keep its status for the plan year preceding such plan year for purposes of section 305 of ERISA and section 432 of the Code. For example, a plan that was not in endangered status for 2008 may elect to keep that non-endangered status for 2009 even if it is in fact in endangered status. On March 27, 2009, the Internal Revenue Service issued Notice 2009–31, 2009–16 I.R.B. 856, providing guidance to multiemployer plans relating to such elections, and on April 30, 2009, issued Notice 2009–42, 2009–20 I.R.B. 1011, modifying Notice 2009–31 to provide an extension of the election period and relief for plans needing arbitration on the election.

[4] An excise tax under Code section 4971(g)(4) generally applies, in addition to any penalty under ERISA section 502(c)(8), in the case of a failure to adopt a rehabilitation plan with respect to a multiemployer plan in critical status.

[5] An excise tax under Code section 4971(g)(3) generally applies in the case of a failure by a multiemployer plan in seriously endangered status to meet the applicable benchmarks by the end of the funding improvement period or a failure of a plan in critical status to meet the requirements applicable to such plans under section 432(e) of the Code.

[6] The Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), Public Law 101–410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996 (the 1996 Act), Public Law 104–134, 110 Stat. 1321–373, generally provides that Federal agencies adjust certain civil monetary penalties for inflation no later than 180 days after the enactment of the 1996 Act, and at least once every four years thereafter, in accordance with the guidelines specified in the 1990 Act. The 1996 Act specifies that any such increase in a civil monetary penalty shall apply only to violations that occur after the date the increase takes effect.

the plan sponsor or representative thereof; by leaving a copy at the principal office, place of business, or residence of the plan sponsor or representative thereof; or by mailing a copy to the last known address of the plan sponsor or representative thereof. As noted above, paragraph (i)(2) of this section provides that when service of a notice under paragraph (c) or (g) is by certified mail, service is complete upon mailing, but five days are added to the time allowed for the filing of a statement or a request for hearing and answer, as applicable. Service by regular mail is complete upon receipt by the addressee.

Paragraph (i)(3) of the regulation, which relates to the filing of statements of reasonable cause, provides that a statement of reasonable cause shall be considered filed (i) upon mailing if accomplished using United States Postal Service certified mail or express mail, (ii) upon receipt by the delivery service if accomplished using a ''designated private delivery service'' within the meaning of 26 U.S.C. 7502(f), (iii) upon transmittal if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment, or (iv) in the case of any other method of filing, upon receipt by the Department at the address provided in the notice. This provision does not apply to the filing of requests for hearing and answers with the Office of the Administrative Law Judge (OALJ) which are governed by the Department's OALJ rules in 29 CFR 18.4.

Paragraph (j) of the regulation clarifies the liability of the parties for penalties assessed under section 502(c)(8) of ERISA. Paragraph (j)(1) provides that, if more than one person is responsible as plan sponsor for the failure to adopt a funding improvement or rehabilitation plan, or to meet the applicable benchmarks, as required by section 305 of ERISA, all such persons shall be jointly and severally liable for such failure. Thus, the entire joint board of trustees would be jointly and severally liable for any such failure. Paragraph (j)(2) provides that any person against whom a penalty is assessed under section 502(c)(8) of ERISA, pursuant to a final order, is personally liable for the payment of such penalty, and that such liability is not a liability of the plan. It is the Department's view that payment of penalties assessed under ERISA section 502(c) from plan assets would not constitute a reasonable expense of administering a plan for purposes of sections 403 and 404 of ERISA.

Paragraph (k) of the regulation establishes procedures for hearings before an Administrative Law Judge (ALJ) with respect to assessment by the Department of a civil penalty under ERISA section 502(c)(8), and for appealing an ALJ decision to the Secretary or her delegate. The procedures are the same procedures as would apply in the case of a civil penalty assessment under section 502(c)(7) of ERISA.

C. Effective Date

The Department proposes to make this regulation effective 60 days after the date of publication of the final rule in the **Federal Register**.

D. Regulatory Impact Analysis

Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this proposed rule relating to the assessment of civil monetary penalties under section 502(c)(8) of the Act is not significant under section 3(f)(4) of the Executive Order; and, therefore, it is not subject to OMB review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of RFA requires that the agency present a regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of its analyses under the RFA, EBSA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reporting for pension plans that cover fewer than 100 participants. By this standard, data from the EBSA Private Pension Bulletin for 2006 show that only 46 multiemployer defined benefit pension plans or 3% of all multiemployer defined benefit pension plans are small entities. This number represents .1% of all small defined benefit pension plans. The Department does not consider this to be a substantial number of small entities. Therefore, pursuant to section 605(b) of RFA, the Department hereby certifies that the rule is not likely to have a significant economic impact on a substantial number of small entities.

The terms of the statute pertaining to the assessment of civil penalties under section 502(c)(8) of ERISA do not vary relative to plan or plan sponsor size. The opportunity for a plan sponsor to present facts and circumstances related to a failure or refusal to comply with section 305 of the Act that may be taken into consideration by the Department in reducing or not assessing penalties under ERISA section 502(c)(8) may offer some degree of flexibility to small entities subject to penalty assessments. Penalty assessments will have no direct impact on small plans, because the plan sponsor assessed a civil penalty is personally liable for the payment of that penalty pursuant to § 2560.502c–8(j)(2).

The Department invites interested persons to submit comments on the impact of this proposed rule on small entities and on any alternative approaches that may serve to minimize the impact on small plans or other entities while accomplishing the objectives of the statutory provisions.

Paperwork Reduction Act

The proposal is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*), because it does not contain a collection of information as defined in 44 U.S.C. 3502(3). Information otherwise provided to the Secretary in connection with the

administrative and procedural requirements of this proposed rule is excepted from coverage by PRA 95 pursuant to 44 U.S.C. 3518(c)(1)(B), and related regulations at 5 CFR 1320.4(a)(2) and (c). These provisions generally except information provided as a result of an agency's civil or administrative action, investigation, or audit.

Congressional Review Act

This proposed rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, upon finalization, will be transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, and does not impose an annual burden exceeding $100 million, as adjusted for inflation, on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this proposed rule do not alter the fundamental reporting and disclosure, or administration and enforcement provisions of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR 2560

Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

Accordingly, 29 CFR part 2560 is proposed to be amended as follows:

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

1. The authority citation for part 2560 is revised to read as follows:

Authority: 29 U.S.C. 1132, 1135, and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2560.503–1 also issued under 29 U.S.C. 1133. Sec. 2560.502c–7 also issued under 29 U.S.C 1132(c)(7). Sec. 2560.502c–4 also issued under 29 U.S.C. 1132(c)(4). Sec. 2560.502c–8 also issued under 29 U.S.C. 1132(c)(8).

2. Add § 2560.502c–8 to read as follows:

§ 2560.502c–8 Civil penalties under section 502(c)(8).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(8) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the plan sponsor (within the meaning of section 3(16)(B)(iii) of the Act) shall be liable for civil penalties assessed by the Secretary under section 502(c)(8) of the Act, for:

(i) Each violation by such sponsor of the requirement under section 305 of the Act to adopt by the deadline established in that section a funding improvement plan or rehabilitation plan with respect to a multiemployer plan which is in endangered or critical status; or

(ii) In the case of a plan in endangered status which is not in seriously endangered status, a failure by the plan to meet the applicable benchmarks under section 305 by the end of the funding improvement period with respect to the plan.

(2) For purposes of this section, violations or failures referred to in paragraph (a)(1) of this section shall mean a failure or refusal, in whole or in part, to adopt a funding improvement or rehabilitation plan, or to meet the applicable benchmarks, at the relevant times and manners prescribed in section 305 of the Act.

(b) *Amount assessed.* The amount assessed under section 502(c)(8) of the Act for each separate violation shall be determined by the Department of Labor, taking into consideration the degree or willfulness of the failure or refusal to comply with the specific requirements referred to in paragraph (a) of this section. However, the amount assessed for each violation under section 502(c)(8) of the Act shall not exceed $1,100 a day (or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the plan sponsor's failure or refusal to comply with the specific requirements referred to in paragraph (a) of this section.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(8) of the Act, the Department shall provide to the plan sponsor of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(8) of the Act, the amount of such penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the plan sponsor complied with the requirements of section 305 of the Act, or on a showing by the plan sponsor of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the plan sponsor shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the plan sponsor that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(8) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The

Department, following a review of all of the facts in a statement of reasonable cause alleged in support of nonassessment or a complete or partial waiver of the penalty, shall notify the plan sponsor, in writing, of its determination on the statement of reasonable cause and its determination whether to waive the penalty in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty assessment, not to exceed the amount described in paragraph (c) of this section. This notice is a ''pleading'' for purposes of § 2570.131(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's determination to assess a penalty, shall become a final order, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.131(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the plan sponsor or a representative thereof files a request for a hearing under §§ 2570.130 through 2570.141 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.132 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the plan sponsor or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the plan sponsor or representative thereof; or

(iii) By mailing a copy to the last known address of the plan sponsor or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five days shall be added to the time allowed by these rules for the filing of a statement or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or express mail;

(ii) Upon receipt by the delivery service, if accomplished using a ''designated private delivery service'' within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as plan sponsor for violations referred to in paragraph (a) of this section, all such persons shall be jointly and severally liable for such violations.

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(8) of the Act, pursuant to a final order within the meaning of § 2570.131(g) of this chapter, shall be personally liable for the payment of such penalty.

(k) *Cross-references.* (1) The procedural rules in §§ 2570.130 through 2570.141 of this chapter apply to administrative hearings under section 502(c)(8) of the Act.

(2) When applying procedural rules in §§ 2570.130 through 2570.140:

(i) Wherever the term ''502(c)(7)'' appears, such term shall mean ''502(c)(8)'';

(ii) Reference to § 2560.502c–7(g) in 2570.131(c) shall be construed as reference to § 2560.502c–8(g) of this chapter;

(iii) Reference to § 2560.502c–7(e) in § 2570.131(g) shall be construed as reference to § 2560.502c–8(e) of this chapter;

(iv) Reference to § 2560.502c–7(g) in § 2570.131(m) shall be construed as reference to § 2560.502c–8(g); and

(v) Reference to §§ 2560.502c–7(g) and 2560.502c–7(h) in § 2570.134 shall be construed as reference to §§ 2560.502c–8(g) and 2560.502c–8(h), respectively.

Signed at Washington, DC, this 28th day of August 2009.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E9–21343 Filed 9–3–09; 8:45 am]

BILLING CODE 4510–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0520; FRL–8953–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Opacity Variance for Rocket Testing Operations Atlantic Research Corporation's Orange County Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of adding 9 VAC 5 Chapter 220, ''Variance for Rocket Motor Test Operations at Atlantic Research Corporation Orange County Facility'' which includes an opacity variance for the rocket motor test operations at Aerojet Corporation's Orange County Facility, in lieu of opacity limits established in the Virginia SIP. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the Commonwealth's submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 5, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0520 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2009–0520, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S.

Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2009–0520. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title: ''Virginia; Opacity Variance for Rocket Testing Operations Atlantic Research Corporation's Orange County Facility,'' which is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: August 26, 2009.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. E9–21398 Filed 9–3–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R07–RCRA–2009–0646; FRL–8953–4]

Adequacy of Kansas Municipal Solid Waste Landfill Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Kansas' Research, Development and Demonstration (RD&D) permit program and updates to the approved Municipal Solid Waste Landfill Permit (MSWLP) program. On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued to certain municipal solid waste landfills by approved states. On December 11, 2008, Kansas submitted an application to the EPA seeking Federal approval of its RD&D requirements and to update Federal approval of its MSWLP program.

DATES: Comments on this proposed action must be received in writing by October 5, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–RCRA–2009–0646 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: cruise.nicole@epa.gov.*

3. *Mail:* Send written comments to Nicole Cruise, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Nicole Cruise, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Nicole Cruise at (913) 551–7641, or by e-mail at *cruise.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register,** EPA is approving Kansas' Research, Development and Demonstration permit program and updates to the approved Municipal Solid Waste Landfill Permit (MSWLP) program as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments to this action. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register.**

Dated: August 27, 2009.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. E9–21401 Filed 9–3–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1922; MB Docket No. 09–156; RM–11556]

Television Broadcasting Services; Jackson and Laurel, Mississippi

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by commonly-owned WLBT License Subsidiary, LLC and WDAM License Subsidiary, LLC (''Petitioners''), the licensees of stations WLBT(TV), Jackson, Mississippi, channel 7, and WDAM–TV, Laurel, Mississippi, channel 28. Petitioners request the substitution of channel 30 for WLBT(TV)'s assigned channel 7 at Jackson and the substitution of channel 7 for WDAM–TV's assigned channel 28 at Laurel.

DATES: Comments must be filed on or before September 21, 2009, and reply comments on or before September 29, 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: Jennifer A. Johnson, Esq., Covington and Burling LLP, 1201 Pennsylvania Avenue, NW., Washington, DC 20004–2401.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@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. 09–156, adopted August 25, 2009, and released August 27, 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 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Mississippi, is amended by adding DTV channel 30 and removing DTV channel 7 at Jackson.

3. Section 73.622(i), the Post-Transition Table of DTV Allotments under Mississippi, is amended by adding DTV channel 7 and removing DTV channel 28 at Laurel.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–21318 Filed 9–3–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1969; MB Docket No. 09–159; RM–11557]

Television Broadcasting Services; St. Petersburg, Florida

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed Bay Television, Inc. (''Bay Television''), the licensee of station WTTA(TV), channel 38, St. Petersburg, Florida. Bay Television requests the substitution of channel 32 for its assigned channel 38 at St. Petersburg.

DATES: Comments must be filed on or before September 21, 2009, and reply comments on or before September 29, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Clifford M. Harrington, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037–1128.

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. 09–159, adopted August 28, 2009, and released August 31, 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 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Florida, is amended by adding DTV channel 32 and removing DTV channel 38 at St. Petersburg.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–21388 Filed 9–3–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1963; MB Docket No. 09–160; RM–11558]

Television Broadcasting Services; Traverse City, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Barrington Traverse City License, LLC (''Barrington''), the licensee of station WPBN–TV, channel 7, Traverse City, Michigan. Barrington requests the substitution of digital channel 47 for digital channel 7 at Traverse City.

DATES: Comments must be filed on or before September 21, 2009, and reply comments on or before September 29, 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: Marnie K. Sarver, Esq., Wiley Rein, LLP, 1776 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: David Brown, *david.brown@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. 09–160, adopted August 27, 2009, and released August 28, 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 Michigan, is amended by adding DTV channel 47 and removing DTV channel 7 at Traverse City.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–21390 Filed 9–3–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907281181–91191–01]

RIN 0648–AX93

Fisheries of the Northeastern United States; Modification to the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Authorization Letter

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes modifications to the requirements for

midwater trawl vessels issued All Areas and/or Areas 2 and 3 Atlantic herring limited access permits fishing in Closed Area I (CA I). In order to fish in CA I, midwater trawl vessels with these permits would be required to carry a NMFS-approved observer and to bring the entire catch aboard the vessel, unless specific conditions are met, so that it is available to the observer for sampling. These proposed changes to the Gulf of Maine/Georges Bank (GOM/GB) Herring Midwater Trawl Gear Letter of Authorization (LOA) would be effective indefinitely, until changed by a subsequent action.

DATES: Written comments must be received no later than 5 p.m. local time on September 21, 2009.

ADDRESSES: You may submit comments, identified by 0648–AX93, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-rulemaking portal: *http://www.regulations.gov*.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276. Mark the outside of the envelope: ''Modification to GOM/GB Midwater Trawl LOA.''
- Fax: (978) 281–9135.

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341, fax (978) 281–9135.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Northeast Regional Office and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) voted at its April 8, 2009, Council meeting to request that the NMFS Northeast Regional Administrator modify the GOM/GB Herring Midwater Trawl Gear LOA to require midwater trawl vessels fishing in CA I to have 100–percent observer coverage; be prohibited from slipping codends (the practice of opening the codend of the net and releasing the catch before all of it is brought on board); and be required to pump aboard the vessel all fish caught, to allow sampling by the observer.

The final rule implementing Framework Adjustment 18 (FW 18) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) (63 FR 7727, February 17, 1998) authorized midwater trawl vessels to fish in the groundfish year-round closed areas with specific conditions regarding bycatch of regulated multispecies. The FW 18 implementing regulations (§ 648.81(a)(2)(iii)), grant the Regional Administrator the authority to place restrictions and conditions in the LOA if it is determined that the bycatch of regulated multispecies in the groundfish closed areas exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation. Recent analysis of at-sea observer data, presented by NMFS at the April 8, 2009, Council meeting, demonstrated that the bycatch of regulated multispecies in groundfish CA I exceeded 1 percent of herring caught on at least two individual fishing trips between May 2004 and October 2008. Based on this information, the intent of the Council's motion is to collect additional information on bycatch by the midwater trawl directed herring fishery in CA I to determine whether revisions should be made to the exemption allowing these vessels to fish in groundfish closed areas.

Therefore, based on the authority granted in the regulation cited above, in combination with section 402(a) of the Magnuson-Stevens Act, which allows NMFS to implement information collections or observer programs if additional information is necessary to monitor a fishery management plan, NMFS proposes to implement the Council's recommendation by adding language to the existing LOA to prohibit midwater trawl vessels with All Areas and/or Areas 2 and 3 limited access Atlantic herring permits from fishing in CA I without a NMFS-approved at-sea observer aboard. The LOA would also stipulate that such vessels, while operating in CA I, would be prohibited, except under certain circumstances, from releasing fish from the net before all of the catch has been pumped aboard and made available to the observer for sampling.

Starting in 2005 with FW 40–B to the NE Multispecies FMP (70 FR 31323, June 1, 2005), vessels in the directed herring fishery (those permitted to land 500 mt of herring or more) have been required to notify NMFS at least 72 hr prior to departing on a herring trip into the GOM/GB Exemption Area, to facilitate observer deployment. In 2006, FW 43 to the NE Multispecies FMP (71 FR 46871, August 15, 2006) instituted a bycatch allowance of regulated groundfish for vessels in the directed herring fishery. Based on the precedent set in these previous Council actions, the measures proposed by this action would apply to vessels in the directed herring fishery, specifically those with All Areas and/or Areas 2 and 3 limited access Atlantic Herring permits.

Observer Provisions

This proposed rule would require vessels using midwater trawl gear in the directed herring fishery to indicate their intention to fish in CA I when scheduling an observer through the Northeast Fishery Observer Program. This notification is intended to allow NMFS to ensure an observer is deployed on all vessels that intend to fish in CA I with midwater trawl gear. To ensure 100–percent observer coverage, midwater trawl vessels would not be permitted to fish in CA I without an observer.

Slipped Codend Provisions

NMFS proposes that midwater trawl vessels in the directed herring fishery, that have indicated an intention to fish in CA I, and that have been assigned a NMFS-approved at-sea observer, would be prohibited, unless specific conditions are met, from releasing (i.e., slipping) fish from the codend of the net, transferring fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer. Even if such a vessel did not fish an entire trip inside of CA I, it would be required to comply with these requirements for the entire trip to ensure that maximum amount of information is obtained.

NMFS recognizes that there are certain conditions under which fish must be released from the codend without being sampled. Therefore, this provision is not intended to limit the

discretion of the captain to regulate the stability of the vessel in adverse sea conditions, and the operator would be permitted to dump fish if bringing them aboard the vessel could compromise the safety of the vessel or her crew. In addition, mechanical failure of the pump may preclude bringing some or all of a catch aboard the vessel. That part of the catch that could not be pumped aboard because of mechanical failure could be released. Mechanical or safety problems of sufficient magnitude to warrant slipping a codend would require termination of the fishing trip and the vessel's return to port. This requirement is designed to help ensure that safety or mechanical justifications for slipping a codend are not used as a false pretext to avoid sampling.

NMFS recognizes that species composition in the catch, specifically a high concentration of spiny dogfish, can cause the fish pump to clog, slowing the pump-out process and potentially damaging the rest of the catch. Therefore, NMFS proposes allowing fish to be released unsampled if spiny dogfish are determined to comprise more than 50 percent of the catch, by weight. Pumping operations would have to be started so that the observer could determine that the quantity of spiny dogfish in the catch is sufficient to make pumping the remainder of the catch nearly impossible. A vessel would not be required to end the trip following a slipped codend due to a high concentration of spiny dogfish.

If a codend is slipped, the vessel operator would be required to sign an affidavit to NOAA's Office of Law Enforcement (OLE) attesting to the specific reason for the release, and a good-faith estimate of both the total weight of fish caught and the weight of fish released. Completed and signed affidavits would be sent to OLE at the conclusion of the trip. Slipped codends for which an affidavit has been completed and signed, citing one of the exemptions mentioned above, would be presumed to be in accordance with the regulations unless a preponderance of the evidence demonstrates otherwise.

Representatives of the commercial midwater trawl industry have asserted that short duration tows, or ''test tows,'' used to check the abundance of target and bycatch species in an area should not be required to be pumped aboard. Because the purpose of this proposed expansion of the information collection program is to increase the understanding of the bycatch of this fishery in CA I, it is necessary to collect information on bycatch in all tows made by midwater trawl vessels in CA I. However, the proposed regulations would not require a vessel to pump out the catch from a test tow if the net is simply reset without releasing the catch. In this circumstance, the catch from the test tow would remain in the codend and would be available to the observer to sample when the subsequent tow is pumped out. In addition, fish that a vessel would normally discard because of regulatory, market, or other factors, could be discarded, but only after being brought on board and sampled by the observer.

Request for Comments

The public is invited to comment on any of the measures proposed in this proposed rule. NMFS is especially interested in receiving comments on proposed measures regarding the requirement for vessels to end a trip after a codend is slipped due to safety concerns or mechanical failure. Additionally, comment is specifically sought on whether or not 50 percent is the appropriate level of spiny dogfish bycatch at which to allow a codend to be released. Comment is also sought regarding how much of the catch should be pumped to determine the level of dogfish bycatch, in order to justify slipping the codend and releasing the remainder of the tow without being sampled by the observer.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Herring and NE Multispecies FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The NMFS Northeast Regional Administrator has determined that this proposed rule is a minor technical addition, correction, or change to a management plan and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This amendment does not significantly affect the practices of any fishing operation. It increases the rate of at-sea fishery observer coverage to 100 percent for midwater trawl vessels fishing in CA I. Sufficient observer sea-days have been allocated to this program to cover the expected fishing effort by midwater trawlers in CA I in the next fishing year. If the Northeast Fishery Observer Program is unable to provide an observer for a vessel that indicates an intention to fish in CA I, the vessel may still fish, but would be prohibited from fishing inside CA I on that trip. The rule also stipulates that, during trips when a vessel has indicated an intention to fish in CA I, the codend of the net may not be slipped and all fish must be pumped aboard the vessel, unless specific conditions are met. For example, exceptions would be made for a vessel if pumping out the net is not possible due to concerns for vessel safety, mechanical problems, or a high concentration of spiny dogfish. Currently, very few midwater trawl trips fish in CA I on an annual basis, and vessels that do not receive an observer are still able to fish in any other areas open to this gear. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains one new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The observer notification of a vessel's intention to fish in CA I will be added to the information collection for the Herring Vessel Observer Program Notification, which has been approved by OMB under control number 0648–0202. The public reporting burden for the Herring Vessel Observer Program Notification will not change, and is estimated to average 2 min per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The new collection-of-information requirement pertaining to the slipped codend exemption affidavit has been submitted to OMB for approval. The public reporting burden for completion of the slipped codend exemption affidavit is estimated to average 5 min per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and

clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the ADDRESSES above, and e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 31, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, add paragraphs (r)(2)(v), (r)(2)(vi), and (r)(2)(vii) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(2) * * *

(v) Fish with midwater trawl gear in Closed Area I, as specified at § 648.81(a), without a NMFS approved observer onboard, if the vessel holds an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit.

(vi) Release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea before bringing the fish aboard and making it available to the observer for sampling, unless subject to one of the exemptions as defined at § 648.80(d)(7)(ii), if the vessel has expressed an intention to fish in Closed Area I, as detailed at § 648.80(d)(5) and is carrying an observer.

(vii) Fail to complete, sign, and submit an affidavit if fish are released pursuant to the exemptions detailed at § 648.80(d)(7)(ii).

* * * * *

3. In § 648.80, revise paragraph (d)(5) and add paragraph (d)(7) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(5) To fish for herring under this exemption, vessels issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must provide notice of the following information to NMFS at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment: Vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and whether the vessel intends to engage in fishing in Closed Area I, as defined in § 648.81(a), at any point in the trip; and

* * * * *

(7) *Fishing in Closed Area I.* (i) No vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may fish in, or possess or land fish from, Closed Area I with pelagic midwater trawl gear unless it has declared its intent to fish in Closed Area I as required by paragraph (d)(5) of this section, and is carrying a NMFS-approved observer.

(ii) No vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that has declared its intent to fish with pelagic midwater trawl gear in Closed Area I, in accordance with paragraph (d)(5) of this section, and is carrying a NMFS-approved observer, may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer (e.g. an Atlantic herring at-sea processing vessel or an Atlantic herring carrier vessel), or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) That mechanical failure of the fish pump precludes bringing the fish aboard the vessel for inspection; or,

(C) After pumping of fish onto the vessel has begun, the vessel operator determines that spiny dogfish comprise at least 50 percent, by weight, of the catch, and observer sampling demonstrates that spiny dogfish comprise at least 50 percent, by weight, of the sampled catch.

(iii) If fish are released prior to being brought aboard the vessel due to any of exceptions detailed in paragraphs (d)(7)(ii)(A) through (C) of this section, the vessel operator shall make all reasonable efforts to assist the observer in identifying the reason for the release; the total weight of fish caught, and the weight of fish released, and shall sign an affidavit attesting to this information. Further, if fish are discarded prior to being inspected by the observer, for either safety or mechanical reasons, as detailed in paragraphs (d)(7)(ii)(A) or (B) of this section, the vessel must end the trip and return to port without making additional tows.

* * * * *

[FR Doc. E9–21404 Filed 9–3–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 74, No. 171
Friday, September 4, 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—FNS–380, Worksheet for the Supplemental Nutrition Assistance Program Quality Control Reviews

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 the proposed information collection. This collection is a revision of a currently approved collection of FNS–380, Worksheet for the Supplemental Nutrition Assistance Program's Quality Control Reviews.

DATES: Written comments must be submitted on or before November 3, 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, (703) 305–2410.

SUPPLEMENTARY INFORMATION:

Title: Worksheet for the Supplemental Nutrition Assistance Program's (SNAP) Quality Control Reviews.

OMB Number: 0584–0074.

Form Number: FNS–380.

Expiration Date: February 28, 2010.

Type of Request: Revision of a currently approved collection.

Abstract: Form FNS–380 is a SNAP worksheet used to determine eligibility and benefits for households selected for review in the quality control sample of active cases. We estimate the total reporting burden for this collection of information as 8.9 hours, equating to a total of 498,978 hours collectively. This includes the time for State agencies analyzing the household case record; planning and carrying out the field investigation; gathering, comparing, analyzing and evaluating the review data and forwarding selected cases to the Food and Nutrition Service for Federal validation. It also includes an average interview burden of 30 minutes (0.5 hours) for each household. Additionally, we estimate the recordkeeping burden per record for the state agency to be 0.0236 hours, thereby making the recordkeeping burden associated with this information collection for the state agency to be 1,323 hours. The total estimated reporting and recordkeeping burden for this collection is 500,301 hours.

The reporting and recordkeeping burden for this form was previously approved under Office of Management and Budget (OMB) clearance number 0584–0074. OMB approved the burden through November 30, 2009. Based on the most recent table of active case sample sizes and completion rates (FY 2007), we estimate 56,065 FNS–380 worksheets and interviews will now be completed annually. This is a decrease of 1,134 responses from the estimate made to substantiate the current collection. This estimate will also cause a corresponding decrease in the reporting and recordkeeping burden. The decrease in response is a result of a reduction in the number of cases being pulled for review over the minimum required review amount. We are requesting a three-year approval from OMB for this information collection.

Affected Public: State or local governments.

Estimated Number of Respondents: 53 State agencies.

Estimated Number of Responses per Respondent: 1057 responses.

Estimated Total Number of Responses per Year: 56,065 responses.

Estimated Time per Response: 8.4 hours per State agency.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 56,065 Households.

Estimated Number of Responses per Respondent: 1.

Estimated Total Number of Responses per Year: 56,065.

Estimated Time per Response: .5 hours per Household.

Estimated Total Annual Reporting Burden: 498,978 hours.

Estimated Number of Records: 56,065.

Estimated Time per Record: 0.0236 hours.

Estimated Total Annual Recordkeeping Burden: 1,323 hours.

Estimated Total Annual Reporting and Recordkeeping Burden: 500,301 hours.

Affected public	Number of respondents	Number of responses per respondent	Total responses per year	Time per response	Annual reporting burden [(c)(d)]	Number of records	Time per record	Total annual record-keeping burden [(f)(g)]	Total annual reporting and record-keeping burden [(e+h)]
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
State Agencies	53	1057	56,065	8.4	470,946	56,065	0.0236	1,323	500,301
Households	56,065	1		.5	28,032				

Dated: August 27, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–21373 Filed 9–3–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Champaign, IL; Detroit, MI; Davenport, IA; Enid, OK; Keokuk, IA; Marshall, MI; and Omaha, NE Areas and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end on March 31, 2010. We are asking persons or governmental agencies interested in providing official services in the areas served by these agencies to submit an application for designation. We are also asking for comments on the quality of services provided by these currently designated agencies: Champaign-Danville Grain Inspection Departments, Inc. (Champaign); Detroit Grain Inspection Service, Inc. (Detroit); Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa); Enid Grain Inspection Company, Inc. (Enid); Keokuk Grain Inspection Service (Keokuk); Michigan Grain Inspection Services, Inc. (Michigan); and Omaha Grain Inspection Service, Inc. (Omaha).

DATES: Applications and comments must be received on or before October 1, 2009.

ADDRESSES: We invite you to submit applications and comments on this notice by any of the following methods:

- To apply for designation, go to ''FGIS*online''* at: *https://fgis.gipsa.usda.gov/default_home_FGIS.aspx* then select *Delegations/Designations and Export Registrations (DDR).* You will need a USDA e-authentication, username, password, and a customer number prior to applying.
- *Hand Delivery or Courier:* Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- *Fax:* (202) 690–2755, to the attention of: Karen Guagliardo.
- *E-mail: Karen.W.Guagliardo@usda.gov.*
- *Mail:* Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.
- *Internet:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting and reading comments online.

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Karen Guagliardo at 202–720–7312, e-mail *Karen.W.Guagliardo@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 7(f)(1) of the United States Grain Standards Act (USGSA or Act) (7 U.S.C. 71–87k) authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Under section 7(g)(1) of the USGSA, designations of official agencies are effective for 3 years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

Areas Open for Designation

Champaign

Pursuant to Section 7(f)(2) of the Act, the following geographic areas in the States of Illinois, Indiana, and Michigan are assigned to this official agency.

- In Illinois and Indiana:
  - Bounded on the North by the northern Livingston County line from State Route 47; the eastern Livingston County line to the northern Ford County line; the northern Ford and Iroquois County lines east to Interstate 57; Interstate 57 north to the northern Will County line and east to the Illinois-Indiana State line; the Illinois-Indiana State line north to the northern Lake County line; the northern Lake, Porter, Laporte, St. Joseph, and Elkhart County lines;
  - Bounded on the East by the eastern and southern Elkhart County lines; the eastern Marshall County line; the southern Marshall and Starke County lines; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to Indiana State Route 55; Indiana State Route 55 south to the Newton County line; the southern Newton County line west to U.S. Route 41; U.S. Route 41 south to the northern Parke County line; the northern Parke and Putnam County lines; the eastern Putnam, Owen and Greene County lines;
  - Bounded on the South by the southern Greene County line; the southern Sullivan County line west to U.S. Route 41(150); U.S. Route 41(150) south to U.S. Route 50; U.S. Route 50 west across the Indiana-Illinois State line to Illinois State Route 33; Illinois State Route 33 north and west to the Western Crawford County line; and
  - Bounded on the West by the western Crawford and Clark County lines; the Southern Coles County line; the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line, from this point through Arrowsmith to Pontiac along a straight line running north and south which intersects with State Route 116; State Route 116 east to State Route 47; State Route 47 north to the northern Livingston County line.
- In Michigan:
  - Berrien, Cass, and St. Joseph Counties.

The following grain elevators located within Champaign's assigned geographic area are serviced by Titus Grain Inspection, Inc.: Kentland Elevator and Supply, Boswell, Benton County, Indiana; ADM, Dunn, Benton County, Indiana; and ADM, Raub, Benton County, Indiana.

The following grain elevators located outside of the above areas are serviced by Champaign: Okaw Cooperative, Cadwell, Moultrie County; ADM (3 elevators), Farmer City, Dewitt County; and Topflight Grain Company, Monticello, Piatt County (located inside Decatur Grain Inspection, Inc.'s, area).

All export port locations within Champaign's assigned geographic area are serviced by GIPSA.

Detroit

Pursuant to Section 7(f)(2) of the Act, the following geographic areas in the State of Michigan are assigned to this official agency.

- Bounded on the North by the northern Clinton County line; the eastern Clinton County line south to State Route 21; State Route 21 east to State Route 52; State Route 52 north to the Shiawassee County line; the northern Shiawassee County line east to the Genesee County line; the western Genesee County line; the northern Genesee County line east to State Route 15; State Route 15 north to Barnes Road; Barnes Road east to Sheridan Road; Sheridan Road north to State Route 46; State Route 46 east to State Route 53; State Route 53 north to the Michigan State line;
- Bounded on the East by the Michigan State line south to State Route 50;
- Bounded on the South by State Route 50 west to U.S. Route 127; and
- Bounded on the West by U.S. Route 127 north to U.S. Route 27; U.S. Route 27 north to the northern Clinton County line.

The following grain elevator, located outside of the above areas is serviced by Detroit: Caledonia Farmers Elevator, St. Johns, Clinton County (located inside Michigan Grain Inspection Services, Inc.'s, area).

Eastern Iowa

Pursuant to Section 7(f)(2) of the Act, the following geographic areas in the States of Illinois, Iowa, and Wisconsin are assigned to this official agency.

- In the States of Illinois and Iowa:
  - Northern Area:
    - Jo Daviess, Stephenson, Winnebago, Boone, McHenry, Lake, Will DuPage, Kendall, DeKalb, Lee, and Ogle Counties in Illinois and
    - Delaware and Dubuque Counties in Iowa.
  - Southern Area:
    - Bounded on the North, in Iowa, by Interstate 80 from the western Iowa County line east to State Route 38; State Route 38 north to State Route 130; State Route 130 east to the Mississippi River;
    - Bounded on the East, in Illinois, from the Mississippi River to the eastern Rock Island County line; the northern Henry and Bureau County lines; east to State Route 88; State Route 88 south to the southern Bureau County line; the eastern and southern Henry County lines; the eastern Knox County line;
    - Bounded on the South by the southern Knox County line; the eastern and southern Warren County lines; the southern Henderson County line across the Mississippi River; in Iowa, by the southern Des Moines, Henry, Jefferson, and Wapello County lines; and
    - Bounded on the West by the western and northern Wapello County lines; the western and northern Keokuk County lines; the western Iowa County line north to Interstate 80.
- In the State of Wisconsin:
  - The entire State of Wisconsin, for domestic services.

All export port locations within Eastern Iowa's assigned geographic areas in the State of Illinois are serviced by GIPSA and in the State of Wisconsin are serviced by GIPSA (Milwaukee) and the Wisconsin Department of Agriculture (Superior).

Enid

Pursuant to Section 7(f)(2) of the Act, the following geographic areas in the States of Oklahoma and Texas are assigned to this official agency.

- In Oklahoma:
  - Adair, Alfalfa, Atoka, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward Counties.
- In Texas:
  - Clay, Wichita, and Wilbarger Counties.

Keokuk

Pursuant to Section 7(f)(2) of the Act, the following geographic areas in the States of Illinois and Iowa are assigned to this official agency.

- In Illinois:
  - Adams, Brown, Fulton, Hancock, Mason, McDonough, and Pike (northwest of a line bounded by U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the eastern Pike County line) Counties.
- In Iowa:
  - Davis, Lee, and Van Buren Counties.

Michigan

Pursuant to Section 7(f)(2) of the Act, the following geographic areas in the States of Michigan and Ohio are assigned to this official agency.

- In Michigan:
  - Bounded on the North by the northern Michigan State line;
  - Bounded on the East by the eastern Michigan State line south and east to State Route 53; State Route 53 south to State Route 46; State Route 46 west to Sheridan Road; Sheridan Road south to Barnes Road; Barnes Road west to State Route 15; State Route 15 south to the Genesee County line; the northern Genesee County line west to the Shiawassee County line; the northern Shiawassee County line west to State Route 52; State Route 52 south to State Route 21; State Route 21 west to Clinton County; the eastern and northern Clinton County lines west to U.S. Route 27; U.S. Route 27 south to U.S. Route 127; U.S. Route 127 south to the Michigan-Ohio State line.
- In Ohio:
  - In Ohio, the northern State line east to the eastern Fulton County line; the eastern Fulton, Henry, and Putnam County lines; the eastern Allen County line south to the northern Hardin County line; the northern Hardin County line east to U.S. Route 68; U.S. Route 68 south to State Route 47;
  - Bounded on the South by State Route 47 west-southwest to Interstate 75 (excluding all of Sidney, Ohio); Interstate 75 south to the Shelby County line; the southern and western Shelby County lines; the southern Mercer County line; and
  - Bounded on the West by the Ohio-Indiana State line from the southern Mercer County line to the northern Williams County line; in Michigan, by the southern Michigan State line west to the Branch County line; the western Branch County line north to the Kalamazoo County line; the southern Kalamazoo and Van Buren County lines west to the Michigan State line; the western Michigan State line north to the northern Michigan State line.

The following grain elevators located within Michigan's assigned geographic area are serviced by official agencies other than Michigan: Caledonia Farmers Elevator, St. Johns, Clinton County, Michigan (serviced by Detroit Grain Inspection Service, Inc.) and E.M.P. Coop, Payne, Paulding County, Ohio

(serviced by Northeast Indiana Grain Inspection, Inc.).

Omaha

Pursuant to Section 7(f)(2) of the Act, the following geographic areas in the States of Iowa and Nebraska are assigned to this official agency.

- Bounded on the North by Nebraska State Route 91 from the western Washington County line east to U.S. Route 30; U.S. Route 30 east to the Missouri River; the Missouri River north to Iowa State Route 175; Iowa State Route 175 east to Iowa State Route 37; Iowa State Route 37 southeast to the eastern Monona County line;
- Bounded on the East by the eastern Monona County line; the southern Monona County line west to Iowa State Route 183; Iowa State Route 183 south to the Pottawattamie County line; the northern and eastern Pottawattamie County lines; the southern Pottawattamie County line west to M47; M47 south to Iowa State Route 48; Iowa State Route 48 south to the Montgomery County line;
- Bounded on the South by the southern Montgomery County line; the southern Mills County line west to Interstate 29; Interstate 29 north to U.S. Route 34; U.S. Route 34 west to the Missouri River; the Missouri River north to the Sarpy County line (in Nebraska); the southern Sarpy County line; the southern Saunders County line west to U.S. Route 77; and
- Bounded on the West by U.S. Route 77 north to the Platte River; the Platte River southeast to the Douglas County line; the northern Douglas County line east; the western Washington County line northwest to Nebraska State Route 91.

The following grain elevators, located outside of the above areas, are serviced by Omaha: Hancock Elevator, Elliot, Montgomery County, Iowa; Hancock Elevator (2 elevators), Griswold, Cass County, Iowa (located inside Central Iowa Grain Inspection Service, Inc.'s, area); United Farmers Coop, Rising City, Butler County, Nebraska; United Farmers Coop, Shelby, Polk County, Nebraska (located inside Fremont Grain Inspection Department, Inc.'s, area); and Goode Seed & Grain, McPaul, Fremont County, Iowa; Haveman Grain, Murray, Cass County, Nebraska (located inside Lincoln Inspection Service, Inc.'s, area).

The following grain elevators located within Omaha's assigned geographic area are serviced by Fremont Grain Inspection Department, Inc.: Farmers Cooperative, Saunders County, Nebraska and Krumel Grain and Storage, Saunders County, Nebraska.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the USGSA and 7 CFR 800.196(d). Designation in the specified geographic areas is for the period beginning January 4, 2010, and ending December 31, 2012. To apply for designation or for more information, contact Karen Guagliardo at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov.*

Request for Comments

We are publishing this notice to provide interested persons the opportunity to comment on the quality of services provided by the Champaign, Detroit, Eastern Iowa, Enid, Keokuk, Michigan, and Omaha official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicants. Submit all comments to Karen Guagliardo at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicant will be designated.

Authority: 7 U.S.C. 71–87k.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–21336 Filed 9–3–09; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of New Shipper Reviews and Fifth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting new shipper reviews and an administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam''). *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003) (''Order''). We preliminarily find that QVD Food Company Ltd. (''QVD''),[1] Vinh Hoan Corporation (''Vinh Hoan''), Saigon-Mekong Fishery Co. (''SAMEFICO''), and Cadovimex II Seafood Import-Export & Processing Joint Stock Company (''Cadovimex II'') did not sell subject merchandise at less than normal value (''NV'') during the period of review (''POR''), August 1, 2007, through July 31, 2008.

DATES: *Effective Date:* September 4, 2009.

FOR FURTHER INFORMATION CONTACT: Alan Ray (QVD), Javier Barrientos (Vinh Hoan), Alexis Polovina (SAMEFICO), and Tim Lord (Cadovimex II) Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5403, (202) 482–2243, (202) 482–3927, and (202) 482–7425, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On August 1, 2008, the Department published a notice of an opportunity to request an administrative review of the order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 73 FR 44966 (August 1, 2008). By August 31, 2008, the Department received review requests for 20 companies from Petitioners [2] and certain individual companies. In addition, pursuant to 19 CFR 351.214(c), the Department also received new shipper review requests from SAMEFICO and Cadovimex II on August 8, 2008, and, August 24, 2008, respectively.

On September 30, 2008, the Department initiated an antidumping

[1] The Department is treating QVD, QVD Dong Thap Food Co., Ltd. (''QVD DT''), and Thuan Hung Co., Ltd. (''Thuan Hung'') as a single entity in these preliminary results. Similarly, the Department is treating Vinh Hoan, Vinh Hoan USA Inc. (''Vinh Hoan USA''), and Van Duc Food Export Joint Stock Company (''Van Duc'') as a single entity. Section 351.401(f) of the Department's regulations define single entities as those affiliated producers who have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production. For further analysis, *see Affiliations* section below.

[2] The Catfish Farmers of America and individual U.S. catfish processors, America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, Simmons Farm Raised Catfish, Inc., and Southern Pride Catfish Company LLC (''Petitioners'').

duty administrative review on frozen fish fillets from Vietnam covering 20 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part* (''*5th AR Initiation''*), 73 FR 56795 (September 30, 2008).[3]

On October 1, 2008, the Department initiated the new shipper reviews for SAMEFICO and Cadovimex II. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of New Shipper Reviews,* 73 FR 57058 (October 1, 2008).

On October 29, 2008, the Department issued a letter to all interested parties informing them of its decision to select QVD and Vinh Hoan, the two largest exporters of subject merchandise during the POR, as mandatory respondents based on Customs and Border Protection (''CBP'') import data for the fifth administrative review. *See* Memorandum to the File from Alexis Polovina, Case Analyst, through Alex Villanueva, Program Manager, Antidumping Duty Administrative Review of Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review (''Respondent Selection Memo''), dated October 29, 2008.

Between December 4, 2009, and June 23, 2009, QVD submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires. Between November 24, 2008, and June 10, 2009, Vinh Hoan submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires.

In the new shipper reviews, Cadovimex submitted responses to questionnaires between November 4, 2008, and July 15, 2009. SAMEFICO submitted responses to questionnaires between December 31, 2008, and March 31, 2009.

On March 20, 2009, the Department aligned the antidumping duty new shipper and administrative reviews. On April 23, 2009, the Department extended the deadline for the preliminary results of this review by 120 days, to August 31, 2009. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the Fifth Antidumping Duty Administrative Review* (''*Prelim Extension''*), 74 FR 18549 (April 23, 2009).

[3] We note that the initiation notice contained 20 companies. However, two of those companies (Vinh Hoan Co., Ltd. and Vinh Hoan Corporation) are the same company, existing with the former name prior to the POR and with the latter name during and after the POR.

On April 30, 2009, the Department rescinded the administrative review with respect to 13 companies because all requesting parties for those companies withdrew their requests for review in a timely manner. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Partial Rescission of the Fifth Antidumping Duty Administrative Review,* 74 FR 19933 (April 30, 2009) (''*5th AR Partial Rescission''*).[4] Therefore, seven companies remain in this administrative review: East Sea Seafoods Joint Venture Co., Ltd. (''East Sea''), the QVD single entity, representing three affiliated and collapsed companies, An Giang Fisheries Import and Export Joint Stock Company (''Agifish'' or ''AnGiang Fisheries Import and Export''), Vinh Hoan Corporation, and Vinh Hoan Company, Ltd.

QVD's Revocation Request

On August 29, 2008, in QVD's request for an administrative review, QVD requested that the antidumping order be revoked for QVD, pursuant to section 351.222(b)(2) of the Department's regulations. Section 351.222(b)(2) permits, in relevant part, the Department to revoke an order in part with regard to a particular company if that company has not sold the subject merchandise at less than NV for a period of at least three consecutive years. QVD participated in the second, third, and fourth administrative reviews. QVD received a weighted-average margin of 0.0 percent in the second and third administrative reviews, but received a weighted-average margin of 0.52 percent in the fourth administrative review. Because QVD sold merchandise at less than NV during the fourth administrative review, it does not qualify for revocation under the Department's regulations.

Vietnam-Wide Entity

As discussed above, in this administrative review we limited the selection of respondents using CBP import data. *See* Respondent Selection Memo at 2. In this case, we made available to the companies who were not selected, the separate rates application and certification, which were put on the Department's Web site. *See 5th AR Initiation,* dated September 30, 2008. Those companies which did not apply for separate rates will continue to be part of the Vietnam-wide entity. Because the Department determines preliminarily that there were exports of merchandise under review from Vietnam producers/exporters that did not demonstrate their eligibility for separate-rate status, the Vietnam-wide entity is now under review.

[4] Pursuant to *5th AR Partial Rescision,* the Department rescinded on the 13 following companies: An Xuyen Co., Ltd.; Asia Commerce Fisheries Joint Stock Company (aka Acomfish JSC); Ben Tre Forestry Aquaproduct Import-Export Company (aka FAQUIMEX); Binh An Seafood Joint Stock Co.; Hiep Thanh Seafood Joint Stock Co.; Hung Vuong Corporation; Nam Viet Company Limited (aka NAVICO); Phuong Nam Co., Ltd.; Da Nang Seaproducts Import-Export Corporation (aka Da Nang or Seaprodex Danang); Southern Fishery Industries Company, Ltd. (aka South Vina); Thien Ma Seafood Co., Ltd.; Vinh Quang Fisheries Corporation; and Anvifish Co., Ltd.

Separate Rates

A designation as a non-market economy (''NME'') remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Tariff Act of 1930, as amended (''the Act''). Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers''*), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide''*).

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

Although the Department has previously assigned a separate rate to all of the companies eligible for a separate rate in the instant proceeding, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of whether the respondent received a separate rate in the past. *See Manganese Metal from the People's Republic of China, Final*

Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12440 (March 13, 1998).

In this review, Agifish, Vinh Hoan, QVD, and East Sea [5] submitted complete separate rates certifications and applications. SAMEFICO and Cadovimex II provided separate rate information in their questionnaire responses. The evidence submitted by these companies includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by these companies support a finding of a *de jure* absence of government control over their export activities, based on: (1) An absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.

B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587; *Sparklers,* 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

In this review, Agifish, Vinh Hoan, QVD, SAMEFICO, Cadovimex II, and East Sea submitted evidence indicating an absence of *de facto* government control over their export activities. Specifically, this evidence indicates that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general managers are selected by the board of directors or company employees, and the general managers appoint the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies' use of export revenues. Therefore, the Department preliminarily finds that Agifish, Vinh Hoan, QVD, and East Sea have established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers.*

Rate for Non-Selected Companies

In this review there are two companies that were not selected for individual examination, East Sea and Agifish. The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's practice in this regard, in reviews involving limited respondent selection based on exporters accounting for the largest volumes of trade, has been to average the rates for the selected companies, excluding zero and *de minimis* rates and rates based entirely on facts available. *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 52273, 52275 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 6 (''Shrimp from Vietnam I & D''). Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based entirely on facts available, we may use ''any reasonable method'' for assigning the rate to non-selected respondents, including ''averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

In this case, the rates for both individually examined respondents are *de minimis* and accordingly, the Department will determine a reasonable method for assigning a rate to East Sea and Agifish. The Department has available in administrative reviews information that would not be available in an investigation, namely rates from prior administrative and new shipper reviews. Accordingly, since the determination in the investigation in this proceeding, the Department has determined that in cases where we have found dumping margins in previous segments of a proceeding, a reasonable method for determining the rate for non-selected companies is to use the most recent rate calculated for the non-selected company in question unless we calculated in a more recent review a rate for any company that was not zero, *de minimis* or based entirely on facts available. *See* Shrimp from Vietnam I & D at Comment 6; *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part,* 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 6; *Certain Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review,* 73 FR 52015 (September 8, 2008) (changed in final results as final calculated rate for mandatory respondent was above de minimis, which remained unchanged in the amended final results); *see* also *Certain Polyester Staple Fiber From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results,* 74 FR 32125 (July 7, 2009). Agifish recently received an assigned non-*de minimis* per-unit rate of $0.02 per kilogram in an antidumping duty new shipper and administrative review.[6] *See Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Frozen Fish Fillets from Vietnam* (''*4th AR Final*''), 74 FR 17816 (April 17, 2009). We have assigned a non-selected separate rate of $0.02 per kilogram for Agifish and East Sea for the purposes of these preliminary results, as it is the assigned rate from the most recently completed segment of the proceeding that is above *de minimis* and not based on adverse facts available (''AFA''). The $0.02 per kilogram is a non-*de minimis* per unit rate. For the Vietnam-wide entity, we have assigned the entity's current rate and only rate ever determined for the entity in this proceeding, which is $2.11 per

[5] East Sea addressed the separate rates section of the Department's questionnaire in its November 25, 2008, submission as the certification it had submitted was no longer valid given that there had been a change in ownership and in name.

[6] The rate assigned for Agifish was, in *ad valorem* terms, above *de minimis.*

kilogram, which is a non-*de minimis* per-unit rate.

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the sales and factors of production (''FOP'') for SAMEFICO between April 13–15, 2009, in Tra Vinh City Vietnam. *See* Memorandum to the File from Alexis Polovina and Timothy Lord, Case Analysts through Alex Villanueva, Program Manager, Verification of the Sales and Processing Response of Saigon-Mekong Fishery Co., Ltd. (''SAMEFICO'') in the Antidumping New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (''Vietnam''), dated June 30, 2009 (''SAMEFICO Verification Report''). We conducted a verification of the sales and FOP for Vinh Hoan between June 22 and July 1, 2009 in Cao Lanh, Dong Thap Province and in Ho Chi Minh City Vietnam. *See* Memorandum to the File from Javier Barrientos and Alan Ray, Senior and Case Analysts, through Alex Villanueva, Program Manager, Verification of the Sales and Processing Response of Vinh Hoan Co., Ltd/Corp. (''Vinh Hoan'') in the Antidumping Duty New Shipper and Administrative Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (''Vietnam''), dated August 28, 2009 (''Vinh Hoan Verification Report'').

Scope of the Order

The product covered by this Order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus.* Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (''regular'' fillets), boneless fillets with the belly flap removed (''shank'' fillets), boneless shank fillets cut into strips (''fillet strips/finger''), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (''HTSUS'').[7] This Order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the Order is dispositive.

Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non-market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Notice of Final Results of Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 73 FR 15479 (March 17, 2008) and accompanying Issues and Decision Memorandum (''*3rd AR Final Results''*). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country and Surrogate Values

On April 2, 2009, the Department sent interested parties a letter setting a deadline to submit comments on surrogate country selection and information pertaining to valuing factors of production (''FOP''). QVD, Cadovimex II, SAMEFICO, and Petitioners submitted surrogate country comments and surrogate value data on April 20, 2009. On April 30, 2009, Respondents submitted a rebuttal to Petitioners' comments. On August 10, 2009, Respondents reiterated their April 20 and April 30, 2009, comments.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in the Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Alexis Polovina, Case Analyst, dated August 27, 2009.

The Department determined that Bangladesh, Pakistan, India, Indonesia, the Philippines, and Sri Lanka are countries comparable to Vietnam in terms of economic development.[8] Once it has identified economically comparable countries, the Department's practice is to select an appropriate surrogate country from the list based on the availability and reliability of data from the countries. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

In this case, we have found that Bangladesh is a significant producer of comparable merchandise. We find Bangladesh to be a reliable source for surrogate values because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has more complete publicly available and reliable data. Thus, we have selected Bangladesh as the primary surrogate country for this administrative review. However, in certain instances where Bangladeshi data was not available, we looked to see if Philippine data was available, and if not, we used data from Indian or Indonesian sources. For a more complete explanation of the surrogate country selection, *see* Memorandum to the File, through James C. Doyle, Office 9 Director, through Alex Villanueva, Office 9 Program Manager, from Timothy Lord, Office 9 Case Analyst, dated August 28, 2009, Fifth Antidumping Duty Administrative Review and Aligned Fourth New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of

[7] Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

[8] *See* Memorandum from Kelly Parkhill, Acting Director of Office of Policy, to Alex Villanueva, Program Manager, China/NME Group, Office 9: Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (Vietnam): Request for a List of Surrogate Countries (''Surrogate Country List'') (January 15, 2009).

Vietnam: Selection of a Surrogate Country (''Surrogate Value Memo'').

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

Affiliations

Section 771 (33) of the Act provides that:

The following persons shall be considered to be 'affiliated' or 'affiliated persons':

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer of director of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: ''For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restrain or direction over the other person.''

In the final results of the third antidumping duty administrative review, the Department determined that QVD Choi Moi Farming Cooperative (''QVD Choi Moi'') would no longer be collapsed with QVD, QVD DT, and Thuan Hung, pursuat to sections 771(33)(A), (B), (E), (F), and (G) of the Act and 19 CFR 351.401(f). *See* Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary: Issues and Decision Memorandum for the Final Results of the Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (''Vietnam'') (''3rd I & D'') (March 17, 2008). The Department also determined that QVD USA is affiliated with QVD, QVD Dong Thap, and Thuan Hung pursuant to sections 771(33)(A), (B), (E), (F), and (G) of the Act. Therefore, the Department determined to calculate a constructed export price (''CEP'') through QVD USA to its first unaffiliated U.S. customer. *See* 3rd I & D at Comment 5. The Department also determined that Beaver Street Fisheries (''BSF'') and QVD USA were not affiliated. *See Id.*

In QVD's Section A Questionnaire Response, it stated that during the POR ''the QVD shareholders sold the land and all shareholdings in QVD Choi Moi on May 4, 2008.'' *See* QVD's December 4, 2008, Section A Questionnaire at 3. Therefore, based on the record evidence in this review we find find QVD Choi Moi is no longer affiliated with QVD entities as of May 4, 2008.

For these preliminary results, based on the information on the record of this proceeding, the Department continues to find that QVD, QVD DT, and Thuan Hung should be collapsed and treated as a single entity. *See* 3rd I & D at Comment 5. Similarly, for these preliminary results, based on the information on the record of this proceeding, the Department continues to find that QVD and QVD USA are affiliated pursuant to sections 771(33)(A), (B), (E), (F), and (G) of the Act. For these preliminary results, we also continue to find that BSF and QVD USA are not affiliated.

Based on evidence submitted by Vinh Hoan and explained at verification, we preliminarily find that Vinh Hoan is affiliated Vinh Hoan 1 Feed Joint Stock Company (''Vinh Hoan Feed'') and Van Duc, pursuant to section 771(33) of the Act. Because much of the facts underlying this determination are business proprietary, for a detailed discussion of affiliations, please *see* Vinh Hoan Verification Report at pages 4–8 and 15–18. In addition, based on evidence found at verification of Vinh Hoan, we preliminarily find that Vinh Hoan, and Van Duc, but not Vinh Hoan Feed, should be treated as a single entity for purposes of this new shipper review. *See* 19 CFR 351.401(f)(1).

Also based on evidence submitted by Vinh Hoan and explained at verification, we preliminarily find that Vinh Hoan is affiliated Vinh Hoan USA, pursuant to section 771(33) of the Act. *Id.*

Based on evidence submitted by Cadovimex II in their questionnaire responses, we preliminarily find that Cadovimex II is affiliated with Oceanwide Seafood, LLC (''Oceanwide''), pursuant to section 771(33) of the Act. *Id.*

Fair Value Comparisons

To determine whether sales of the subject merchandise made by QVD, Vinh Hoan, SAMEFICO or Cadovimex II to the United States were at prices below NV, we compared each company's export price (''EP'') or CEP, where appropriate, to NV, as described below.

U.S. Price

For SAMEFICO's and Vinh Hoan's EP sales, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation and CEP was not otherwise warranted by the facts on the record. We calculated EP based on the Free-on-board foreign port price to the first unaffiliated purchaser in the United States. For the EP sales, we also deducted foreign inland freight, foreign cold storage, and international ocean freight from the starting price (or gross unit price), in accordance with section 772(c) of the Act.

In accordance with section 772(b) of the Act, we used the CEP methodology when the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. In this instance, we calculated CEP for all of QVD's, Cadovimex II's, and Vinh Hoan's U.S. sales through their respective U.S. affiliates, QVD USA, Oceanwide, and Vinh Hoan USA to unaffiliated customers.

For QVD's, Cadovimex II's, and Vinh Hoan's CEP sales, we made adjustments to the gross unit price for billing adjustments, rebates, foreign inland freight, international freight, foreign cold storage, U.S. marine insurance, U.S. inland freight, U.S. warehousing, U.S. inland insurance, other U.S. transportation expenses, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including commissions, credit expenses, advertising expenses, indirect selling expenses, inventory carrying costs, and U.S. re-packing costs. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Where movement expenses were provided by NME-service providers or paid for in NME currency, we valued these services using either Bangladeshi or Indian surrogate values. *See* Surrogate Value Memo. Where applicable, we used the actual reported expense for those movement expenses provided by ME suppliers and paid for in ME currency.

Bona Fide New Shipper Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by SAMEFICO and Cadovimex II for the new shipper review. In evaluating whether a sale is *bona fide,* the Department considers,

inter alia, such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis. We preliminarily find that the new shipper sales made by SAMEFICO and Cadovimex II are *bona fide* transactions. *See* Memo to the File Through Alex Villanueva, Program Manager, Office 9 from Alexis Polovina, Case Analyst: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Bona Fide Nature of the Sale Under Review for Saigon-Mekong Fishery Co., Ltd. and Memo to the File Through Alex Villanueva, Program Manager, Office 9 from Tim Lord, Case Analyst: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Bona Fide Nature of the Sale Under Review for Cadovimex II Seafood Import-Export & Processing Joint Stock Company, dated August 27, 2009. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by SAMEFICO and Cadovimex, as well the companies' eligibility for a separate rate (*see* ''Separate Rates'' section above), and the Department's preliminary determination that SAMEFICO and Cadovimex II were not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that SAMEFICO and Cadovimex II have met the requirements to qualify as new shippers during the POR. Therefore, for purposes of these preliminary results of review, we are treating SAMEFICO's and Cadovimex II's respective sales of subject merchandise to the United States as appropriate transactions for this new shipper review. We will continue to evaluate all aspects of SAMEFICO's and Cadovimex II's sales during the final results.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home-market prices, third-country prices, or constructed value and no party has argued otherwise, we calculated NV based on FOPs reported by QVD, Vinh Hoan, SAMEFICO, and Cadovimex II, pursuant to sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

As the basis for NV, QVD, Vinh Hoan, SAMEFICO, and Cadovimex II provided FOPs used in each of the stages for processing frozen fish fillets. Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the FOPs that a respondent uses to produce the subject merchandise.

To calculate NV, we valued QVD's, Vinh Hoan's, SAMEFICO's, and Cadovimex II's reported per-unit factor quantities using publicly available Bangladeshi, Philippine, Indian, and Indonesian surrogate values. Bangladesh was our first surrogate country source from which to obtain data to value inputs, and when data was not available from there, we used Philippine, Indian, or Indonesian sources. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Specifically, we added surrogate freight costs to surrogate values using the reported distances from the Vietnam port to the Vietnam factory or from the domestic supplier to the factory, where appropriate. This adjustment is in accordance with the decision of the CAFC in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997).

For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's International Financial Statistics. Import data from South Korea, Thailand and Indonesia were excluded from the surrogate country import data due to generally available export subsidies. *See China Nat'l Mach. Import & Export Corp.* v. *United States,* CIT 01–1114, 293 F. Supp. 2d 1334 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004), and *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 12651, and accompanying issues and Decision Memorandum at Comment 4 (March 15, 2005). Additionally, we excluded prices from NME countries and imports that were labeled as originating from an ''unspecified'' Asian country. The Department excluded these imports because it could not ascertain whether they were from either an NME country or a country with general export subsidies. We converted the surrogate values to U.S. dollars as appropriate, using the official exchange rate recorded on the dates of sale of subject merchandise in this case, obtained from *http://www.ia.ita.doc.gov/exchange/index.html.* For further detail, *see* Surrogate Values Memo.

Preliminary Results of the Review

As a result of our review, we preliminarily find that the following margins exist for the period August 1, 2007, through July 31, 2008:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/exporter	Weighted-average margin (dollars per kilogram)
QVD[9]	0.00
Vinh Hoan	0.00
Agifish	0.02
SAMEFICO	0.00
Cadovimex II	0.00
East Sea	0.02
Vietnam-wide Entity	2.11

Public Comment

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this

[9] This rate is applicable to the QVD Single Entity which includes QVD, QVD DT, and Thuan Hung.

administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Assessment Rates

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. For the mandatory respondents, QVD and Vinh Hoan, and new shippers, SAMEFICO and Cadovimex II, we will calculate importer-specific duty assessment rates on a per-unit basis.[10] Where the assessment rate is *de minimis,* we will instruct CBP to assess no duties on all entries of subject merchandise by that importer. We will instruct CBP to liquidate entries containing merchandise from the PRC-wide entity at the PRC-wide rate we determine in the final results of review. We will issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, except for Cadovimex II and SAMEFICO, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* the cash deposit will be zero); (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnam exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide rate of $2.11 per kilogram; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporters that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of subject merchandise from new shippers Cadovimex II or SAMEFICO entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Cadovimex II or produced and exported by SAMEFICO, the cash deposit rate will be zero; (2) for subject merchandise exported by Cadovimex II or SAMEFICO but not manufactured by Cadovimex II or SAMEFICO, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.,* $2.11 per kilogram); and (3) for subject merchandise manufactured by Cadovimex II or SAMEFICO, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer-exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 28, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–21429 Filed 9–3–09; 8:45 am]

BILLING CODE 3510–DS–P

[10] We divided the total dumping margins (calculated as the difference between NV and EP or CEP) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

DEPARTMENT OF COMMERCE

International Trade Administration

(C–552–805)

Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of polyethylene retail carrier bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice. This notice also serves to align the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of PRCBs from Vietnam.

EFFECTIVE DATE: September 4, 2009.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1396 and (202) 482–3586, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the April 20, 2009 initiation of this investigation. *See Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation and Request for Public Comment on the Application of the Countervailing Duty Law to Imports From the Socialist Republic of Vietnam*, 74 FR 19064 (April 27, 2009) (*Initiation Notice*).

On April 21, 2009, the Department met with officials of the government of Vietnam (GOV) to provide an overview of the procedures and timetable of the investigation. *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Meeting with the Government of Socialist Republic of Vietnam (GOV): Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic

of Vietnam'' (April 23, 2009). On May 13, 2009, the Department selected as mandatory respondents the three largest Vietnamese producers/exporters of PRCBs that could reasonably be examined: Advance Polybag Co., Ltd. (API), Chin Sheng Company, Ltd. (Chin Sheng), and Fotai Vietnam Enterprise Corp. (Fotai Vietnam) and Fotai Enterprise Corporation (collectively, Fotai). *See* Memorandum to John M. Andersen, Acting Deputy Assistant Secretary, AD/CVD Operations, ''Selection of Respondents for the Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam'' (May 13, 2009). A public version of this memorandum is on file in the Department's Central Records Unit (CRU) in Room 1117 of the main Commerce building. On May 18, 2009, we issued the CVD questionnaire to the GOV, requesting that the GOV forward the company sections of the questionnaire to the mandatory company respondents.

On May 22, 2009, the U.S. International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Vietnam of PRCBs. *See Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam; Determinations*, 74 FR 25771 (May 29, 2009); and *Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam*, USITC Pub. 4080, Inv. Nos. 701–TA–462 and 731–TA–1156–1158 (May 2009).

On May 28, 2009, the GOV requested that the Department conduct a questionnaire presentation in Hanoi. On June 4, 2009, the Department informed the GOV that it would be unable to conduct a questionnaire presentation given the timing of the request relative to the progress of the investigation. *See* Memorandum to the File, ''Communications with the Embassy of the Socialist Republic of Vietnam Concerning Request for Questionnaire Presentation'' (June 5, 2009) and the June 17, 2009 GOV submission (responding to the Department's June 4, 2009 letter). On June 9, 2009, the GOV requested that the Department modify the May 18, 2009 questionnaire by establishing a ''cut–off date,'' limiting the time period covered by the questionnaire. During a follow–up *ex parte* meeting with the GOV, the Department stated that the issue of whether there should be a cut–off date, and what such a date would be, could not be determined until the preliminary determination. We also stated it was necessary, therefore, for the questionnaire to cover the entire average useful life (AUL) selected for this investigation (11 years). *See* Memorandum to the File, ''Ex–Parte Meeting with Counsel for the Government for the Socialist Republic of Vietnam and Chin Sheng Trading Production Co., Ltd.'' (June 18, 2009).

On June 4, 2009, we published a postponement of the preliminary determination of this investigation until August 28, 2009. *See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 74 FR 26846 (June 4, 2009). We received responses from the GOV and the three mandatory company respondents on July 8, 2009, to our May 18, 2009 questionnaire. On July 24, 2009, we issued supplemental questionnaires to the GOV and the three respondents. We received a response from API on August 7, 2009, and responses from the GOV, Chin Sheng, and Fotai on August 17, 2009.

On June 25, 2009, Hilex Poly Co., LLC and Superbag Corporation (collectively, Petitioners) submitted new subsidy allegations covering nine programs. On July 17, 2009, the Department determined to investigate seven of these newly alleged subsidy programs pursuant to section 775 of the Tariff Act of 1930, as amended (the Act). *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Initiation Analysis

of New Subsidy Allegations'' (July 17, 2009). Also on July 17, 2009, the GOV submitted objections to the newly alleged subsidy programs, claiming Petitioners could have raised the allegations in the petition, but had chosen not to do so in order to manipulate the schedule of the investigation, depriving the GOV of adequate time to respond to questionnaires. Questions regarding these newly alleged subsidies were sent to the GOV and the three company respondents on July 17, 2009. API submitted its questionnaire response on July 30. The GOV, Chin Sheng, and Fotai submitted responses on August 7 and 10, 2009 (narrative responses were due on August 7 and attachments were due on August 10).

On July 17, 2009, Petitioners submitted a second set of new subsidy allegations regarding two programs. On July 28, 2009, the Department determined to investigate both subsidy programs pursuant to section 775 of the Act. *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Initiation Analysis of July 17, 2009 New Subsidy Allegations'' (July 28, 2009). Questions regarding this second set of newly alleged subsidies were sent to the GOV and the three company respondents on July 28, 2009. API responded to the questionnaire on August 7, 2009, and the GOV, Chin Sheng, and Fotai responded on August 17, 2009.

On August 19, 2009, Petitioners submitted pre–preliminary determination comments. Fotai submitted rebuttal comments on August 21, 2009, API on August 24, 2009, and the GOV on August 25, 2009.

Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

On April 20, 2009, the Department initiated the CVD and AD investigations of PRCBs from Vietnam. *See Initiation Notice and Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 74 FR 19049 (April 27, 2009). The CVD investigation and the AD investigation have the same scope with regard to the merchandise covered.

On August 24, 2009, Petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final AD determination of PRCBs from Vietnam. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final AD determination. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than January 11, 2010, unless postponed.[1]

Scope Comments

As explained in the preamble to the Department's regulations, we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 21 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997); and *Initiation Notice*, 74 FR at 19065. No

[1] The calculated signature date is January 10, 2010, a Sunday. The next business day is January 11, 2010.

such comments have been filed on the record of either this investigation or the companion AD investigation.

Scope of the Investigation

The scope of this investigation covers polyethylene retail carrier bags, which also may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of this investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

Imports of merchandise included within the scope of this investigation are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Application of the CVD Law to Vietnam

This is the first CVD investigation of exports from Vietnam. Vietnam has been treated as a non–market economy (NME) country in all past AD investigations and administrative reviews. *See, e.g.*, Memorandum to Faryar Shirzad, Assistant Secretary, Import Administration, *Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam - Determination of Market Economy Status*, November 8, 2002 (this document is available online at *http://ia.ita.doc.gov/download/vietnam-nme-status/vietnam-market-status-determination.pdf*); *see also Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 45738, 45739 (August, 6, 2008), unchanged in *Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 62479 (October 21, 2008). In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003).

According to the petition, there is no statutory bar to applying countervailing duties to imports from non–market economy countries like Vietnam. *See* the March 31, 2009 Petition. Citing *Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986) (*Georgetown Steel*), the petition argues that the Court of Appeals for the Federal Circuit affirmed the Department's discretion regarding application of the countervailing duty law to NME countries. *Id.*

Following its assessment of another NME country, the People's Republic of China (the PRC), the Department, in its final affirmative countervailing duty determination on coated free sheet paper from the PRC, determined that the current nature of the Chinese economy does not create obstacles to applying the necessary criteria in the countervailing duty law. *See* Memorandum to David M. Spooner, Assistant Secretary, Import Administration, *Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China: Whether the Analytical Elements of the Georgetown Steel Holding are Applicable to the PRC's Present-day Economy*, March 29, 2007; *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (CFS from the PRC), and the accompanying Issues and Decision Memorandum (CFS IDM) at Comment 1; *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

The petition argues that the Vietnamese economy, like the PRC's economy, is substantially different from the Soviet–style economy investigated in *Georgetown Steel* and that the Department should not have any special difficulties in the identification and valuation of subsidies involving a non–market economy like Vietnam. *See* the March 31, 2009 Petition. Finally, the petition argues that Vietnam's economy significantly mirrors the PRC's present-day economy and is at least as different from the Soviet–style economy at issue in Georgetown Steel, as the PRC's economy was found to be in 2007. *Id.*

The petition also argues that Vietnam's accession to the World Trade Organization (WTO) allows the Department to apply countervailing duties on imports from that country. *Id.* The WTO Subsidies and Countervailing Measures Agreement (SCM Agreement), similar to U.S. law, permits the imposition of countervailing duties on subsidized imports from member countries and nowhere exempts non–market economy imports from being subject to the provisions of the SCM Agreement. As Vietnam agreed to the SCM Agreement and other WTO provisions on the use of subsidies, the petition argues that Vietnam should be subject to the same disciplines as all other WTO members. *Id.*

Given the complex legal and policy issues involved in determining whether the CVD law should be applied to Vietnam, the Department invited public comment on this matter. *See Initiation Notice*, 74 FR at 19067. The comments we received are on file in the Department's CRU, and can be accessed on the Web at *http://ia.ita.doc.gov/ia-highlights-and-news*. Informed by those comments and based on our assessment of the differences between the Vietnamese economy today and the Soviet–style economies that were the subject of *Georgetown Steel*, we preliminarily determine that the countervailing duty law can be applied to imports from Vietnam. For a detailed discussion of the Department's research and analysis, see Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary, Import Administration, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam Whether the CVD law is Applicable to

Vietnam's Present Day Economy'' (August 28, 2009).

Date of Applicability of CVD Law to Vietnam

We preliminarily determine that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in Vietnam for purposes of the CVD law, and have adopted January 11, 2007, the date on which Vietnam became a member of the WTO, as that date. We have selected this date because of the reforms in Vietnam's economy in the years leading up to its WTO accession and the linkage between those reforms and Vietnam's WTO membership. The changes in Vietnam's economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Vietnamese producers. For example, the GOV has created room for private and foreign ownership in the production system by encouraging private entrepreneurship, liberalizing the foreign investment regime, and equitizing state–owned enterprises (SOEs).

Additionally, Vietnam's accession agreement contemplates application of the CVD law. While the accession agreement itself would not preclude application of the CVD law prior to the date of accession, the Working Party Report at Paragraph 255 regarding benchmarks for measuring subsidies and Vietnam's assumption of obligations with respect to subsidies provides support for the notion that the Vietnamese economy had reached the stage where subsidies and disciplines on subsidies (*e.g.*, countervailing duties) were meaningful. *Accession of Vietnam: Report of the Working Party on the Accession of Viet Nam*, WT/ACC/VNM/48 (October 27, 2006).

Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2008 through December 31, 2008.

Subsidies Valuation Information

Allocation Period

The AUL period in this proceeding, as described in 19 CFR 351.524(d)(2), is 11 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture PRCBs. No party in this proceeding has disputed this allocation period. There are no non–recurring subsidy benefits in this preliminary determination that exceed 0.5 percent of relevant sales, and thus no benefits were allocated across the AUL. See 19 CFR 351.524(b)(2).

Denominator and Attribution of Subsidies

When selecting an appropriate denominator for use in calculating the *ad valorem* countervailable subsidy rate, the Department considered the basis for the approval of benefits under each program at issue. For example, export subsidies are attributed only to products exported and export sales are used as the denominator, *see* 19 CFR 351.525(b)(2); while domestic subsidies are attributed to the total sales of all products of each respondent and total sales are used as the denominator in our calculations. *See* 19 CFR 351.525(b)(3). All three respondents reported that they had no cross–owned affiliates that received subsidies and no trading companies involved in sales transactions; therefore, we are using only respondents' own sales figures as denominators. *Id.*

API acts solely as a processor on behalf of its U.S. parent. Its sales revenue consists solely of conversion fees paid by the parent. It reported, however, the value of the merchandise that is reported to U.S. Customs and Border Protection (CBP) when the merchandise is entered into the United States as the value to be used as the denominator for all subsidy calculations. This constructed sales value includes the conversion fees plus the value of the materials converted.

We preliminarily determine that API's sales revenue figure (*i.e.*, its conversion fees) should be used as the denominator for subsidy calculations. This figure is the income value from its financial statements and its tax return. It is the basis used by API to claim the income tax preferences described below. The value of the merchandise, by contrast, represents the income of API's U.S. parent. Furthermore, we note that API did not adequately address why such an adjustment is warranted in this case and whether the facts in this case meet the criteria for the Department to consider such an adjustment set forth in *Ball Bearings and Parts Thereof From Thailand; Final Results of Countervailing Duty Administrative Review*, 57 FR 26646, 26647 (June 15, 1992), and in CFS IDM at Comment 21.

Discount Rate for Allocation

As noted above, there are no non–recurring subsidy benefits in this preliminary determination that exceed 0.5 percent of relevant sales, and thus no benefits were allocated across the AUL. As such, discount rates were not required for this preliminary determination.

Interest Rate Benchmarks

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,'' indicating that a benchmark must be a market–based rate. Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. 19 CFR 351.505(a)(3)(i). If the firm does not receive any comparable commercial loans during the relevant periods, the Department's regulations provide that we ''may use a national average interest rate for comparable commercial loans.'' 19 CFR 351.505(a)(3)(ii). The Department, however, has determined that loans provided by Vietnamese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary, Import Administration, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam A Review of Vietnam's Banking Sector'' (August 28, 2009) (Vietnam Banking Memorandum). Thus, the benchmarks that are described under 19 CFR 351.505(a)(3) are not appropriate. The Department is, therefore, preliminarily determining that it must use an external, market–based benchmark interest rate.

For loans denominated in Vietnamese dong, we are calculating the external benchmark following, where appropriate, the regression–based methodology first developed in the CVD investigation of Coated Free Sheet Paper from the PRC, and updated in several subsequent PRC investigations, most recently Citric Acid. *See* CFS IDM at ''Benchmarks'' section, and *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) and accompanying Issues and Decision Memorandum at ''Benchmarks and Discount Rates'' section. This methodology bases the benchmark interest rate on the inflation–adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to Vietnam's, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, which is not

directly tied to the state–imposed distortions in the banking sector discussed in the Vietnam Banking Memorandum.

Following the methodology developed in the PRC investigations, we first identified the countries most similar to Vietnam in terms of GNI, based on the World Bank's classification of countries as low income, lower–middle income, upper–middle income, and high income. Vietnam, with a per capita GNI of $890, is near the upper boundary of the low income category (and the lower boundary of the lower–middle income category), which the World Bank established as $975 during the POI. However, data are not currently available for many of the countries in the low income ''basket.'' *See* Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags (PRCBs) from the Socialist Republic of Vietnam: Preliminary Determination Loan Benchmark Analysis'' (August 28, 2009) (Loan Benchmark Memorandum). Moreover, several of the countries in the basket appear to be involved in crises that would preclude a functional internal lending system. These factors suggest that the low income basket of countries cannot serve as the basis of a benchmark interest rate. Thus, we are preliminarily determining to use the lower–middle income basket of countries as the basis of our regression analysis.

With the following exceptions, we have used the interest and inflation rates reported in the International Financial Statistics (IFS), collected by the International Monetary Fund, for the countries identified as ''lower–middle income'' by the World Bank. First, we did not include those economies the Department considered to be non–market economies for any part of the years in question: the PRC, Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates for the IFS for the relevant years, since our calculation requires both lending and inflation rates for each country considered in the regression analysis (*i.e.*, we deduct inflation from nominal lending rates to derive real rates). Third, Jordan reported a deposit rate, not a lending rate; and the rates reported by Ecuador and Timor L'Este are dollar–denominated rates. Therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation–adjusted short–term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.

With the interest rates remaining, adjusted for inflation, we performed the regression analysis and calculated short–term interest rates, exclusive of inflation, for the years the Vietnamese dong loans were disbursed. *See* Loan Benchmark Memorandum. We did not need to calculate long–term Vietnamese dong benchmark rates.

For loans denominated in U.S. dollars, we are again choosing to follow the methodology developed over a number of successive PRC investigations. Specifically, for U.S. dollar loans, the Department used as a benchmark the one-year dollar interest rates for the London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. For long–term U.S. dollar loans, we added the spread between one-year and 5-year and 10-year BB bond rates in order to calculate 5-year and 10-year dollar benchmark rates. *Id.*

Land Benchmark

Section 351.511(a)(2) of the Department's regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. As explained in detail in a separate memorandum, the Department cannot rely on the use of so called ''first–tier'' and ''second–tier benchmarks'' to assess the benefits from the provision of land at LTAR in Vietnam, and we have also preliminarily determined that the purchase of land–use rights in Vietnam is not conducted in accordance with market principles. *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary, Import Administration, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam Land Markets in Vietnam'' (August 28, 2009).

Given these findings, we looked for an appropriate basis to determine the extent to which land–use rights are provided for less than adequate remuneration. Consistent with our PRC investigations in which land has been an issue, we have preliminarily determined that this analysis is best achieved by comparing prices for land–use rights in Vietnam with comparable market–based prices in a country at a comparable level of economic development that is within the geographic vicinity of Vietnam. In the PRC investigations, we concluded that the most appropriate benchmark for respondents' land–use rights were sales of certain industrial land plots in industrial estates, parks, and zones in Thailand. We relied on prices from a real estate market report on Asian industrial property that was prepared outside the context of any Department proceeding by an independent and internationally recognized real estate agency with a long–established presence in Asia. In relying on a land benchmark from Thailand, we noted that the PRC and Thailand had similar levels of per capita GNI and that population density in the PRC and Thailand are roughly comparable. Additionally, we noted that producers consider a number of markets, including Thailand, as options for diversifying production bases in Asia beyond the PRC. Therefore, we concluded, the same producers may compare prices across borders when deciding what land to buy. We cited to a number of sources which named Thailand as an alternative production base to the PRC.

For this investigation, we have obtained two additional sets of information from the same independent and internationally recognized real estate agency: The latest Asian Industrial Property Market Flash (AIPMF), an updated version of the same report relied on in the PRC investigations, which includes industrial land rental values for plots in industrial estates, parks, and zones in Thailand, the Philippines, and other Asian countries; and, an unpublished report that includes industrial land rental values for plots in industrial estates, parks, and zones in several Indian cites. We are placing both the AIPMF, which is available on the internet, and the unpublished Indian report on the record of this investigation. *See* Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, ''Countervailing Duty Investigation of Polyethylene Retail Carrier Bags (PRCBs) from the Socialist Republic of Vietnam: Preliminary Determination Land Benchmark Analysis'' (August 28, 2009) (Land Benchmark Memorandum). In evaluating which of these locations is most appropriate to use as the source of the benchmark, we have focused on per capita GNI, considering population

density as well (following the PRC precedent described above).

Based on our analysis, we preliminarily determine that a simple average of all rental rates for industrial property in the cities of Pune and Bangalore in India provides the closest match among options on the record to Vietnam in terms of per capita GNI and population density. The per capita GNI of India is $1,070, compared to $890 for Vietnam, while the per capita GNI for the Philippines and Thailand is $1,890 and $2,840, respectively (the AIPMF includes data for other Asian nations, all with even higher incomes; *e.g.*, Singapore). While the Philippines is a closer match in terms of population density with 285 people per square kilometer (psk) compared to Vietnam's 253 people psk, India is still close with 344 people psk. At the metropolitan level, Pune and Bangalore have an average population density of 7,791 psk compared to 8,805 psk for Ho Chi Minh City (all three respondents are located in Ho Chi Minh City or adjacent towns). The other cities analyzed in the Indian report have population densities much higher than Ho Chi Minh City. The calculated average of the rates for Pune and Bangalore is $6.088 per square meter per month. *See* Land Benchmark Memorandum.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we

determine the following:

I. *Programs Preliminarily Determined to Be Countervailable*

A. *Preferential Lending for the Plastics Industry*

According to the petition, the GOV directs preferential lending to plastic producers through the Vietnam Development Bank (VDB) and state–owned commercial banks (SOCBs). The petition claims this allegation is evident from the GOV's ''plastics plan,'' a five-year plan for the plastics industry subsequently provided by the GOV as Exhibit 15 of its July 8, 2009 questionnaire response, and other official documentation and press reports. *See* the March 31, 2009 Petition at 78.

The GOV states there is no policy for the provision of preferential lending to plastic producers. *See* the GOV's July 8, 2009 questionnaire response at II–27. According to the GOV, five-year plans are not ''self–executing.'' *Id.* at II–11. Instead, there must be separate, distinct policies creating preferences or subsidies designed to meet the goals of five-year plans. For example, according to the GOV, the plastics plan states only four specific programs available to plastic producers: exemptions for land rent, R&D subsidies, trade promotion funds, and loans from the VDB. Thus, the GOV argues, if there were a policy to provide preferential lending to plastic producers through SOCBs, it would be explicit, and specified within the plastics plan or other document issued by the administering agency. *See* the GOV's August 17, 2009 questionnaire response at 23. In that regard, the GOV claims that the plastic plan's reference to ''preferential credit capital,'' discussed below, refers only to loans and other financing from the VDB.[2] *Id.* at 24. The GOV also emphasizes that its influence on SOCBs was removed through a series of measures beginning in 1997. *See* the GOV's July 8, 2009 questionnaire response at II–17.

We preliminarily determine that lending from SOCBs (including joint–stock commercial banks that are owned by government entities such as other state–owned banks or SOEs) to Chin Sheng and Fotai confers a countervailable subsidy. (API did not receive any loans from banks in Vietnam). The central five-year plan for 2006–2010 identifies the ''plastics industry'' among 14 ''major tasks'' in the economic development section of the plan, and specifically states the goal of satisfying demand for ''plastic packages'' for ''daily life.'' Exhibit 10 of the July 8, 2009 GOV submission (FYP) at 81. Plastic products are also discussed in other sections of the FYP. For example, within the regional development section of the FYP, the plan provides for a ''focus'' on the development of ''key processing industries,'' such as plastics, among several others, in the ''southeastern region,'' which is where all three respondents are located. FYP at 122.

The GOV also issued a five-year plan explicitly for the plastics industry. Exhibit 15 of the July 8, 2009 GOV submission (Plastics Plan). According to the GOV, the Plastics Plan was prepared by the same agencies that prepared the FYP, and elements of the Plastics Plan were included in the FYP.[3] The Plastics Plan enumerates several types of assistance that should be made available for the development of the plastics industry, or segments within that industry, including preferential credit capital. Article 2 of the Plastics Plan states that the GOV's ''preferential credit capital shall be concentrated on investment projects in support of the industry's development . . . .'' Plastics Plan at 18. The Plastics Plan also requires the State Bank of Vietnam (SBV), which is the central bank of Vietnam, to coordinate with the GOV's principal planning agency and other government agencies ''in supporting enterprises in the implementation of the approved planning.'' *Id.*

The 2007 annual report of Vietcombank, an SOCB that provided Vietnam dong loans outstanding during the POI in this investigation, states that it ''arranged and financed for many state important projects'' during 2007, indicating a goal of lending to targeted or encouraged projects. Exhibit 21 of the August 17, 2009 GOV submission at 4. A directive from the SBV, effective in the POI, ''requires credit institutions . . . to continue increasing credit extension for national key projects . . . .'' *See* Directive No. 05/2008/CT–NHNN, October 9, 2008, attached to Memorandum to the File, ''Additional Documents Regarding Preferential Lending Allegation,'' August 28, 2009 (Lending Documents Memorandum). A questionnaire issued by the SBV, also in the POI, requests that commercial banks report information on interest rates charged to different categories of customers, including ''preferential subjects under the bank's policy.'' *See* Document No. 10080/NHNN–CSTT, November 13, 2008, attached to Lending Documents Memorandum. Finally, a news bulletin posted on the SBV's website during the POI discusses the progress of SOCBs in reducing interest rates to ''priority policy–based sectors,''[4] thus appearing to acknowledge the existence of preferential policy–based lending. *See* ''News & Event: Commercial banks join in massive reduction of lending rate,'' September 24, 2008, attached to Lending Documents Memorandum.

Therefore, the Department finds that the merchandise under investigation is part of a state targeted, or encouraged, industry or project, and that there is evidence that loans from SOCBs are a designated means for developing that industry or project. While there may be no single policy document directing preferential lending to plastic producers from SOCBs, when all of the documents described above are evaluated together, it is the Department's preliminary

[2] As noted above, the GOV acknowledges there is preferential lending from the VDB, a state-owned policy bank, which does not lend to the three respondents.

[3] The Plastics Plan was issued nearly a year and a half before the FYP. Both documents cover planning and development until 2010.

[4] Another document singles out the steel industry for debt restructuring and requests that banks approve new loans to that industry, thus providing evidence that the SBV promotes specific industries. Document No. 11170/NHNN-TD, December 24, 2008, attached to Lending Documents Memorandum.

determination that SOCBs are part of the GOV framework to provide lending to targeted industries in the economy and that the plastics industry (which explicitly includes products like PRCBs as priority products) is one of the major targeted industries. Likewise, while the GOV argues that commercial banks have autonomy and are free from government interference, the record indicates that, in practice, SOCBs implement the goals of the state planning documents.

Finally, despite the GOV's claim, the fact that there may be subsidies enumerated in the plastics plan cannot be construed as proof of the non–existence of any other means of development. Such an interpretation fails to explain the purpose of the document beyond the four subsidy programs,[5] and, in our view, one of the four enumerated programs includes the provision of preferential credit capital through more than just the VDB. The plan includes no language linking the reference to ''preferential credit capital'' to the VDB, and does not even imply that the use of ''preferential credit capital'' is limited to funds from the VDB. The VDB is only mentioned once as one of several GOV agencies that are instructed to advance the goals of the plan through their coordinated efforts. As discussed above, other evidence on the record indicates that SOCBs are required to provide credit to priority industries and activities.

In addition to being a subsidy specific to the plastics industry, pursuant to section 771(5A)(D)(i) of the Act, loans from SOCBs, which we determine are public entities, constitute financial contributions from the GOV pursuant to section 771(5)(D)(i) of the Act. *See also* 771(5)(B)(i) of the Act. Information provided by the GOV in its August 17, 2009 questionnaire response indicates that two SOCBs that lent to respondents are public entities given that they are almost entirely owned by the GOV: Vietcombank and the Bank for Investment and Development of Vietnam (BIDV).[6] The August 17, 2009 questionnaire response indicates a third bank involved in this investigation, Indovina Bank Ltd. (Indovina), is also a public entity. Indovina is a joint venture between Vietin Bank (Vietin), another one of the five SOCBs in Vietnam, and Cathay United Bank, a Taiwanese bank. Vietin owns 50 percent of Indovina. It is the Department's position that it is not necessary to conduct further analysis to determine whether an SOCB (or any state–owned non–bank enterprise) is a public entity if the government is a majority owner. For Indovina, we note that under the Law of Credit Institutions, December 12, 1997, provided by the GOV as Exhibit 7 of its July 8, 2009 questionnaire response, the chairman and other members of the managing board including the general director of the bank must be approved by the SBV. In addition, there are conditions within Indovina's Articles of Association which provide the GOV with an apparent upper hand in any dispute between the two partners. *See* Exhibit S1–25 of the GOV's August 17, 2009 questionnaire response. (The Articles of Association is a proprietary document, therefore, the exact terms may not be publically disclosed.) Based on either of these two factors, the GOV is the dominant partner or shareholder. Therefore, we preliminarily determine that Indovina is a public entity.

Finally, this program provides benefits to the recipients equal to the difference between what the recipients paid on loans from SOCBs and the amount they would have paid on comparable commercial loans, pursuant to section 771(5)(E)(ii) of the Act. Only Fotai and Chin Sheng received loans from the GOV SOCBs that were outstanding during the POI. In determining the amount these companies would have paid on comparable commercial loans, we employed the interest rate benchmarks discussed above. We then divided the benefits by each company's total sales. On this basis, we preliminarily determine the CVD subsidy to be 1.18 percent *ad valore*m for Chin Sheng and 0.21 percent *ad valorem* for Fotai.

B. *Land Rent Exemption for Manufacturers of Plastic Products*

According to the petition, the GOV owns all land in Vietnam and uses this land ownership to further its industrial and economic policies. *See* June 25, 2009 New Subsidy Allegations at 2. In addition, the petition claims the Plastics Plan, discussed above in the context of preferential lending, exempts companies that invest in ''key programs'' from paying rent for land. According to the GOV, the ''mandatory respondents did not enjoy any reduction or exemption from the payment of the amounts applicable to their sub–leases or, in the case of Fotai, lease.'' GOV's August 10, 2009 questionnaire response at 14.

We preliminarily determine that one tract of land leased by Fotai is countervailable. API and Chin Sheng lease their land from private companies, who in turn lease their land from the GOV.[7] Fotai leases two tracts from private companies and a third tract from the Binh Duong provincial government. According to Fotai's submission, the tract leased from the provincial government was previously exempt from lease fees in its entirety, apparently under a now terminated land law that provided an exemption for certain projects.[8] The exemption expired for all but that fraction used for office space, and, under the superseding land law, a new lease rate was negotiated in 2006. In May 2007, the agreement was amended by the province to provide a 30-year extension of the terms of the lease.

According to a decree implementing the new land law, Decree No. 142/2005/ND–CP, November 14, 2005, Exhibit NSA1–7 of the GOV's August 10, 2009 questionnaire response, land rent shall be reduced under several specific circumstances enumerated in the law, and also where the Prime Minister determines it is appropriate to do so based on the recommendations of agency heads and provincial and municipal governments. *Id.* at Article 15. The GOV's plastics plan, in turn, provides that ''key programs . . . and projects relocated out of cities are all entitled to enjoy the localities' preferential regimes on land rent exemption.'' Plastics Plan at Article 2.

The plan then briefly describes three key programs (Plastics Plan at Article 2), and expands these three programs in a list of nine investment fields in an appendix. Fotai would appear to qualify under one or more of the three programs and nine fields. Moreover, Binh Duong province, is one of three ''concentrated plastic industry zones'' specifically directed in the plastics plan to relocate plastic factories from inner cities into ''industrial parks or clusters.''[9]

[5] We note in this regard that the record indicates at least two other GOV efforts to implement the goals of the plastics plan that are not explicitly mentioned in the plastics plan: 1) Chin Sheng received tax preferences, as discussed below, because, apparently, of its production of plastics; and, 2) the GOV's tariff schedule applies zero rates to imports of basic plastic raw materials (polyethylene and polypropylene) and plastic processing equipment.

[6] According to the GOV, there are five SOCBs: Vietcombank, BIDV, Vietin Bank, Agribank, and Mekong Housing and Commercial Bank.

[7] To be precise, except for the transaction involving Fotai and Binh Duong province, the respondents sublease land from other private companies that have leased the land use rights from the GOV. The Department could not find any evidence that the companies involved in these sublease transactions with the respondents are government entities or SOEs. We intend to gather additional information regarding the lease agreements between the GOV and the private parties from whom the respondents sublease their land in supplemental questionnaires.

[8] Fotai's documents reference Decision No. 189/2000/QD-BTC, November 24, 2000.

[9] Advance is also located in Binh Duong province. Chin Sheng is located in Ho Chi Minh

Continued

Thus, we preliminarily determine that Fotai's land rented from Binh Duong province was provided by the province pursuant to Fotai's production of plastics as referenced under the Plastics Plan. While the rate readjustment took place in 2006, before the January 11, 2007 cut–off date, discussed above under the ''Date of Applicability of CVD Law to Vietnam'' section, the Department finds that the May 2007 amendment to the agreement, which changed its material terms by extending its duration to 30 years, constitutes a new subsidy provided after the cut–off date, which is countervailable.

We preliminarily determine that the provision of land to manufacturers of plastic products is specific to the plastics industry, pursuant to section 771(5A)(D)(i) of the Act. We also preliminarily determine there is a financial contribution under section 771(5)(D)(iii) of the Act because the rented land use rights constitute the provision of a good or service. We preliminarily determine that a benefit exists under 19 CFR 351.511(a) to the extent that these rights were provided for LTAR. In order to calculate the benefit, we first multiplied the benchmark land rental rate, discussed above under the ''Land Benchmark'' section, by the total area of Fotai's tract at issue. We then deducted the rental fee paid by Fotai during the POI to derive the total benefit. We then divided the total benefit by Fotai's total sales to calculate a countervailable subsidy rate of 3.86 percent *ad valorem* for Fotai.

C. *Corporate Income Tax Exemptions and Reductions*

The petition alleged Income Tax Preferences for Foreign Invested Enterprises (FIEs). In the June 25, 2009 new subsidy allegations, Petitioners alleged a similar program of Discounted Corporate Income Taxes for Industrial Zone Enterprises.

We preliminarily determine that API was eligible for countervailable income tax preferences under the Discounted Corporate Income Taxes for Industrial Zone Enterprises program, but received no benefit during the POI.

We preliminarily determine that Fotai received countervailable income tax preferences under the Income Tax Preferences for FIEs program. Such preferences are specific under section 771(5A)(D)(i) of the Act because they are limited as a matter of law to a group of enterprises, FIEs. The preferences are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to Fotai pursuant to 19 CFR 351.509(a)(1) in the amount of tax savings. Specifically, Fotai benefited from a reduction in the standard corporate income tax rate for the tax return filed during the POI (its income tax rate under the program will change in subsequent years). To calculate the amount of the benefit,

we divided Fotai's tax savings by its total sales. On this basis, we preliminarily determine a countervailable subsidy rate of 0.17 percent *ad valorem* for Fotai.

Chin Sheng also benefited from a corporate income tax rate reduction for the tax return filed during the POI. Chin Sheng also enjoyed an exemption at the same time, further reducing its effective rate. We preliminarily determine that Chin Sheng received this reduction and exemption under a program for new investment projects and relocated businesses. While such a program was not alleged in the petition or in the new subsidy allegations, 19 CFR 351.311(b) allows the Department to investigate a possible countervailable subsidy discovered during a proceeding. According to Chin Sheng's August 10, 2009 questionnaire response at page 6, the company received its ''incentive tax'' rate because of its status as a ''business establishment newly set up under investment projects.'' Chin Sheng also references an April 2007 memorandum it received from the Tax Department, Exhibit 7 of the August 10, 2009 questionnaire response, that discusses its tax treatment. The memorandum refers to Circular 128/2003/TT–BTC, December 22, 2003 (Circular 128), a document not submitted or discussed by the GOV, but which appears to be a terminated tax law for domestic enterprises. Chin Sheng refers to section E.III.1.1 of the circular. However, there is no section E.III.1.1. Presumably, Chin Sheng intended to cite section F.III.1.1, which provides rate reductions and exemptions for ''business establishments newly set up under investment projects and relocated business establishments.''

We preliminarily determine that the tax reduction and exemption provided to Chin Sheng under this program are specific to a group of enterprises, ''business establishments newly set up under investment projects and relocated business establishments,'' under section 771(5A)(D)(i) of the Act. The income tax reduction and exemption are financial contributions in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to Chin Sheng pursuant to 19 CFR 351.509(a)(1) in the amount of tax savings. To calculate the amount of the benefit, we divided Chin Sheng's tax savings by its total sales. On this basis, we preliminarily determine a countervailable subsidy rate of 0.51 percent *ad valorem* for Chin Sheng.

D. *Import Duty Exemptions for Raw Materials*

According to the petition and the June 25, 2009 new subsidy allegations, companies in Vietnam are entitled to exemptions from import duties on raw materials if they are FIEs or located in industrial zones. While both API and Fotai are in fact exempt from paying duties on imported raw materials, their exemptions stem from Article 16 of the Law on Import Tax and Export Tax, Law No. 45/2005/QH–11, June 14, 2005, included as Exhibit 43 of the GOV's July 8, 2009 questionnaire response. Article 16 states that ''§g§oods imported for processing for a foreign party which are then exported'' are exempt from import duties. Thus, according to respondents, their exemptions are not contingent on either FIE status or location in industrial zones.[10]

Despite this incorrect identification of the nature of the program, such exemptions can still constitute countervailable export subsidies ''to the extent that the §Department§ determines that the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowances for waste'' under 19 CFR 351.519(a)(1)(i). Thus, we preliminarily determine that API received countervailable benefits under this program to the extent it imported materials not consumed in exported products. Such materials were identified by API in its July 8, 2009 questionnaire response. Such exemptions are specific as export subsidies in accordance with section 771(5A)(A) and (B) of the Act because they are contingent upon export performance. Furthermore, such exemptions provide a financial contribution in the form of revenue forgone under 771(5)(D)(ii) of the Act. To calculate the amount of the benefit, we summed the amount of duties saved on materials imported but not consumed in exported products, and divided the sum by API's export sales. On this basis, we preliminarily determine a rate of 0.20 percent *ad valorem*.

City, another one of the three ≥zones≥ referred to in the plastics plan.

[10] According to the GOV, the FIE exemption program was part of a terminated law. Also according to the GOV, there is no exemption program for industrial zones.

As noted, Fotai also had imports of materials under this program, but it is unclear whether all of these materials were consumed in the exported products. We intend to gather clarifying information after this preliminary determination. Chin Sheng reported that its imports are subject to a zero rate under the normal tariff schedule, and, therefore, it did not benefit from the program. Chin Sheng's claims are consistent with the 2005 Tariff Schedule for Vietnam, the latest the Department was able to locate in English. However, the Department intends to gather more information regarding how the GOV establishes and verifies which goods are consumed in the production of exported products and how it reconciles imports and exports under these exemptions. Because the exemptions received by API and Fotai were not linked to FIE status or industrial zone location, the GOV provided limited information in its questionnaire responses concerning these exemptions.

II. Programs Preliminarily Determined to Be Not Countervailable

VAT Exemptions for Equipment for FIEs

In the June 25, 2009 new subsidy allegations, Petitioners claim FIEs are exempt from paying VAT on imported equipment. We preliminarily determine that this program is not countervailable because a benefit is not provided under the program.

Under the VAT system described by the GOV and company respondents, absent an exemption, a company would normally pay VAT to suppliers on purchases. In turn, the company collects VAT from its customer along with the sales price. The VAT paid by the company to suppliers on purchased equipment is called ''input'' VAT, while the VAT the company collects from the customer is called ''output'' VAT. The company periodically submits a VAT report to the GOV that reconciles the two VAT amounts, and passes forward to the government only the amount by which output VAT exceeds input VAT. Conversely, if input VAT exceeds output VAT, the government refunds the difference to the company. Thus, with or without the exemption, the company merely passes forward VAT collected from its customer (or receives a refund); it is the final consumer, not the producer, who actually incurs the VAT owed to the government.

The Department has examined similar VAT exemptions and rebates in past proceedings and has determined that the amount of exempted or rebated VAT was, in itself, not countervailable within the meaning of 19 CFR 351.510 and 19 CFR 351.517. The Department has further determined in these prior cases that exempting the tax at the time of importation, rather than recovering the tax at the time of reconciliation, conferred no benefit because of the short time difference between the two events. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot–Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at ''VAT Exemptions Under the Investment Promotion Act,'' and *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory ''DRAM'' Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) and accompanying Issues and Decision Memorandum at ''Exemption of VAT on Imports Used for Bonded Factories under Construction.'' Therefore, based on the respondents' description of the program, we preliminarily determine the respondents did not benefit from a VAT exemption for equipment.

III. Programs Preliminarily Determined to Be Terminated

Export Bonus Program

The GOV submitted documents, specifically Decision No. 1042/QD–BTM, June 29, 2007, Exhibit 39 of the GOV's July 8, 2009 questionnaire response, demonstrating this program was terminated effective June 29, 2007. The GOV also stated the last bonuses were granted in 2006 based on exports in 2005. Thus, we preliminarily determine, in accordance with 19 CFR 351.526, that the program was terminated and the last benefits disbursed before the POI of this investigation.

IV. Programs Preliminarily Determined to Be Not Used by Respondents

A. Government Provision of Water for LTAR in Industrial Zones

The petition claims occupants of industrial zones are offered special rates on water. API provided all of its water invoices for the POI along with a water rate schedule for the area outside its industrial zone. The rates on the invoices were identical to the rates on the schedule. Chin Sheng also provided POI invoices. The rates on its invoices are identical to the rate stated by the GOV in its August 10, 2009 questionnaire response. Fotai claimed not to have used water in its industrial zone location, which was not operational during the POI. The GOV stated that the rates paid in all industrial zones in which the three respondents have facilities are identical to the rates charged in the surrounding regions. Therefore, because there is no evidence of preferential pricing, we preliminarily determine that this program is not used.

B. Preferential Lending for Exporters

C. Export Promotion Program

D. New Product Development Program

E. Income Tax Preferences for Exporters

F. Income Tax Preferences for FIEs Operating in Encouraged Industries

G. Import Tax Exemptions for FIEs Using Imported Goods to Create Fixed Assets

H. Import Tax Exemptions for FIEs Importing Raw Materials

I. Provision of Land Use Rights in Industrial Zones For LTAR

J. Land Rent Reduction or Exemption for FIEs

K. Exemption of Import Duties on Importation of Fixed Assets for Industrial Zone Enterprises

According to the petition and the June 25, 2009 new subsidy allegations, companies in Vietnam are entitled to exemptions from import duties for equipment if they are FIEs or located in industrial zones. API and Fotai reported they are eligible for such exemptions because of their location in industrial zones. API also reported it is eligible for such exemptions because, under a now terminated law, it exports more than 80 percent of its sales; its preference apparently surviving under a grandfathering or transition clause. Chin Sheng reported it did not participate in any program providing duty exemptions for imported equipment.

After applying the ''cut–off'' date discussed above under the ''Date of Applicability of CVD Law to Vietnam'' section, we preliminarily determine Fotai had no equipment import exemptions after the cut–off date. API had no equipment import exemptions during the POI and its equipment import exemptions prior to the POI were not greater than 0.5 percent of relevant sales. Therefore, benefits for these imports were expensed prior to the POI in accordance with 19 CFR 351.524(b)(2).

L. Exemption of Import Duties for Imported Raw Materials for Industrial Zone Enterprises

M. Accelerated Depreciation for Companies in Encouraged Industries and Industrial Zones

N. Losses Carried Forward for Companies in Encouraged Industries and Industrial Zones

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the GOV and the company respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/Manufacturer	Net Subsidy Rate
Advance Polybag Co., Ltd.	0.20% (de minimis)
Chin Sheng Company, Ltd.	1.69%
Fotai Vietnam Enterprise Corp.	4.24%
All Others	2.97%

Sections 703(d) and 705(c)(5)(A) of the Act state that, for companies not investigated, we will determine an all others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States, excluding any zero and *de minimis* rates and any rates based solely on the facts available.[11] In this investigation, Chin Sheng and Fotai's rates meet the criteria for the all others rate. Notwithstanding the language of section 705(c)(1)(B)(i)(I) of the Act, we have not calculated the all others rate by weight averaging the rates of the Chin Sheng and Fotai because doing so risks disclosure of proprietary information. Therefore, for the all others rate, we have calculated a simple average of the two firms' rates.

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, except for products both produced and exported by API, which has a *de minimis* rate, we are directing CBP to suspend liquidation of all entries of PRCBs from Vietnam that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration. In accordance with section 705(b)(2)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, case briefs for this investigation must be submitted no later than 50 days after the date of publication of the preliminary determination. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: August 28, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–21427 Filed 9–3–09; 8:45 am]

BILLING CODE 3510–DS–S

[11] Pursuant to 19 CFR 351.204(d)(3), the Department must also exclude the countervailable subsidy rate calculated for a voluntary respondent. In this investigation, we had no producers or exporters request to be voluntary respondents.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

International Code Council: The Update Process for the International Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The International Code Council (ICC), promulgator of the International Codes and Standards, maintains a process for updating the entire family of International Codes based on receipt of proposals from interested individuals and organizations involved in the construction industry as well as the general public. The codes are updated every three years (2009—current edition, 2012, 2015 editions, etc.). In the past, the codes were updated on 2–18 month cycles, with an intervening supplement between cycles. Starting with the 2009/2010 Cycle, ICC is transitioning to a development cycle where there will only be a single cycle of code development with the codes split into two groups. For each group of codes, there are two hearings for each code development cycle; the first where a committee considers the proposals and recommends an action on each proposal and the second to consider comments submitted in response to the committee action on proposals.

The purpose of this notice is to increase public participation in the system used by ICC to develop and

maintain its codes and standards. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of ICC is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the codes or standards referenced in the notice.

DATES: The date of the next code development hearing is October 24–November 11, 2009 in Baltimore, Maryland at the Hilton Baltimore.

Completion of this cycle results in the 2012 edition of the International Codes which are scheduled to be published by April 2011. For detailed information on the 2009/2010 Cycle, go to: *http://www.iccsafe.org/cs/codes/2009-10cycle/index.html*

FOR FURTHER INFORMATION CONTACT: Mike Pfeiffer, PE, Secretary, Code Development, 4051 West Flossmoor Road, Country Club Hills, Illinois 60478; Telephone 708–799–2300, Extension 4338.

SUPPLEMENTARY INFORMATION:

Background

ICC produces the only family of Codes and Standards that are comprehensive, coordinated, and necessary to regulate the built environment. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning new and existing construction.

The Code Development Process is initiated when proposals from interested persons, supported by written data, views, or arguments are solicited and published in the Proposed Changes document. This document is posted a minimum of 30 days in advance of the first hearing and serves as the agenda.

At the first hearing, the ICC Code Development Committee considers testimony on every proposal and acts on each one individually (Approval, Disapproval, or Approval as Modified). The results are published in a report entitled the Report of the Public Hearing, which identifies the disposition of each proposal and the reason for the committee's action. Anyone wishing to submit a comment on the committee's action, expressing support or opposition to the action, is provided the opportunity to do so. Comments received are published and distributed in a document called the Final Action Agenda which serves as the agenda for the second hearing. Proposals which are approved at the second hearing are incorporated in the subsequent Edition, with the next cycle starting with the submittal deadline for proposals.

ICC maintains a mailing list of interested parties who will be sent a complimentary CD, free of charge, of all code development documents from ICC's Chicago District Office:

International Code Council, 4051 W Flossmoor Road, Country Club Hills, Illinois 60478; or download a copy from the ICC Web site noted previously.

The International Codes and Standards consist of the following:

ICC Codes

International Building Code.
International Energy Conservation Code.
International Existing Building Code.
International Fire Code.
International Fuel Gas Code.
International Mechanical Code.
ICC Performance Code for Buildings and Facilities.
International Plumbing Code.
International Private Sewage Disposal Code.
International Property Maintenance Code.
International Residential Code.
International Wildland-Urban Interface Code.
International Zoning Code.

ICC Standards

ICC A 117.1 Accessible and Usable Buildings and Facilities.

ICC 300: Standard on Bleachers, Folding and Telescopic Seating and Grandstands.

ICC 400: Standard on the Design and Construction of Log Structures.

ICC 500: ICC/NSSA Standard on the Design and Construction of Storm Shelters.

ICC 600: Standard for Residential Construction in High Wind Areas.

The maintenance process for ICC Standards such as ICC A117.1 follows a similar process of soliciting proposals, committee action, public comment and ultimately the update and publication of the standard. ICC's Standard development process meets ANSI requirements for standard's development.

ICC has recently begun the development of the International Green Construction Code which will become part of the family of 2012 International Codes (''I-Codes''). For information on its development: *http://www.iccsafe.org/IGCC*

Dated: August 31, 2009.

Katharine B. Gebbie,

Director, Physics Laboratory.

[FR Doc. E9–21393 Filed 9–3–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XR41

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day Council meeting on September 22–24, 2009 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ)

DATES: The meeting will begin on Tuesday, September 22, 2009, beginning at 9 a.m., and on Wednesday and Thursday, September 23–24, 2009, beginning at 8:30 a.m. each day.

ADDRESSES: The meeting will be held at the Radisson Hotel, 180 Water Street, Plymouth, MA 02360; telephone: (508) 747–4900; fax: (508) 747–8937.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, September 22, 2009

Following introductions and any announcements, the Council will elect officers for 2009–10 and swear in the new and reappointed members for the upcoming year. The Council will receive a series of brief reports from the Council Chairman and Executive Director, the NOAA Fisheries Northeast Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel, representatives of the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission, as well as NOAA Enforcement. These reports will be followed by a review of any experimental fishery permit applications that have been received since the last Council meeting. A brief public comment period will occur prior to the afternoon lunch break. The afternoon session will begin with the Council's Research Steering Committee review of its evaluation of final reports for a number of cooperative research projects. The Monkfish Committee will review and possibly approve a

recommendation to defer measures that had previously been approved for consideration in Amendment 5 to the Monkfish Fishery Management Plan (FMP). These could include the monkfish incidental catch limits, and alternative catch share management programs. The Whiting Committee will discuss draft alternatives to be developed and analyzed in Amendment 17 to the Northeast Multispecies FMP.

Wednesday, September 23, 2009

The Wednesday session of the Council meeting will begin with reports from the Northeast Fisheries Science Center concerning the recent Transboundary Resource Assessment Committee (TRAC) meeting results. The review will include a report on herring and the three groundfish stocks addressed through the U.S./Canada Resource Sharing Agreement (Eastern Georges Bank cod, Eastern Georges Bank haddock and Georges Bank yellowtail flounder). The Council's Scientific and Statistical Committee will provide its recommendations on: final acceptable biological catch (ABCs) and ABC control rules for groundfish, scallops, herring and red crab; and provide a corrected 2010–11 skate complex ABC value to be included in Amendment 3 to the Skate FMP (the recalculation will include the 2008 spring survey values for little skate). The Council will then address a number of groundfish management issues which will include: consideration and approval of the Transboundary Management Guidance Committee's catch recommendations for 2010 for Eastern Georges Bank cod, Eastern Georges Bank haddock and Georges Bank yellowtail flounder; Council advice on measures for the U.S./Canada area in fishing year 2010; and development of groundfish ACLs for fishing years 2010–12 (including the yellowtail flounder sub-components for the scallop fishery). Final action on the ACLs is planned for the November Council meeting. There also will be a discussion regarding a NMFS letter dated August 24, 2009 concerning Amendment 16 measures for common pool vessels (in particular, measures for GOM cod and pollock), and possible initiation of a framework action in response to the letter. This meeting will be the first framework meeting if an action is initiated.

Thursday, September 24, 2009

On the last day of the Council meeting NMFS will present information on the most recent amendment to the Consolidated HMS FMP, an action which focuses on small coastal sharks, shortfin mako, and smooth dogfish issues. NMFS staff will present the management measures analyzed in the Draft Environmental Impact Statement and the proposed rule for draft Amendment 3 to the FMP and, on behalf of the agency, will seek Council comments. The Scallop Survey Advisory Panel will report on its most recent meeting followed by a report from the Council's Scallop Committee. During that discussion, the Council will review and is expected to approve the Draft Environmental Impact Statement for Scallop Amendment 15 for purposes of soliciting input at public hearings. Measures will include annual catch limit requirements, address excess capacity in the limited access scallop fishery through permit stacking and leasing alternatives, modifications to some measures for the limited access general category fishery and other measures. An update on Framework Adjustment 21 also will be provided.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 31, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–21315 Filed 9–3–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 0908181242–91243–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals for Fiscal Year 2011

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State, is seeking public comments on the potential market impact of the proposed disposal levels of excess materials for the Fiscal Year (FY) 2011 Annual Materials Plan.

DATES: To be considered, written comments must be received October 5, 2009.

ADDRESSES: Address all comments concerning this notice to John Isbell, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, 1401 Constitution Avenue, NW., Room 3876, Washington, DC 20230, *fax:* (202) 482–5650 (*Attn:* John Isbell), *e-mail: MIC@bis.doc.gov;* or Peter Secor, U.S. Department of State, Bureau of Economic and Business Affairs, Office of International Energy and Commodity Policy, Washington, DC 20520, *fax:* (202) 647–8758 (*Attn:* Peter Secor), or *e-mail: SecorPF@state.gov.*

FOR FURTHER INFORMATION CONTACT: David Newsom, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, *Telephone:* (202) 482–7417.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended (50 U.S.C. 98, *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile. * * *'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, the Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the

Committee to consult with industry representatives that produce, process, or consume the materials contained in the stockpile.

In Attachment 1, the Defense National Stockpile Center (DNSC) lists the proposed quantities that are enumerated in the stockpile inventory for the FY 2011 Annual Materials Plan. The Committee is seeking public comments on the potential market impact of the sale of these materials. Public comments are an important element of the Committee's market impact review process.

The quantities listed in Attachment 1 are not disposal or sales target quantities, but rather a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year by the DNSC. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress.

Submission of Comments

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. All comments must be submitted to the address indicated in this notice. All comments submitted through e-mail must include the phrase ''Market Impact Committee Notice of Inquiry'' in the subject line.

The Committee encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on October 5, 2009. The Committee will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

All comments submitted in response to this notice will be made a matter of public record and will be available for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by law.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–1900 for assistance.

Dated: August 28, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

Attachment 1

PROPOSED FY 2011 ANNUAL MATERIALS PLAN

Material	Unit	Quantity	Footnote
Beryl Ore	ST	1	[1]
Beryllium Metal	ST	60	
Chromite, Refractory	SDT	2,000	
Chromium, Ferro	ST	100,000	
Chromium, Metal	ST	500	
Cobalt	LB Co	1,000,000	[1]
Columbium Metal Ingots	LB Cb	22,000	[1]
Germanium	Kg	8,000	
Manganese, Chemical Grade	SDT	5,000	[1]
Manganese, Ferro	ST	100,000	
Manganese, Metallurgical Grade	SDT	100,000	[1]
Platinum	Tr Oz	9,000	[1]
Platinum—Iridium	Tr Oz	1,000	[1]
Talc	ST	1,000	[1]
Tantalum Carbide Powder	LB Ta	4,000	[1]
Tin	MT	4,000	[1]
Tungsten Metal Powder	LB W	300,000	[1]
Tungsten Ores & Concentrates	LB W	8,000,000	
Zinc	ST	8,500	[1]

[1] Actual quantity will be limited to remaining inventory.

[FR Doc. E9–21350 Filed 9–3–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Technology Innovation Program (TIP) Seeks White Papers

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology's (NIST) Technology Innovation Program (TIP) announces that it is seeking white papers from any interested party, including academia; federal, state, and local governments; industry; national laboratories; and professional organizations/societies. White papers will be used to identify and select areas of critical national need and the associated technical challenges to be addressed in future TIP competitions.

DATES: The suggested dates for submission of white papers are November 9, 2009, February 15, 2010, May 10, 2010, and July 12, 2010. However, TIP will accept white papers at any time during the period November 9, 2009 through September 30, 2010.

ADDRESSES: White papers must be submitted to TIP as follows:

Electronic (e-mail) submission: tipwhitepaper@nist.gov.

FOR FURTHER INFORMATION CONTACT: Thomas Wiggins at 301–975–5416 or by e-mail at *thomas.wiggins@nist.gov.*

SUPPLEMENTARY INFORMATION:

Background Information: The Technology Innovation Program (TIP) at the National Institute of Standards and Technology (NIST) was established for the purpose of assisting U.S. businesses and institutions of higher education or other organizations, such as national laboratories and nonprofit research institutions, to support, promote, and accelerate innovation in the United States through high-risk, high-reward research in areas of Critical National Need. The TIP statutory authority is Section 3012 of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Act, Public Law 110–69 (August 9, 2007), 15 U.S.C.A. § 278n (2008). The TIP implementing regulations are published at 15 CFR Part 296 (73 FR 35,913 (June 25, 2008)).

TIP holds competitions for funding based on addressing areas of critical national need. TIP identifies and selects topics for areas of critical national need based on input from within NIST, the TIP Advisory Board, the science and technology communities, and from the public. TIP is interested in receiving input on the identification and definition of problems that are sufficiently large in magnitude that they have the potential to inhibit the growth and well-being of our nation today. This announcement explains the requirements and process for submitting white papers to TIP by interested parties. White papers from experts in other federal agencies are valued and welcome, and will enable TIP to complement the efforts of other mission agencies and avoid duplication of their efforts, thereby leveraging resources to benefit the nation.

The key concepts, enumerated below, are the foundation of TIP and should form the basis of an effective white paper:

a. An *area of critical national need* means an area that justifies government attention because the magnitude of the problem is large and the associated societal challenges that need to be overcome are not being addressed, but could be addressed through high-risk, high-reward research.

b. A *societal challenge* is a problem or issue confronted by society that when not addressed could negatively affect the overall function and quality of life of the Nation, and as such, justifies government action. A societal challenge is associated with barriers preventing the successful development of solutions to the area of critical national need. TIP's mission is to tackle the technical issues that can be addressed through high-risk, high-reward research. The results of the high-risk, high-reward research should have the potential for transformational results.

c. A *transformational result* is a potential project outcome that enables disruptive changes over and above current methods and strategies. Transformational results have the potential to radically improve our understanding of systems and technologies, challenging the status quo of research approaches and applications.

The white papers are expected to contain: A description of an area of critical national need and the associated societal challenge(s) (what is the problem, why is it a problem, and why is it challenging); why government support is needed, and what could happen if that support is not provided in the proposed time frame; and a high level discussion of potential scientific advancements and/or technologies that are needed to address the societal challenges; and an indication of the types of entities or groups who might be interested in developing proposal submissions to fund these scientific and/or technology approaches. Do not include ideas for specific proposals in the white paper (*i.e.,* your specific solution to the problem).

This solicitation for white papers is neither a Request for Proposals (RFP) nor should it be viewed as a request for pre-proposals. Rather, it is a way to include ideas from the public to identify problems that justify government support and can be addressed by technological innovations that are not currently being sufficiently supported to meet the challenge.

White papers must not contain proprietary information. Submission of a white paper means that the author(s) agrees that all the information in the white paper can be made available to the public.

Information contained in these white papers will be considered and combined with information from other resources—including the vision of the Administration, NIST, other government agencies, technical communities, the TIP Advisory Board, and other stakeholders—to develop the scope of future competitions and to shape TIP's collaborative outreach. White papers are a valuable resource that adds to TIP's understanding of the significance and scope of critical national needs and associated societal challenges. The white papers submitted could be shared with the Administration, NIST, other government agencies, technical communities, the TIP Advisory Board, other stakeholders and the public as part of the selection process for future competitions.

For detailed instructions on how to prepare and submit white papers, refer to *''A Guide for Preparing and Submitting White Papers on Areas of Critical National Need.''* The *Guide* is available on the TIP Web site at *http://www.nist.gov/tip/guide_for_white_papers.pdf.*

In this call for white papers, TIP is seeking information in all areas of critical national need, but also seeks information to assist TIP in further defining several topic areas under development. White papers that address any of the following areas may further develop the definition and scope of the critical national need suggested by these topic areas, and should additionally identify and explain specific societal challenges within these critical national need areas that require a technical solution. White papers may discuss any critical national need area of interest to the submitter, or may address any of the following topic areas:

Civil Infrastructure: Civil infrastructure constitutes the basic fabric of the world in which we live and work. It is the combination of fundamental systems that support a community, region, or country. The civil infrastructure includes systems for transportation (airport facilities, roads, bridges, rail, waterway locks); and systems for water distribution and flood control (water distribution systems, storm and waste water collection, dams, and levees). New construction approaches and materials to improve the infrastructure and for mitigating the expense of repairing or replacing existing infrastructure appear to be areas with the potential for specific societal challenges within this area of critical national need.

Examples could include challenges such as: Advanced materials for repair and rehabilitation of existing infrastructure, advanced inspection and monitoring technologies that assist public safety officials in determining the condition of structures, or areas of sustainability of infrastructure construction.

Complex networks and complex systems: Society is increasingly dependent on complex networks like those used for energy delivery, telecommunication, transportation, and finance over which we have imperfect control. No single organization and no collection of organizations have the ability to effectively control these multi-scale, distributed, highly interactive networks. Complex network theory will also be important in modeling neural systems, molecular physiological

response to disease, and environmental systems. The current technical and mathematical methodologies that underpin our ability to simulate and model physical systems are unable to predict and control the behavior of complex systems. Stability and control of these networks can have far reaching consequences to our quality of life.

Examples could include challenges such as: Theoretical advances and/or proof-of-concept applications; or capabilities that can potentially address and advance the use of complex network analyses in the following areas—sustainable manufacturing models, resource management and environmental impacts (energy, water, agriculture), intelligent transportation systems, biological systems, communications networks, security systems, personalized healthcare, and others.

Energy: From agriculture to manufacturing, all endeavors require energy as input. Escalating energy demands throughout the world can lead to national security challenges, financially challenge national economies, and contribute to environmental alterations. Although heavily supported projects exist in energy research, there remain technical roadblocks that affect full deployment of new and emerging energy technologies.

Examples could include challenges such as: Technologies for improved manufacturing of critical components for alternative energy production; replacement of fossil-fuel derived fuels with non-food, renewably produced fuels; or improved technologies for stable connections of many power sources to the electrical grid.

Ensuring Future Water Supply: The Nation's population and economic growth places greater demands on freshwater resources. At the same time, temporary or permanent drought conditions and water access rights affect regional freshwater availability. Water needs threaten to outstrip available freshwater, now and in the future. Water quality, both in terms of decontamination and disinfection of water supplies, is also being pressured by emerging contaminants that must either be removed from distributed water or converted to harmless forms of waste. Food contaminations are often traced back to water contaminations, either in the field or in processing. Municipal waste streams and irrigation runoff may waste resources that are not captured and/or recovered.

Examples could include challenges such as: Means to provide future fresh water supplies without undue consumption of energy resources; means that determine and assure the safety of water and food from waterborne contamination; or means to economically recover resources from wastewater streams and lower the energy cost of producing freshwater and potable water from marginalized water resources.

Healthcare: Healthcare spending per capita in the United States is high and rising, and currently approved drugs work only in a fraction of the population. Doctors are unable to select optimal drug treatments and dosages based on the patient's unique genetics, physiology, and metabolic processes, resulting in a trial and error component to treatment. As a consequence, significant expenditures result in drugs that are ineffective on subsets of patients, and a clearer understanding of which patients may suffer side effects from prescribed medicine is lacking. The key to patient response lies in greater understanding of both genetic variability and environmental influences on disease mechanisms.

Examples could include challenges such as: Cost effective advanced tools and techniques for genomics and proteomics research that provide greater understanding of complex biological systems, biomarker identification, and targeted drug and vaccine delivery systems; improved and low cost diagnostic and therapeutic systems; or better methods of integration and analysis of biological data, especially when combined with environmental and patient history data.

Manufacturing: Manufacturing is a vital part of our nation's economy, which now is facing increasing global competitiveness challenges, regulations and controls over environmental and resource issues, and other economic pressures. Technical advances have at times been able to address productivity and other issues, but the recent pressures on the manufacturing community have hindered their ability to focus the necessary resources on longer term solutions that could lead to economic growth in this sector which the nation needs.

Examples could include challenges such as: Manufacturing systems that have shorter innovation cycles, more flexibility, and are rapidly reconfigurable; accelerating commodization of next generation, high-performance materials, such as nanomaterials, composites, and alloys to specification, in a consistent, efficient and effective manner; or life cycle assessment tools, an aid toward sustainable manufacturing; and better automation solutions.

Nanomaterials/nanotechnology: The unique properties of nanomaterials provide extraordinary promise. There is a need for greater understanding and solutions to overcome the barriers associated with manufacturing nanomaterials and their incorporation into products, while maintaining the unique functionality of the nanomaterial. Although many processes are achievable in the laboratory, the scale-up to industrial production without compromising the quality of the produced material can be highly problematic.

Examples could include challenges such as: Methods required for manufacturing nanomaterials with pre-specified functionality and morphology; methods for inspection and real-time monitoring the processing of nanomaterials; or methods for incorporation of nanomaterial into products without compromising the material's required properties.

Sustainability: ''Sustainability,'' as defined by a widely used definition is ''meeting the needs of the present generation without compromising the ability of future generations to meet their needs.'' Clearly, sustainability is an attractive and desirable concept for the nation. TIP is interested in technologies that reduce or eliminate the environmental ''footprint'' of industrial processes and public waste streams. Sustainability is a complex and highly-interdisciplinary endeavor with economic, environmental, and societal dimensions. In this context, the white papers should address elements such as cost effectiveness, energy efficiency, recyclability, safety, resource use, life-cycle analysis, and ecosystem health.

Examples could include challenges such as: Technologies to develop feedstocks from renewable sources; technologies to recover resources (minerals, materials, energy, water) from industry and other/public waste streams; low-cost, low-energy separation technologies; and replacement of hazardous/toxic materials with safer, more cost effective materials and/or process technology.

Dated: September 1, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–21421 Filed 9–3–09; 8:45 am]

BILLING CODE 3510–13–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0032]

TGH International Trading, Inc., a Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with TGH International Trading, Inc., containing a civil penalty of $31,500.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by September 21, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 09–C0032, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Belinda V. Bell, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7592.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 31, 2009.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. This Settlement Agreement (''Agreement'') is made by and between the staff (''staff'') of the U.S. Consumer Product Safety Commission (''Commission'') and TGH International Trading, Inc. (''TGH''), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''CPSA''). The Agreement and the incorporated attached Order (''Order'') resolve the staff's allegations set forth below.

The Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Federal Hazardous Substances Act (''FHSA'') 15 U.S.C. 1261–1278.

3. TGH is a corporation organized and existing under the laws of the State of California. TGH's principal place of business is located in Los Angeles, California.

4. At all times relevant herein, TGH imported, distributed and sold children's toys, including those that are the subject of the Agreement and Order.

Staff Allegations

5. On March 17, 2006, TGH introduced or caused the introduction into interstate commerce and/or received in interstate commerce and delivered or proffered delivery for pay or otherwise, 8 types of toys totaling 6,180 retail units. These toys were intended for children under three years old and were subject to the Commission's Small Parts Regulation, 16 CFR Part 1501. The toys, imported from China, were intercepted by U.S. Customs and Border Patrol staff at the Los Angeles, California, entry port.

6. Further staff investigation revealed that on several occasions between March 2005 and June 2006, TGH also introduced or caused the introduction into interstate commerce and/or received in interstate commerce and delivered or proffered delivery for pay or otherwise, 5 additional types of toys, totaling 5,112 retail units. These toys were intended for children under three years old and were subject to the Commission's Small Parts Regulation, 16 CFR Part 1501.

7. The toys identified in paragraphs 5 and 6 above are ''consumer products'' and, at the times relevant herein, TGH was a ''manufacturer'' of ''consumer products,'' which were ''distributed in commerce,'' as those terms are defined in sections 3(a)(5), (8), and (11) of the CPSA, 15 U.S.C. 2052(a)(5), (8), and (11).

8. The toys referred to in paragraphs 5 and 6 failed to comply with the Commission's Small Parts Regulation, 16 CFR Part 1501, in that when tested under the ''use and abuse'' test methods specified in 16 CFR 1500.51 and .52, (a) one or more parts of each tested toy separated, and (b) one or more of the separated parts from each of the toys fit completely within the small parts test cylinder referenced in 16 CFR 1501.4.

9. Because the separated parts fit completely within the test cylinder as described in paragraph 8 above, each of the toys identified in paragraphs 5 and 6 above presents a ''mechanical hazard'' within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s), and poses a choking, aspiration and/or ingestion risk, possibly leading to serious injury or death.

10. Each of the toys identified in paragraphs 5 and 6 above is a ''hazardous substance'' pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D), and is a ''banned hazardous substance'' pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A), and 16 CFR 1500.18(a)(9).

11. TGH knowingly introduced or caused the introduction into interstate commerce and received in interstate commerce and delivered or proffered for delivery for pay or otherwise, the ''banned hazardous substances'' identified above, as the term ''knowingly'' is defined in section 5(c)(5) of the FHSA, 15 U.S.C. 1264(c)(5), in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

12. The aforementioned acts also constitute a violation of the 2003 Consent Order Agreement entered into between TGH and the Commission, which prohibited TGH from introducing or causing the introduction into interstate commerce or receiving in interstate commerce or delivering or proffering delivery for pay or otherwise, any banned or misbranded hazardous substances as so stipulated in the Order arising from the Consent Order Agreement.

13. Pursuant to section 5 of the FHSA, 15 U.S.C. 1264, TGH is subject to civil penalties for the aforementioned violations.

Response of TGH

14. TGH denies the staff's allegations contained herein.

Agreement of the Parties

15. Under the FHSA, the Commission has jurisdiction over this matter and over TGH.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by TGH or a determination by the Commission that TGH violated the FHSA or any other Commission regulation or requirement.

17. In settlement of the staff's allegations, TGH agrees to pay a civil penalty of thirty-one thousand five hundred dollars ($31,500.00) in three installments. The first installment of twenty-one thousand five hundred dollars ($21,500.00) shall be paid within ten (10) calendar days of service of the Commission's final Order accepting the Agreement. The second installment of five thousand dollars ($5,000.00) shall be paid within six (6) months of service of the Commission's final Order accepting the Agreement. The third and final installment of five thousand dollars ($5,000.00) shall be paid within twelve (12) months of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

18. Upon the failure of TGH to make any of the aforementioned payments when due, the total amount of the civil penalty shall become immediately due and payable, and interest on the unpaid amount shall accrue and be paid by TGH at the Federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

19. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within 15 calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, TGH knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) An

administrative or judicial hearing; (ii) judicial review or other challenge or contest of the validity of the Agreement and Order as issued and entered; (iii) a determination by the Commission as to whether TGH failed to comply with the CPSA and its underlying regulations; (iv) a statement by the Commission of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and Order.

22. The Agreement and Order shall apply to and be binding upon TGH and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the FHSA, and a violation of the Order may subject those referenced in paragraph 22 above to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or to contradict their terms.

25. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced.

26. If, after the effective date hereof, any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and TGH agree that severing the provision materially affects the purpose of the Agreement and the Order.

TGH International Trading, Inc.

Dated: 7/22/09

By: _____

Teresa Chan,

President, TGH International Trading, Inc., 318 East 4th Street, Los Angeles, CA 90013.

Dated: 7/22/09

By: _____

Kam Louie, Esq.,

301 N. Lake Avenue, Suite 800, Pasadena, CA 91101, Counsel for TGH International Trading, Inc.

U.S. Consumer Product Safety Commission

Cheryl A. Falvey,

General Counsel.

Ronald G. Yelenik,

Assistant General Counsel, Office of the General Counsel.

Dated: _____

By: _____

Belinda V. Bell,

Trial Attorney, Division of Compliance, Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between TGH International Trading, Inc. (''TGH'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over TGH, and it appearing that the Settlement Agreement and Order are in the public interest, it is

Ordered that the Settlement Agreement be, and hereby is, accepted; and it is

Further Ordered that TGH shall pay a civil penalty in the amount of thirty-one thousand, five hundred dollars ($31,500.00) in three installment payments. The first installment of twenty-one thousand five hundred dollars ($21,500.00) shall be paid within ten (10) calendar days of service of the Commission's final Order accepting the Settlement Agreement. The second installment of five-thousand dollars ($5,000.00) shall be paid within six (6) months of service of the Commission's final Order accepting the Settlement Agreement. The third and final installment of five-thousand dollars ($5,000.00) shall be paid within twelve (12) months of the service of the Commission's final Order accepting the Settlement Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

Upon the failure of TGH to make any of the aforementioned payments when due, the total amount of the civil penalty shall become immediately due and payable, and interest on the unpaid amount shall accrue and be paid by TGH at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 14th day of August 2009.

By Order of the Commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–21385 Filed 9–3–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–20]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM. (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–20 with attached transmittal, policy justification, sensitivity of technology.

Dated: August 26, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 5 2009

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-20, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $530 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick
Acting Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-20
Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 19 million
Other	$511 million
TOTAL	$530 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: services to upgrade the Tactical Airborne Surveillance System (TASS) aircraft, installation of 10 AN/ARC-230 High Frequency Secure Voice/Data Systems, 25 AN/ARC-231 or 25 AN/ARC-210 Very High Frequency/Ultra High Frequency (VHF/UHF) Secure Voice/Data Systems, 4 Multifunctional Information Distribution System-Low Volume Terminals (MIDS-LVT), 4 LN-100GT Inertial Reference Units, 25 SY-100 or functional equivalent Crypto Systems, 7 SG-250 or functional equivalent Crypto Systems, 6 SG-50 or functional equivalent Crypto Systems, 10 CYZ-10 Fill Devices, modification of existing ground stations, TASS equipment trainer, mission scenario generator (simulator), and maintenance test equipment; spare and repair parts, support and test equipment, personnel training and training equipment, publications and technical documentation including flight/operator/maintenance manuals, modification/construction of facilities, U.S. Government and contractor engineering and support services and other related elements of logistics support.

(iv) Military Department: Air Force (QAP)

(v) Prior Related Cases, if any:
FMS case YBW - $45M - 19Oct90

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See attached Annex

(viii) Date Report Delivered to Congress: AUG 5 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia –Upgrade of Tactical Airborne Surveillance System (TASS)

The Government of Saudi Arabia has requested services to upgrade the Tactical Airborne Surveillance System (TASS) aircraft, installation of 10 AN/ARC-230 High Frequency Secure Voice/Data Systems, 25 AN/ARC-231 or 25 AN/ARC-210 Very High Frequency/Ultra High Frequency (VHF/UHF) Secure Voice/Data Systems, 4 Multifunctional Information Distribution System-Low Volume Terminals (MIDS-LVT), 4 LN-100GT Inertial Reference Units, 25 SY-100 or functional equivalent Crypto Systems, 7 SG-250 or functional equivalent Crypto Systems, 6 SG-50 or functional equivalent, 10 CYZ-10 Fill Devices, modification of existing ground stations, TASS equipment trainer, mission scenario generator (simulator), and maintenance test equipment; spare and repair parts, support and test equipment, personnel training and training equipment, publications and technical documentation including flight/operator/maintenance manuals, modification/construction of facilities, U.S. Government and contractor engineering and support services and other related elements of logistics support. The estimated cost is $530 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed upgrade will enable the Royal Saudi Air Force (RSAF) to sustain their current capability, maintain interoperability with USAF and other coalition forces, and provide flexibility options for future growth. The upgrade will enhance the RSAF's ability to use a common architecture for efficiently communicating the gathered electronic data, within the RSAF and with other regional coalition forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The pricipal contractor will be L-3 Communications Integrated Systems Company in Greenville, TX. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will involve up to six U.S. government and four contractor personnel to participate in program reviews at the contractor's facility every six months. There will be approximately six contractors in Saudi Arabia providing technical assistance on a full-time basis until the system is integrated into the operational units.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-20

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Tactical Airborne Surveillance System (TASS) modernization program updates the 1993 Royal Saudi Air Force TASS aircraft mission system and its support elements with current technology equipment and software to resolve supportability problems. The modernized mission system performs the same basic function as the 1993 system, but with the added benefits of greater speed, sensitivity, capacity, accuracy, and level of automation resulting from the use of current technology equipment. None of the technology being provided is considered latest state-of-the-art. Sensitive elements include the secure communications systems, search and location systems, signal processing systems, and databases. Classified elements include U.S. Government-provided secure communications equipment and key material, mission system software, and databases. Detailed system design information and software source code is sensitive, but will not be released to Saudi Arabia. If released, U.S. Government-provided databases will be provided on a one-time government-to-government basis. These elements are classified up to and including Secret to protect vulnerabilities, design parameters, system related data, and similar critical information.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E9–21357 Filed 9–3–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Louisiana Coastal Area (LCA)—Louisiana, Modification of Davis Pond Diversion Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE) intends to prepare a supplemental environmental impact statement (EIS) for the Louisiana Coastal Area (LCA)—Louisiana, Modification of Davis Pond Diversion Project. This modification project will be designed to increase wetland restoration outputs. This supplemental EIS will be tiered off of the programmatic final EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004, and the final EIS for the LCA—Louisiana, Freshwater Diversion to Barataria and Breton Sound Basins Study, September 1984. The record of decision (ROD) for the programmatic final EIS was signed on November 18, 2005 and the ROD for the freshwater diversion final EIS was signed on July 16, 1987.

DATES: A scoping meeting is planned for October 6, 2009, see **SUPPLEMENTARY INFORMATION** section for scoping meeting location.

FOR FURTHER INFORMATION CONTACT: Questions concerning the draft supplemental EIS should be addressed to Michael T. Brown, CEMVN–PM–RP, P.O. Box 60267, New Orleans, LA 70160–0267; telephone: (504) 862–1570; fax: (504) 862–2088; or by email: *michael.t.brown@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Authority.* This supplemental EIS will be tiered off of the programmatic final EIS for the LCA—Louisiana, Ecosystem Restoration Study, November 2004 and the final EIS for the LCA—Louisiana, Freshwater Diversion to

Barataria and Breton Sound Basins Study, September 1984. The Water Resources Development Act of 2007 (WRDA 2007) authorized fifteen projects under the LCA program. The authority includes requirements for comprehensive planning, program governance, implementation, and other program components. The LCA restoration program will facilitate the implementation of critical restoration features and essential science and technology demonstration projects, increase the beneficial use of dredged material and determine the need for modification of selected existing projects to support coastal restoration objectives. The LCA near-term plan includes fifteen elements authorized for implementation contingent upon meeting certain reporting requirements. Specifically, Section 7006 (e)(1)(D) instructs the Secretary of the Army to carry out the following project referred to in the restoration plan: (D) Modification of Davis Pond Diversion at a total cost of $64,200,000. The Congressional language further directs completion of a feasibility report of the Chief of Engineers, and subsequent submission to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

2. *Proposed Action.* The Modification of Davis Pond Diversion Project would increase wetland restoration outputs in the Barataria Basin. The objective of this modification project is to: Maximize the use of the existing diversion structure for the purpose of decreasing wetland loss and increasing habitat quality.

3. *Alternatives.* Restoration measures being considered include changing the structure's operational plan to flow at maximum capacity; to flow at 5,000 cubic feet per second (cfs) on average; and to include pulsing (fully opening the structure's gates during a rise in the Mississippi River to maximize suspended sediment delivery). Other possible alternatives include physical land modifications to divert water to areas that currently do not receive diversion flows; marsh restoration; and measures to increase native vegetation and submerged aquatic vegetation. Alternative plans will be developed through various combinations of restoration measures that best meet the study goals and objectives and is determined to be cost-effective, environmentally acceptable and technically feasible.

4. *Public Involvement.* Public involvement, an essential part of the supplemental EIS process, is integral to assessing the environmental consequences of the proposed action and improving the quality of the environmental decision making. The public includes affected and interested Federal, state, and local agencies, Indian tribes, concerned citizens, stakeholders, and other interested parties. Public participation in the supplemental EIS process will be strongly encouraged, both formally and informally, to enhance the probability of a more technically accurate, economically feasible, and socially and politically acceptable supplemental EIS. Public involvement will include but is not limited to: Information dissemination; identification of problems, needs and opportunities; idea generation; public education; problem solving; providing feedback on proposals; evaluation of alternatives; conflict resolution by consensus; public and scoping notices and meetings; public, stakeholder and advisory groups consultation and meetings; and making the supplemental EIS and supporting information readily available in conveniently located places, such as libraries and on the world wide web.

5. *Scoping.* Scoping, an early and open process for identifying the scope of significant issues related to the proposed action to be addressed in the supplemental EIS, will be used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient supplemental EIS preparation process; (c) define the issues and alternatives that will be examined in detail in the supplemental EIS; and (d) save time in the overall process by helping to ensure that the draft supplemental EIS adequately addresses relevant issues. The public scoping meeting is scheduled for October 6, 2009 at 6:00 p.m. at Cytec's Tom Call Pavilion, 10800 River Road, Waggaman, Louisiana. A Scoping Meeting Notice will also be mailed to all interested parties in September 2009. Additional meetings could be held, depending upon public interest and if it is determined that further public coordination is warranted.

6. *Coordination.* The USACE and the U.S. Fish and Wildlife Service (USFWS) have formally committed to work together to conserve, protect, and restore fish and wildlife resources while ensuring environmental sustainability of our Nation's water resources under the January 22, 2003, Partnership Agreement for Water Resources and Fish and Wildlife. The USFWS will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the USFWS and the National Marine Fisheries Service (NMFS) regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the NMFS regarding essential fish habitat. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the ''Swampbuster'' provisions of the Food Security Act. Coordination will be maintained with the U.S. Environmental Protection Agency concerning compliance with Executive Order 12898, ''Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be consulted concerning potential impacts to Natural and Scenic Streams.

7. *Availability of Draft Supplemental EIS.* The earliest that the draft supplemental EIS will be available for public review would be in spring of 2011. The draft supplemental EIS or a notice of availability will be distributed to affected Federal, state, and local agencies, Indian tribes, and other interested parties.

Dated: August 27, 2009.

Alvin B. Lee,

Colonel, US Army, District Commander.

[FR Doc. E9–21372 Filed 9–3–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Louisiana Coastal Area (LCA)—Louisiana, Stabilize Gulf Shoreline at Point Au Fer Island Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), along with its local sponsor the Louisiana Office of Coastal Protection and Restoration, intends to prepare a supplemental environmental impact statement (SEIS) for the Louisiana Coastal Area (LCA)—Louisiana, Stabilize Gulf Shoreline at Point Au Fer Island restoration project.

This restoration project will examine measures to increase the stability of the Gulf of Mexico shoreline on Point Au Fer Island. This SEIS will be tiered off of the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The Record of Decision for the programmatic EIS was signed on November 18, 2005.

DATES: *See* **SUPPLEMENTARY INFORMATION** section for scoping meeting dates.

FOR FURTHER INFORMATION CONTACT: Questions concerning the draft SEIS should be addressed to Dr. William P. Klein, Jr., CEMVN–PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267; *telephone:* (504) 862–2540; *fax:* (504) 862–1583; or by *e-mail: william.p.klein.jr@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Authority.* This SEIS will tier from the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The Record of Decision for the Programmatic EIS was signed on November 18, 2005. The Water Resources Development Act of 2007 (WRDA 2007) authorized the LCA ecosystem restoration program. The authority includes requirements for comprehensive planning, program governance, implementation, and other program components. The LCA restoration program will facilitate the implementation of critical restoration features and essential science and technology demonstration projects, increase the beneficial use of dredged material and determine the need for modification of selected existing projects to support coastal restoration objectives. The LCA near-term plan includes fifteen elements authorized for implementation contingent upon meeting certain reporting requirements. Specifically, Section 7006(e) of WRDA 2007 authorizes the Secretary of the Army to carry out additional projects referred to in the restoration plan. Section 7006(e)(1) authorizes the following additional projects: Maintain Land Bridge between Caillou Lake and the Gulf of Mexico at a total cost of $56,300,000; Stabilize the Gulf Shoreline at Point Au Fer Island project at a total cost of $43,400,000; the Modification of Caernarvon Diversion project at a total cost of $20,700,000; and the Modification of Davis Pond Diversion Project at a total cost of $64,200,000; if the Secretary of the Army determines such projects are feasible.

2. *Proposed Action.* The LCA Gulf Shoreline Stabilization at Point Au Fer Island restoration project proposes the construction of measures to increase the stability of the gulf shoreline of Point Au Fer Island. The purpose is to prevent direct connections from forming between the Gulf and interior water bodies as the barrier island is eroded. In addition to Gulf shoreline protection, this project would prevent the fresher bay side water circulation patterns from being influenced directly by the Gulf, thus protecting the estuarine habitat, which has higher quality wetland habitats, from conversion to marine habitat.

3. *Public Involvement.* Public involvement, an essential part of the SEIS process, is integral to assessing the environmental consequences of the proposed action and improving the quality of the environmental decision making. The public includes affected and interested Federal, state, and local agencies, Indian tribes, concerned citizens, stakeholders, and other interested parties. Public participation in the SEIS process will be strongly encouraged, both formally and informally, to enhance the probability of a more technically accurate, economically feasible, and socially and politically acceptable SEIS. Public involvement will include but is not limited to: Information dissemination; identification of problems, needs and opportunities; idea generation; public education; problem solving; providing feedback on proposals; evaluation of alternatives; public and scoping notices and meetings; public, stakeholder and advisory groups consultation and meetings; and making the SEIS and supporting information readily available in conveniently located places, such as libraries and on the World Wide Web.

4. *Scoping.* Scoping, an early and open process for identifying the scope of significant issues related to the proposed action to be addressed in the SEIS, will be used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient SEIS preparation process; (c) define the issues and alternatives that will be examined in detail in the SEIS; and (d) save time in the overall process by helping to ensure that the draft SEIS adequately addresses relevant issues. A Scoping Meeting Notice announcing the locations, dates and times for scoping meetings will be mailed to all interested parties in August 2009.

5. *Coordination.* The USACE and the U.S. Fish and Wildlife Service (USFWS) have formally committed to work together to conserve, protect, and restore fish and wildlife resources while ensuring environmental sustainability of our Nation's water resources under the January 22, 2003, Partnership Agreement for Water Resources and Fish and Wildlife. The USFWS will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the USFWS and the National Marine Fisheries Service (NMFS) regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the NMFS regarding essential fish habitat. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the ''Swampbuster'' provisions of the Food Security Act. Coordination will be maintained with the U.S. Environmental Protection Agency concerning compliance with Executive Order 12898, ''Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be consulted concerning potential impacts to Natural and Scenic Streams.

5. *Availability of Draft SEIS.* The earliest that the draft SEIS will be available for public review would be in spring of 2011. The draft SEIS or a notice of availability will be distributed to affected Federal, state, and local agencies, Indian tribes, and other interested parties.

Dated: August 25, 2009.

Alvin B. Lee,

Colonel, US Army, District Commander.

[FR Doc. E9–21370 Filed 9–3–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing for the Draft Supplemental Environmental Impact Statement for Renewal of Authorization To Use Pinecastle Range, Ocala National Forest, FL

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal

Regulations [CFR] Parts 1500–1508), the U.S. Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency a Draft Supplemental Environmental Impact Statement (Draft SEIS) to evaluate potential environmental effects of significant new circumstances and information not available at the time the Final Environmental Impact Statement for Renewal of Authorization to Use Pinecastle Range, Ocala National Forest, Florida, (January 2002) (2002 FEIS) was completed.

The Navy will conduct three public hearings to provide information and receive oral and written comments on the Draft SEIS. Federal, State, and local agencies and interested individuals are invited to be present or represented at the public hearings. Navy representatives will be available to clarify information related to the Draft SEIS. This notice announces the date and location of the public hearings for this Draft SEIS.

DATES AND ADDRESSES: Open information sessions will precede scheduled public hearings and will allow individuals to review data presented in the Draft SEIS. Navy representatives will be available during the information sessions to clarify information related to the Draft SEIS. The open information sessions are scheduled from 6 p.m. to 7:30 p.m., followed by the public hearing from 7:30 p.m. to 9 p.m.

Public hearings will be held on the following dates and at the following locations in Florida:

1. September 22, 2009, at the Umatilla Community Building, 1 South Central Avenue, Umatilla, Florida;
2. September 23, 2009, at the Eustis Community Center, 601 Northshore Drive, Eustis, Florida;
3. September 24, 2009, at the Ocala American Legion Building, 516 NE Sanchez Avenue, Ocala, Florida.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command Southeast (NAVFAC Southeast) P.O. Box 30, Building 903, NAS Jacksonville, Jacksonville, Florida 32212–0030; Attn: SEIS Project Manager; Phone (904) 542–6301; Facsimile (904) 542–6345.

SUPPLEMENTARY INFORMATION: The SEIS supplements the Final Environmental Impact Statement for Renewal of Authorization to Use Pinecastle Range, Ocala National Forest, Florida, dated January 2002. The Record of Decision for the 2002 FEIS was dated March 29, 2002, and published in the **Federal Register** on April 10, 2002, (67 FR 17418). A Notice of Intent to prepare this Draft SEIS was published in the **Federal Register** on June 12, 2008. A public scoping period was conducted prior to the development of the Draft SEIS. During this period, comments were submitted via mail or electronically through the project Web site at *http://www.pinecastleseis.com*.

Pursuant to 40 CFR 1502.9, this Draft SEIS was prepared for the limited purpose of supplementing the 2002 FEIS to analyze new information regarding range safety zones and assess the effectiveness of existing mitigation measures to determine if any additional mitigation measures or a modification to the range Operating Plan were necessary. Following completion of the 2002 FEIS, the Navy adopted a new safety modeling program. This new modeling program, SAFE–RANGE, when applied to current training operations, indicates that range safety zones, are larger than previously modeled. Potential impacts associated with this new information are the focus of the Draft SEIS.

The Draft SEIS analyzes the potential environmental effects resulting from the revised range safety zones and the effectiveness of existing mitigation measures to determine if additional actions or modifications to the range Operating Plan are necessary to maintain public safety and ensure range sustainability. The Draft SEIS also evaluates past, present, and reasonably foreseeable future land use proposals and forestry actions from a cumulative impacts perspective. The Draft SEIS does not propose any changes to targets, method of delivery (air-to-ground), types or volumes of ordnance used at Pinecastle for military training and, therefore, were not re-analyzed in the Draft SEIS.

The Draft SEIS has been distributed to various federal, state, and local agencies, elected officials, and interested parties, and is available for public review at the Umatilla Public Library, 412 Hatfield Drive, Umatilla, Florida, 35784; and the Marion County Public Library, 2720 East Silver Springs Boulevard, Ocala, Florida, 34470. An electronic copy of the Draft SEIS is also available for public viewing at: *http://www.pinecastleseis.com*. Oral statements presented at the public hearing will be recorded by a stenographer; however, to ensure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the Draft SEIS and will be responded to in the Final SEIS. Equal weight will be given to both oral and written statements.

In the interest of available time and to ensure that all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing, or faxed or mailed to: Pinecastle SEIS, c/o Naval Facilities Engineering Command Southeast (NAVFAC Southeast); Attn: SEIS Project Manager; P.O. Box 30, Building 903, NAS Jacksonville, Jacksonville, Florida 32212–0030; Phone (904) 542–6301; Facsimile (904) 542–6345.

All written comments received or postmarked by October 19, 2009, will become part of the official public record and will be responded to in the Final SEIS.

Dated: August 27, 2009.

A.M. Vallandingham,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–21430 Filed 9–3–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Louisiana Coastal Area (LCA)—Louisiana, Maintain Landbridge Between Caillou Lake and the Gulf of Mexico Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), along with its local sponsor the Louisiana Office of Coastal Protection and Restoration, intends to prepare a supplemental environmental impact statement (SEIS) for the Louisiana Coastal Area (LCA)—Louisiana, Maintain Land Bridge between Caillou Lake and the Gulf of Mexico restoration project. This restoration project will examine measures to increase the stability of the land bridge separating Caillou (Sister) Lake from the Gulf of Mexico. This SEIS will tier from the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The Record of Decision for the programmatic EIS was signed on November 18, 2005.

DATES: *See* **SUPPLEMENTARY INFORMATION** section for scoping meeting dates.

FOR FURTHER INFORMATION CONTACT: Questions concerning the draft SEIS should be addressed to Dr. William P. Klein, Jr., CEMVN–PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267; *telephone:* (504) 862–2540; *fax:* (504) 862–1583; or by *e-mail: william.p.klein.jr@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Authority.* This SEIS will tier from the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The Record of Decision for the Programmatic EIS was signed on November 18, 2005. The Water Resources Development Act of 2007 (WRDA 2007) authorized the LCA ecosystem restoration program. The authority includes requirements for comprehensive planning, program governance, implementation, and other program components. The LCA restoration program will facilitate the implementation of critical restoration features and essential science and technology demonstration projects, increase the beneficial use of dredged material and determine the need for modification of selected existing projects to support coastal restoration objectives. The LCA near-term plan includes fifteen elements authorized for implementation contingent upon meeting certain reporting requirements. Specifically, Section 7006(e) of WRDA 2007 authorizes the Secretary of the Army to carry out additional projects referred to in the restoration plan. Section 7006(e)(1) authorizes the following additional projects: Maintain Land Bridge between Caillou Lake and the Gulf of Mexico at a total cost of $56,300,000; Stabilize the Gulf Shoreline at Point Au Fer Island project at a total cost of $43,400,000; the Modification of Caernarvon Diversion project at a total cost of $20,700,000; and the Modification of Davis Pond Diversion Project at a total cost of $64,200,000; if the Secretary of the Army determines such projects are feasible.

2. *Proposed Action.* The LCA Maintain Land Bridge between Caillou (Sister) Lake and the Gulf of Mexico restoration project would propose measures to increase the stability of the land bridge separating Caillou (Sister) Lake from the Gulf of Mexico. The objectives of the restoration project are to stem shoreline retreat and prevent further breaches that have allowed increased water exchange between the gulf and the interior water bodies (Bay Junop and Caillou (Sister) Lake). Prevention of increased marine influence would reduce interior wetland loss as well as preserve the potential for long-range restoration. Closure of newly opened channels would restore historic cross-sections of exchange points, would reduce marine influences in interior areas, and allow increased freshwater influence from Four League Bay to benefit area marshes.

3. *Public Involvement.* Public involvement, an essential part of the SEIS process, is integral to assessing the environmental consequences of the proposed action and improving the quality of the environmental decision making process. The public includes affected and interested Federal, state, and local agencies, Indian tribes, concerned citizens, stakeholders, and other interested parties. Public participation in the SEIS process will be strongly encouraged, both formally and informally, to enhance the probability of a more technically accurate, economically feasible, and socially and politically acceptable SEIS. Public involvement will include but is not limited to: Information dissemination; identification of problems, needs and opportunities; idea generation; public education; problem solving; providing feedback on proposals; evaluation of alternatives; public and scoping notices and meetings; public, stakeholder and advisory groups consultation and meetings; and making the SEIS and supporting information readily available in conveniently located places, such as libraries and on the World Wide Web.

4. *Scoping.* Scoping, an early and open process for identifying the scope of significant issues related to the proposed action to be addressed in the SEIS, will be used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient SEIS preparation process; (c) define the issues and alternatives that will be examined in detail in the SEIS; and (d) save time in the overall process by helping to ensure that the draft SEIS adequately addresses relevant issues. A Scoping Meeting Notice announcing the locations, dates and times for scoping meetings will be mailed to all interested parties in August 2009.

5. *Coordination.* The USACE and the U.S. Fish and Wildlife Service (USFWS) have formally committed to work together to conserve, protect, and restore fish and wildlife resources while ensuring environmental sustainability of our Nation's water resources under the January 22, 2003, Partnership Agreement for Water Resources and Fish and Wildlife. The USFWS will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the USFWS and the National Marine Fisheries Service (NMFS) regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the NMFS regarding essential fish habitat. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the ''Swampbuster'' provisions of the Food Security Act. Coordination will be maintained with the U.S. Environmental Protection Agency concerning compliance with Executive Order 12898, ''Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be consulted concerning potential impacts to Natural and Scenic Streams, and fish and wildlife issues including coordination regarding the Sister Lake Public Oyster Seed Reservation.

5. *Availability of Draft SEIS.* The earliest that the draft SEIS will be available for public review would be in spring of 2011. The draft SEIS or a Notice of Availability will be distributed to affected Federal, state, and local agencies, Indian tribes, and other interested parties.

Dated: August 25, 2009.

Alvin B. Lee,

Colonel, US Army, District Commander.

[FR Doc. E9–21374 Filed 9–3–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board (ASB)

AGENCY: Department of the Army, DOD.

ACTION: Notice; correction.

SUMMARY: The notice of an open meeting scheduled for Sep 15, 2009 published in the **Federal Register** on August 31, 2009 (74 FR 44828) has a revised classification and agenda. The survivability and deployability study of ground platforms session (1230–1330) will be a classified session at the Secret clearance level. A second unclassified session (1345–1430) has been added to adopt recommendations from the ASB

Installation 2025 study. The meeting will now be adjourned at 1445 EDT.

FOR FURTHER INFORMATION CONTACT: Dennis Schmidt, Army Science Board Secretariat, at 703–604–7474

SUPPLEMENTARY INFORMATION: Public attendees desiring to attend the classified session must have a Secret clearance and a need to know the information related to the survivability topic. Please contact Mr. Justin Bringhurst at 703–604–7468 or *justin.bringhurst@us.army.mil* to arrange access to this meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–21369 Filed 9–3–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD) for the Maneuver Center of Excellence (MCOE) Actions at Fort Benning, GA

AGENCY: Department of the Army, DoD.

ACTION: Record of Decision.

SUMMARY: The Department of the Army announces the availability of the ROD that implements MCOE actions at Fort Benning including construction, operation and maintenance of proposed operational facilities, training areas (including ranges and maneuver areas), and infrastructure to accommodate the consolidated Armor and Infantry missions of the MCOE and the increase in military personnel and students due to Army growth.

ADDRESSES: To obtain a copy of the ROD, contact Mr. John Brent, FortBenning Directorate of Public Works, Environmental Management Division, 6650 Meloy Hall, Building 6, Room 308, Fort Benning, GA 31905, or e-mail to: *john.brent@us.army.mil.*

SUPPLEMENTARY INFORMATION: Two action alternatives were identified in the June 2009 MCOE Environmental Impact Statement (EIS) that would fulfill the purpose and need of the MCOE action: Alternative A and Alternative B. The No Action Alternative was also considered but it does not meet the purpose and need of the MCOE actions. The Army has identified Alternative A as its preferred alternative because it best meets the purpose and need of the MCOE actions. Of the two action alternatives, Alternative A is the environmentally preferred alternative.

The Army has decided to proceed with implementing the Preferred Alternative (Alternative A) consistent with the analysis in the MCOE EIS and supporting studies and comments provided during formal comment and review periods. Administrative, maintenance, barracks, commercial services, medical, community, dining, and recreation facilities would be constructed in three of the four cantonment areas: Main Post, Sand Hill, and Harmony Church. Additional construction in the ranges and maneuver areas include small- and large-caliber weapons ranges, heavy maneuver areas and corridors, drivers' training course, and vehicle recovery area to support the training requirements. In addition, MCOE activities will include a substantial long-term increase in training operations and associated land disturbance. Included in this EIS is an increase of 118 military personnel and 2,640 new military students (daily average) resulting from Grow the Army actions.

Special consideration was given to the effect of the preferred alternative on natural, cultural, and human environments. Mitigation measures, as described in the ROD, will be implemented to avoid, minimize, or compensate for the adverse effects identified in the MCOE EIS at Fort Benning for land use, operational noise, biological resources (fish and wildlife), water resources, cultural resources, and soils. Alternative B would also meet the MCOE purpose and need, but it was not selected because it would have substantially greater impacts on the red-cockaded woodpecker (RCW) and other natural and cultural resources. The No Action Alternative would not meet the Army's purpose and need for the MCOE actions. There are no differences between Alternatives A and B in impact to resources such as aesthetics and visual, socioeconomics, transportation, utilities, noise, hazardous and toxic materials and waste, and safety. Alternative A would impact fewer acres of soil and water resources than Alternative B resulting in substantially less impacts on biological resources, water resources, soils, and cultural resources. Impacts on land use and noise would be significant under both alternatives. Both alternatives will have significant impacts on special status species but Alternative B would have much greater impacts to the federally endangered RCW than Alternative A.

The Preferred Alternative includes actions to avoid or reduce adverse effects on federally listed species as identified in the Army's Biological Assessment and the U.S. Fish and Wildlife Service's Jeopardy Biological Opinion (JBO) including the Reasonable and Prudent Alternative, minimization measures, and terms and conditions. Even with these mitigation measures, impacts could still be potentially significant. Among the changes required by the JBO are the relocation of the Scout Leaders Course field training outside of Fort Benning boundaries to a location yet to be identified. This will further reduce impacts to environmental resources. This relocation action will be the subject of further National Environmental Policy Act analysis.

Substantive comments received on the Final ElS during the waiting period are addressed in the ROD.

An electronic version of the ROD is available at *http://www.hqda.army.mil/acsim/brac/nepa_eis_docs.htm.*

Dated: August 28, 2009.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health).

[FR Doc. E9–21300 Filed 9–3–09; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Request

AGENCY: Department of Education.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 2010–2011 award year. The FAFSA is completed by students and their families, and the information submitted on the form is used to determine the students' eligibility and need for financial aid under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA Programs).

The Department is committed to improving the federal student aid application process for individuals completing the Free Application for Federal Student Aid (FAFSA). Because 99 percent of student applicants opt to apply electronically, much of the Department's recent improvements have focused on FAFSA on the Web which maximizes the use of 'skip logic' and previously submitted FAFSA data, to dramatically reduce applicant's burden. For the 2010–2011 cycle FAFSA on the Web and the Pre-filled FAFSA will be further improved by the implementation of significant enhancements facilitated by a Web technology upgrade. The upgraded application will include new features, functionality and a level of user interaction that was not previously

available. The Web site display and navigation will be much more dynamic and personalized.

For the one percent of FAFSA applicants who complete the paper FAFSA, the Department has simplified the application process by grouping like questions together; incorporating previously supplemental worksheets into the application; improving the layout of the form; and clearly delineating between student and parental questions. For those students who prefer to submit a paper FAFSA but do not have access to a pre-printed FAFSA form, the Department has created a FASFA PDF that can be downloaded from the Internet and completed, either on a PC or by hand, and mailed to the Department.

In addition, the Department has created numerous on-line and paper resources to assist students with the FAFSA process. The Web site Student Aid on the Web (*http://www.studentaid.ed.gov*) provides a vast array of student-centric information on researching colleges, finding scholarships, preparing academically, and applying for federal student assistance. The FAFSA4caster Web site (*http://www.fafsa4caster.ed.gov*) enables students to obtain an early estimate of their eligibility for federal student aid while increasing their knowledge of the financial aid process. FAFSA4caster users who opt to provide demographic information about themselves can later 'pre-populate' a FAFSA, thereby shortening the application completion time. Working with customers, stakeholders, partners and Congress, the Department will continue its commitment to further streamline the experience for FAFSA applicants in the future.

DATES: Interested persons are invited to submit comments on or before November 3, 2009.

ADDRESSES: Comments may be submitted electronically through e-mail to *FAFSA.Comments@ed.gov.* 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 4120. When you access the information collection request, 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. In addition, interested persons can access this information clearance request on the Internet:

(1) Go to IFAP at *http://ifap.ed.gov*

(2) Click on ''Processing Resources''

(3) Click on ''FAFSA and SAR Materials''

(4) Click on ''2010–2011''

(5) Click on ''Draft FAFSA Form/Instructions''

Please note that the free Adobe Acrobat Reader software, version 4.0 or greater, is necessary to view this file. This software can be downloaded for free from Adobe's Web site: *http://www.adobe.com.*

FOR FURTHER INFORMATION CONTACT: Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary is publishing this request for comment under the Provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under procedure for obtaining approval from OMB, ED must first obtain public comment of the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register.** In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (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 31, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually.

Affected Public: Individuals or Households; Business or other for-profit; Not-for-profit.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 21,696,675.

Burden Hours: 10,131,696.

Abstract: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, in cooperation with agencies and organizations involved in providing student financial assistance, to produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student for financial assistance under the Title IV, HEA Programs. This form is the FAFSA and applicants can apply either electronically or by paper. In addition, Section 483 authorizes the Secretary to include on the FAFSA non-financial data items that assist States in awarding State student financial assistance.

Requests for copies of the proposed FAFSA information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4120. Written requests for information on the proposed FAFSA 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 directed to the e-mail address *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 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

[FR Doc. E9–21483 Filed 9–3–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Development To Improve Services and Results for Children With Disabilities—Paraprofessional Preservice Program Improvement Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325N.

Dates:

Applications Available: September 4, 2009.

Deadline for Transmittal of Applications: November 3, 2009.

Deadline for Intergovernmental Review: January 4, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) Help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with infants, toddlers, and children with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research and experience, to be successful in serving those children.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (*see* sections 662 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*).

Absolute Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Personnel Development To Improve Services and Results for Children With Disabilities—Paraprofessional Preservice Program Improvement Grants

Background: Paraprofessionals provide important services to children with disabilities ages birth through 21 and their families. In early intervention (EI) programs, preschools, and elementary, middle, and high schools, paraprofessionals provide instructional support, modify instructional materials, implement behavioral management plans, assist in the implementation of postsecondary education transition plans, and collect data to monitor children's development and learning (Kellegrew, Pacifico-Banta, & Stewart, 2008; Mikulecky & Baber, 2005; Shkodriani, 2003). Kellegrew, Pacifico-Banta, and Stewart (2008) and Shkodriani (2003) note that paraprofessionals have become increasingly responsible for other activities involving children with disabilities, such as participating in the development of their Individualized Family Service Plans and Individualized Education Programs; providing direct services to children and their families, including small group instruction and one-on-one tutoring; and assisting with classroom management. Despite the critical roles that paraprofessionals play in the lives of children with disabilities, scant attention has been paid to ensure that early childhood or K through 12 paraprofessional preservice programs adequately prepare paraprofessionals to serve this population.

In a survey of coordinators for the Part C infants and toddlers program under IDEA, half of the respondents indicated that their State had added or created new professional categories, particularly at the paraprofessional level (Center to Inform Personnel Preparation Policy and Practice in Early Intervention and Preschool Education, 2004a). Many States are trying to identify training opportunities for paraprofessionals in EI or work on strategies to increase the quality of preservice programs (Kellegrew *et al.,* 2008). Coordinators for the Part B section 619 preschool program under IDEA also expressed concern about the adequacy of training of paraprofessionals, particularly to work with young children with disabilities and their families (Center to Inform Personnel Preparation Policy and Practice in Early Intervention and Preschool Education, 2004b). Although national professional organizations (*e.g.,* The Division for Early Childhood of the Council for Exceptional Children and the National Association for the Education of Young Children) have personnel standards that could be used to guide the training of paraprofessionals working with young children with disabilities and their families, many of the certificate or associate degree programs that train paraprofessionals have yet to reach these standards or offer practicum experience in working with children with disabilities and their families (Chang, Early, & Winton, 2005).

Section 635(a)(9) of Part C of IDEA and section 612(a)(14)(B) of Part B of IDEA and 34 CFR 300.156(b)(1) of the IDEA Part B regulations require States to provide assurances that they have established paraprofessional qualifications that are consistent with State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing early intervention, special education, or related services. Westat (2002) reported that the average paraprofessional works in five different classes per week and serves 21 students, 15 of whom have disabilities; consequently, it is important that paraprofessionals are trained to meet standards that will prepare them to provide effective services to all students. According to Giangreco (2003), paraprofessionals in elementary and secondary special education settings are under-trained or untrained to work with students with disabilities. Improving paraprofessional preservice programs will help ensure that paraprofessionals are adequately trained to meet the requirements under IDEA and thus, better prepared to meet the needs of children with disabilities.

The Office of Special Education Programs (OSEP) is establishing this priority to improve preservice programs for paraprofessionals who serve children ages birth through five and in grades K through 12 by enhancing or redesigning curricula to adequately train these paraprofessionals to address the needs of children with disabilities.

Priority: The purpose of this priority is to provide Federal support to improve the quality of existing paraprofessional certificate or associate degree programs. Institutions receiving support under this priority must enhance or redesign the program curricula so that paraprofessionals are well-prepared to work with children with disabilities and their families. There are two focus areas under this priority. Under focus area A, the Secretary intends to support improvement grants for EI, early childhood special education (ECSE), and early childhood education (ECE) paraprofessional preservice programs. Under focus area B, the Secretary intends to support improvement grants for K through 12 paraprofessional preservice programs.

Note: Applicants must identify the specific focus area, A or B, under which they are applying as part of the competition title on the application cover sheet (SF form 424, line 4). Applicants may not submit the same proposal under more than one focus area.

Focus Area A: EI, ECSE, and ECE Paraprofessional Preservice Programs

The programs under focus area A include certificate or associate degree programs at institutions of higher education (IHEs), including community colleges, that train EI, ECSE, or ECE paraprofessionals to serve children ages birth through five. These programs under this focus area must enhance or redesign their curricula by: (1) Incorporating evidence-based and competency-based practices and content in special education into each course; and (2) providing at least one practicum experience in a program that serves children with disabilities ages birth through five and their families. Paraprofessional students must obtain the knowledge, training, and skills necessary to work effectively with licensed or certified practitioners to provide appropriate services to children with disabilities and their families. In addition, the programs under this focus area must ensure that program graduates

meet the qualifications for paraprofessionals that are consistent with the State standards in accordance with section 635(a)(9) of IDEA or section 612(a)(14)(B) of IDEA and 34 CFR 300.156(b) of the IDEA Part B regulations, as appropriate, or in States that do not have State standards, meet appropriate national professional organization standards for paraprofessionals.

Focus Area B: K Through 12 Paraprofessional Preservice Programs

The programs under focus area B include certificate or associate degree programs at IHEs, including community colleges, that train paraprofessionals to serve students in grades K through 12. The programs under this focus area must enhance or redesign the curricula by: (1) Incorporating evidence-based and competency-based practices and content in special education into each course; and (2) providing at least one practicum experience in a setting that serves children with disabilities in grades K through 12 and their families. Paraprofessional students must obtain the knowledge, training, and skills necessary to work effectively with licensed or certified K through 12 practitioners to provide appropriate services to children with disabilities and their families. In addition, the programs under this focus area must ensure that program graduates meet the qualifications for paraprofessionals that are consistent with the State standards in accordance with section 612(a)(14)(B) of IDEA and 34 CFR 300.156(b) of the IDEA Part B regulations or in States that do not have State standards, meet the paraprofessional standards in accordance with section 1119 of the Elementary and Secondary Education Act of 1965, as amended.

To be considered for funding under the Paraprofessional Preservice Program Improvement Grants absolute priority, focus area A or B, applicants must meet the application requirements contained in this priority. All projects funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Note: The two focus areas under this priority only support the improvement of *existing* EI, ECSE, and ECE or K through 12 paraprofessional preservice programs. This priority does not support the development of new paraprofessional preservice programs, nor does it provide for financial support of paraprofessional students during any year of the project. Projects training paraprofessionals in other related services, speech/language or adapted physical education are not eligible under these focus areas.

Application Requirements for Focus Areas A and B

An applicant must include in its application—

(a) A plan to implement the activities described in the *Project Activities* section of this priority. In this plan, applicants must describe first-year activities, include a three-year timeline and implementation plan, and indicate the projected number of graduates;

(b) A budget that includes attendance at a three-day Project Directors' Conference in Washington, DC, during each year of the project period; and

(c) An appendix that includes all course syllabi for the existing paraprofessional preservice program.

Project Activities for Focus Areas A and B

To meet the requirements of this priority, the project, at a minimum, must conduct the following activities:

(a) Based on the plan described under paragraph (a) of the *Application Requirements,* enhance or redesign the paraprofessional preservice program's curricula by incorporating evidence-based and competency-based practices and content in special education into each course and by providing at least one practicum experience in a setting that serves children with disabilities and their families. This work must be done in the first year of the project; must describe the proposed project activities associated with implementation of the curricula; and may be implemented with the approval of the OSEP Project Officer. The improved paraprofessional preservice program must—

(1) Be aligned to State standards for paraprofessionals, or in States that do not have State standards, meet appropriate national professional organization standards for paraprofessionals; and

(2) Be designed to ensure that paraprofessional students receive training, and develop knowledge and skills, in the following areas:

(i) Collaborating and working effectively with licensed and certified professional practitioners, as appropriate.

(ii) Implementing social-emotional and behavioral interventions and classroom management practices.

(iii) Implementing instructional strategies to support early development and learning or academic achievement.

(iv) Using technology to enhance children's development and access to natural learning opportunities or participation in the general education curriculum.

(v) Observing and collecting data for progress monitoring.

(vi) Communicating effectively with children and families.

(vii) Assisting in the implementation of transition plans and services across settings from EI to preschool, preschool to elementary school, elementary school to secondary school, and secondary school to postsecondary education (post school) or the workforce, as appropriate.

(viii) Working with children and families from diverse cultural and linguistic backgrounds, including limited English proficient children with disabilities.

Note: In alignment with the principle outlined in the American Recovery and Reinvestment Act of 2009 to make improvements in teacher effectiveness and in the equitable distribution of qualified personnel for all children, particularly children who are most in need, OSEP encourages programs to provide practicum experiences in high-poverty and rural settings.

(b) Develop and implement a plan to ensure that program faculty have the necessary support, knowledge, and skills to implement the new content and to train paraprofessional students to work with children with disabilities.

(c) Develop and implement a management plan for instituting the improved paraprofessional preservice program developed in the first year.

(d) Demonstrate how the improved program will work with other projects funded by OSEP and the Department of Education to incorporate existing training resources on evidence-based practices (*e.g.,* the IRIS Center for Faculty Enhancements: *http://iris.peabody.vanderbilt.edu* and CONNECT: The Center to Mobilize Early Childhood Knowledge: *http://community.fpg.unc.edu/connect*).

(e) Submit the revised curriculum and syllabi for courses that are included in the improved program to the OSEP Project Officer at the end of the first year of the project period and make any necessary revisions required by the OSEP Project Officer.

(f) Communicate and collaborate with the OSEP Project Officer to determine how the project will evaluate the project's goals and objectives, including the implementation of revised coursework, and how the project will report the impact to OSEP in annual performance reports and final performance reports.

(g) Implement a plan to maintain the improved program once Federal funding ends.

(h) If the project maintains a Web site, include relevant information about the revised program and documents in a

form that meets government or industry-recognized standards for accessibility.

(i) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations or e-mail communication and participate in monthly grantee community of practice teleconferences, as directed by OSEP.

References:

Center to Inform Personnel Preparation Policy and Practice in Early Intervention and Preschool Education. (2004a). *Study I data report: The national landscape of early intervention in personnel preparation standards under Part C of the Individuals with Disabilities Education Act.* Farmington, CT: University of Connecticut Health Center. Available at: *http://www.uconnucedd.org/per_prep_center/publications.html.*

Center to Inform Personnel Preparation Policy and Practice in Early Intervention and Preschool Education. (2004b). *Study I data report: The national landscape of early childhood special education in personnel preparation standards under 619 of the Individuals with Disabilities Education Act.* Farmington, CT: University of Connecticut Health Center. Available at: *http://www.uconnucedd.org/per_prep_center/publications.html.*

Chang, F., Early., D., & Winton, P. (2005). Early childhood teacher preparation in special education at 2- and 4- year institutions of higher education. *Journal of Early Intervention, 27*(2), 110–124.

Giangreco, M. (2003). Working with paraprofessionals. *Educational Leadership, 61*(2), 50–53. Retrieved April 9, 2008 from *http://www.monarchcenter.org/pdfs/workwithparas_2003.pdf.*

Kellegrew, D.H., Pacifico-Banta, J., & Stewart, K. (2008). *Training early intervention assistants in California's community colleges.* (Issues & Answers Report, REL 2008–No. 060). Washington, DC: U.S. Department of Education, Institute of Educational Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory West. Available at: *http://ies.ed.gov/ncee/edlabs/projects/project.asp?ProjectID=165.*

Mikulecky, M.T. & Baber, A. (2005). ECS policy brief: from highly qualified to highly competent paraprofessionals: How NCLB requirements can catalyze effective program and policy development guidelines from the ECS paraprofessional expert. Retrieved January 22, 2008, from *http://www.ecs.org/html/IssueSection.asp?issueid=195&subissueid=112&ssID=0&s=Selected+Research+%26+Readings.*

Shkodriani, G. (2003). *Training for paraprofessionals: The community college role.* Retrieved January 22, 2008, from *http://hems.aed.org/docs/Paraprofessionals.pdf.*

Westat. (2002) *Study of personnel needs in special education.* Retrieved January 23, 2008 from *http://ferdig.coe.ufl.edu/spense/KeyFindings.doc.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Available Funds: The Administration has requested $88,152,592 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2010, of which we intend to use an estimated $1,500,000 for the competition announced in this notice. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2011 from this competition.

Estimated Range of Awards: $145,000–150,000.

Estimated Average Size of Awards: $150,000.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs (as defined in section 101 of the Higher Education Act of 1965).

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (*see* section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.325N.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: September 4, 2009.

Deadline for Transmittal of Applications: November 3, 2009.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: January 4, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• Your participation in e-Application is voluntary.

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is

available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325N), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325N), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Personnel Development to Improve Services and Results for Children with Disabilities program. These measures include: (1) The percentage of projects that incorporate scientifically based or evidence-based practices; (2) the percentage of scholars who exit training programs prior to completion due to poor academic performance; (3) the percentage of degree or certification recipients who are working in the area(s) for which they were trained upon program completion; (4) the percentage of degree or certification recipients who are working in the area(s) for which they were trained upon program completion and are fully qualified under IDEA; (5) the percentage of scholars completing IDEA-funded training programs who are knowledgeable and skilled in scientifically based or evidence-based practices for children with disabilities; and (6) the percentage of program graduates who maintain employment for three or more years in the area(s) for which they were trained.

Grantees may be asked to participate in assessing and providing information on these aspects of program quality.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Shedeh Hajghassemali, U.S. Department

of Education, 400 Maryland Avenue, SW., room 4091, Potomac Center Plaza (PCP), Washington, DC 20202–2550. Telephone: (202) 245–7506.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to this Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: August 31, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–21436 Filed 9–3–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of Correspondence from October 1, 2008 through December 31, 2008.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act (IDEA). Under section 607(f) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of the IDEA or the regulations that implement the IDEA.

FOR FURTHER INFORMATION CONTACT: Laura Duos or Mary Louise Dirrigl. Telephone: (202) 245–7468.

If you use a telecommunications device for the deaf (TDD), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this notice in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

The following list identifies correspondence from the Department issued from October 1, 2008 through December 31, 2008. Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by each letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Part A—General Provisions

Section 602—Definitions

Topic Addressed: Highly Qualified

○ Letter dated December 15, 2008 to National Association of Private Special Education Centers Executive Director and CEO Sherry Kolbe, concerning requirements for highly qualified special education teachers and assessments of children with disabilities.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; State-Level Activities; Authorization of Appropriations

Topic Addressed: State-Level Activities

○ Letter dated December 11, 2008 to Louisiana State Department of Education Acting Director of Division of Educational Improvement and Assistance Susan W. Batson, concerning the use of funds reserved for State-level activities for professional development to implement Louisiana's Positive Behavior Supports Initiative.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Use of Funds

○ Letter dated October 31, 2008 to Fiscal and Policy Advisor for Rural and Sparsely Populated Consortium of California James Kennedy, concerning the excess cost and supplement-not-supplant requirements in Part B of the IDEA that apply to local educational agencies (LEAs).

Topic Addressed: Early Intervening Services

○ Office of Special Education Programs (OSEP) Memorandum 08–09, dated July 28, 2008 to Chief State School Officers, entitled Coordinated Early Intervening Services Under Part B of the Individuals with Disabilities Education Act.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Parental Consent

○ Letter dated November 17, 2008 to Harrisburg, Pennsylvania attorney Jeffrey F. Champagne, clarifying the parental consent requirements in Part B of the IDEA that apply when children with disabilities receive special education and related services in preschool from an intermediate educational unit and subsequently receive special education and related services in kindergarten from a school district.

Section 615—Procedural Safeguards

Topic Addressed: Due Process Complaints

○ Letter dated October 30, 2008 to Maryland Assistant State Superintendent for the Division of Special Education/Early Intervention Services Carol Ann Baglin, clarifying that an LEA may not require a confidentiality agreement as a

precondition to holding a resolution meeting.

○ Letter dated December 11, 2008 to individuals (personally identifiable information redacted), clarifying when a parent or an LEA may file a due process complaint regarding an individualized education program (IEP) that is not the child's most recent IEP.

Topic Addressed: Independent Educational Evaluations

○ Letter dated December 11, 2008 to Lehigh University Professor Perry A. Zirkel, clarifying when a parent of a child suspected of having a specific learning disability has the right to an independent educational evaluation at public expense under Part B of the IDEA.

Section 616—Monitoring, Technical Assistance, and Enforcement

Topic Addressed: Correction Of Noncompliance

○ OSEP Memorandum 09–02 dated October 17, 2008 to Chief State School Officers, entitled Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act.

○ Letter dated October 31, 2008 to Mountain Plains Regional Resource Center Director John Copenhaver, clarifying the Department's authority to require States to ensure that their LEAs correct all identified noncompliance with the requirements of the IDEA.

Section 618—Program Information

Topic Addressed: Significant Disproportionality

○ Letter dated November 4, 2008 to Montana Office of Public Instruction Department of Special Education Services Assistant Superintendent Robert Runkel, concerning methods for the collection and examination of data in making determinations of significant disproportionality under Part B of the IDEA.

Part D—National Activities To Improve Education of Children With Disabilities

Section 674—Technology Development, Demonstration, and Utilization; Media Services; and Instructional Materials

Topic Addressed: National Instructional Materials Access Center

○ Letter dated November 14, 2008 to American Printing House for the Blind, Inc. President Dr. Tuck Tinsley, concerning the National Instructional Materials Access Center's (NIMAC) eligibility requirements for authorized users of NIMAC's database.

Other Letters That Do Not Interpret the Idea But May Be of Interest to Readers

Topic Addressed: Report Cards and Transcripts

○ Dear Colleague Letter dated October 17, 2008 from former Assistant Secretary of the Department's Office for Civil Rights Stephanie J. Monroe, concerning whether information about students' disabilities and receipt of special education and related services may be disclosed on report cards and transcripts.

Topic Addressed: Family Educational Rights and Privacy Act

○ Dear Colleague letter dated December 17, 2008 from former Deputy Secretary Raymond Simon, providing a brief summary of the final regulations for the Family Educational Rights and Privacy Act that were published in the **Federal Register** on December 9, 2008 (73 FR 74806).

Electronic Access to This Document

You can view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for Special Education and Rehabilitative Services to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: August 31, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–21437 Filed 9–3–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of Correspondence from January 1, 2009 through March 31, 2009.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act (IDEA). Under section 607(f) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of the IDEA or the regulations that implement the IDEA.

FOR FURTHER INFORMATION CONTACT: Laura Duos or Mary Louise Dirrigl. Telephone: (202) 245–7468.

If you use a telecommunications device for the deaf (TDD), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this notice in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from January 1, 2009 through March 31, 2009. Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by each letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: State-Level Activities

○ Letter dated January 15, 2009 to Ohio Department of Education Chief Counsel Matthew J. DeTemple,

regarding whether funds reserved for State-level activities under Part B of the IDEA can be used in conjunction with other State and Federal funds to provide technical assistance to schools and local educational agencies (LEAs) identified for correction or improvement under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

Topic Addressed: Subgrants to Local Educational Agencies

○ Letter dated February 13, 2009 to District of Columbia Attorney Leigh M. Manasevit, regarding how population and poverty payments are calculated for a State School for the Blind and a State Department of Juvenile Services that have established their eligibility under Part B of the IDEA.

○ Letter dated February 4, 2009 to Minnesota Department of Education Supervisor of the Division of Program Finance Carol Hokenson, clarifying how the requirements for State educational agencies to allocate funds under Part B of the IDEA to eligible LEAs apply to cooperatives and member districts in Minnesota.

Section 612—State Eligibility

Topic Addressed: Children in Private Schools

○ Letter dated March 26, 2009 to Missouri Attorney Teri B. Goldman, clarifying the requirements in Part B of the IDEA that apply when a parent re-enrolls their parentally-placed private school or home-schooled child with a disability in a public school.

○ Letter dated January 28, 2009 to Maryland Attorney Michael J. Eig, clarifying that the LEA of the parent's residence, not the LEA where the private school the child attends is located, is responsible for conducting an evaluation for purposes of making a free appropriate public education available to a child who did not previously receive special education services from the LEA of residence and is parentally-placed in a private school located in another LEA.

Topic Addressed: Least Restrictive Environment

○ Letter dated March 30, 2009 to individual (personally identifiable information redacted), concerning the requirements for a continuum of alternative placements and clarifying that the least restrictive environment requirements in Part B of the IDEA are applicable to children with disabilities who attend public charter schools.

Section 615—Procedural Safeguards

Topic Addressed: Impartial Due Process Hearings

○ Letter dated January 15, 2009 to Massachusetts Commissioner of Education Mitchell D. Chester, concerning the requirements in Part B of the IDEA for impartial due process hearing officers and mediators.

Part C—Infants and Toddlers With Disabilities

Section 641—State Interagency Coordinating Council

Topic Addressed: Composition

○ Letter dated January 28, 2009 to Rhode Island State Interagency Coordinating Council (SICC) Chairperson Dawn Wardyga, concerning parent membership on the SICC.

Electronic Access to This Document

You can view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for Special Education and Rehabilitative Services to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: August 31, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–21434 Filed 9–3–09; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8597–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Draft EISs

EIS No. 20090221, ERP No. D–AFS–F65076–WI, Northwest Sands Restoration Project, Restoring the Pine Barren Ecosystem, Implementation, Washburn District Ranger, Chequamegon-Nicolet National Forest, Bayfield County, WI.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20090222, ERP No. D–AFS–G65109–NM, Rinconada Communication Site, Designation of Site to Serve Present and Future High Power Communication Needs and to Permit the Development of a Radio Transmission Facility within Site, Mt. Taylor Ranger District, Cibola National Forest, Cibola County, NM.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20090226, ERP No. D–FHW–K40272–CA, 6th Street Viaduct Seismic Improvement Project, Retrofitting or Demolition and Replacement of the Existing Viaduct over the Los Angeles river between Mateo and Mill Streets, Los Angeles County, CA.

Summary: EPA expressed environmental concerns about impacts to aquatic resources, air quality/construction mitigation, and environmental justice issues. EPA also requested additional cumulative impacts analysis. Rating EC2.

Final EISs

EIS No. 20090251, ERP No. F–NPS–C61012–NY, Fort Stanwix National Monument General Management Plan, Implementation, Funding, City of Rome, Oneida County, NY.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20090263, ERP No. F–NSF–K99036–HI, Advanced Technology Solar Telescope Project, Issuing Special Use Permit to Operate Commercial Vehicles on Haeakala National Park Road during the Construction of Site at the University of Hawai'i Institute for Astronomy, Haleakala High Altitude Observatory (HO) Site, Island of Maui, HI.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20090264, ERP No. F–FHW–F40447–OH, Cleveland Innerbelt Project, Proposing Major Rehabilitation and Reconstruction between I–71 and I–90, Cleveland Central Business District, Funding, City of Cleveland, Cuyahoga County, OH.

Summary: EPA continues to have environmental concerns about stormwater impacts and requested the pretreatment of all stormwater.

Dated: September 1, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–21386 Filed 9–3–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8596–9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed 08/24/2009 through 08/28/2009. Pursuant to 40 CFR 1506.9.

EIS No. 20090301, Final Supplement, NRS, WV, Lost River Subwatershed of the Potomac River Watershed Project, Construction of Site 16 on Lower Cove Run and Deletion of Site 23 on Cullers Run in the Lost River Watershed, Change in Purpose for Site 16 and Updates Information Relative to Site 23, U.S. Army COE Section 404 Permit, Hardy County, WV, Wait Period Ends: 10/05/2009, *Contact:* Kevin Wickey 304–284–7540.

EIS No. 20090302, Draft EIS, FHW, UT, Tooele County Midvalley Highway Project, To Address Traffic Congestion on UT–36 and at the I–80/Lake Point interchange through the Year 2030, Funding, Tooele County, UT, Comment Period Ends: 10/19/2009, *Contact:* Edward Woolford 801–963– 0182.

EIS No. 20090303, Draft EIS, AFS, OR, Upper Beaver Creek Vegetation Management Project, Proposes to Implement Multiple Resource Management Actions, Pauline Ranger District, Ochoco National Forest, Crook County, OR, Comment Period Ends: 10/19/2009, *Contact:* Slater Turner 541–477–6900

EIS No. 20090304, Final EIS, AFS, CA, Inyo National Forest Motorized Travel Management Project, Implementation, Inyo, Mineral, Mono and Esmeralda Counties, CA, Wait Period Ends: 10/05/2009, *Contact:* Susan Joyce 760–873–2516.

EIS No. 20090305, Final EIS, NOA, CA, ADOPTION—PROGRAMMATIC—South Bay Salt Pond Restoration Project, Restored Tidal Marsh, Managed Ponds, Flood Control Measures and Public Access Features, Don Edward San Francisco Bay National Wildlife Refuge, Alameda, Santa Clara and San Mateo Counties, CA, Wait Period Ends: 10/05/2009, *Contact:* Patricia A. Montanio 301–713–2325.

The U.S. Department of Commerce, National Oceanic and Atmospheric Administration's has adopted the U.S. Department of Interior's, Fish and Wildlife Service's FEIS #20070539 filed 12/17/2007. Fish and Wildlife Service was not a Cooperating Agency on the above FEIS. Under Section 1506.3(b) of the CEQ Regulations, the FEIS must be recirculated for a 30-day Wait Period.

EIS No. 20090306, Final EIS, NOA, CA, ADOPTION—PROGRAMMATIC—San Francisco Estuary Invasive Spartina Project, Spartina Control Program, Preservation and Restoration of Ecological Integrity for the Estuary's Intertidal Habitats, Alameda, Contra Costa, Marin, Napa, San Francisco, Santa Mateo Counties, CA, Wait Period Ends: 10/05/2009, *Contact:* Patricia A. Montanio 301–713–2325.

The U.S. Department of Commerce, National Oceanic and Atmospheric Administration's has adopted the U.S. Department of Interior's, Fish and Wildlife Service's FEIS #200400013 filed 01/12/2004. Fish and Wildlife Service was not a Cooperating Agency on the above FEIS. Under Section 1506.3(b) of the CEQ Regulations, the FEIS must be recirculated for a 30-day Wait Period.

EIS No. 20090307, Draft EIS, UCG, 00, PROGRAMMATIC—Ballast Water Discharge Standard Project, To Implement a Ballast Water Discharge Standard to Prevent or Reduce the Number of Non-indigenous Species introduced into the United States Waters, Comment Period Ends: 10/19/2009, *Contact:* Gregory B. Kirkbride 202–372–1479.

EIS No. 20090308, Draft Supplement, USN, FL, Renewal of Authorization to Use Pinecastle Range, New Information that was not Available in the 2002 FEIS, Continued Use of the Range for a 20 Year Period, Special Use Permit Issuance, Ocala National Forest, Marion and Lake Counties, FL, Comment Period Ends: 10/19/2009, *Contact:* Tom Currin 904–542–6301.

EIS No. 20090309, Final EIS, FHW, MO, Interstate 70 East Corridor Improvements, Kansas City to St. Louis, Evaluates if a Truck-Only Lane Strategy is Viable, Kansas City to St. Louis, MO, Wait Period Ends: 10/05/2009, *Contact:* David Beckhouse 720–963–3306.

Amended Notices

EIS No. 20090223, Draft EIS, AFS, NV, Jarbridge Ranger District Rangeland Management Project, Proposed Reauthorizing Grazing on 21 Existing Grazing Allotments, Humboldt Toiyabe National Forest, Elko County, NV, Comment Period Ends: 09/08/2009, *Contact:* Vern Keller 775–355–5356 Revision to FR Notice Published 07/10/2009: Extending Comment Period from 08/24/2009 to 09/08/2009.

EIS No. 20090265, Draft EIS, AFS, ID, Clearwater National Forest Travel Planning Project, Proposes to Manage Motorized and Mechanized Travel within the 1,827.380–Acre, Clearwater National Forest, Idaho, Clearwater, Latah and Shoshone Counties, ID, Comment Period Ends: 10/02/2009, *Contact:* Doug Gober 208–476–4541. Revision to FR Notice Published 08/07/2009: Extending Comment Period from 09/21/2009 to 10/02/2009

EIS No. 20090285, Draft EIS, NPS, CA, Warner Valley Comprehensive Site Plan, Addressing Natural and Cultural Resource Conflicts, Parking and Circulation Improvements in Warner Valley, Implementation, Lassen Volcanic National Park, Plumas County, CA, Comment Period Ends: 11/20/2009, *Contact:* Louise Johnson 530–595–4444 ext. 5170. Revision to FR Notice Published 08/21/2009: Correction to Comment Period from 11/21/2009 to 11/20/2009.

Dated: September 1, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–21387 Filed 9–3–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0317; FRL–8435–5]

Malathion Registration Review Docket; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of June 24, 2009, concerning the availability of multiple registration review dockets for public comment, including malathion. This document reopens the comment period for the malathion registration review docket, which closed on August 24, 2009, until October 5, 2009.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0317, must be received on or before October 5, 2009.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of June 24, 2009.

FOR FURTHER INFORMATION CONTACT: Eric Miederhoff, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8028; e-mail address: *miederhoff.eric@epa.gov*.

SUPPLEMENTARY INFORMATION: This document reopens the public comment period established in the **Federal Register** of June 24, 2009 (74 FR 30077) (FRL–8422–4). In that document, the Agency announced the availability of multiple registration review dockets for public comment, including malathion. EPA is hereby reopening the comment period for the malathion registration review docket for 30 days.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the June 24, 2009 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 28, 2009.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–21394 Filed 9–3–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0652; FRL–8949–5]

Board of Scientific Counselors, Executive Committee Meeting—September 2009

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Executive Committee.

DATES: The meeting will be held on Tuesday, September 15, 2009, from 8 a.m. to 5 p.m. All times noted are Eastern Daylight Time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to one business day before the meeting.

ADDRESSES: The meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0652, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2009–0652.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2009–0652.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Executive Committee Meeting—September 2009 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2009–0652.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2009–0652.

Note: This is not a mailing address. 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–ORD–2009–0652. 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 information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Executive Committee Meeting—September 2009 Docket, EPA/DC, EPA West, Room B102, 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 ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–3408; via fax at: (202) 565–2911; or via e-mail at: *kowalski.lorelei@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: Executive Committee review of the BOSC Clean Air Subcommittee draft report; update on BOSC program review subcommittees (Drinking Water); update on the BOSC standing subcommittees (National Center for Environmental Research, National Exposure Research Lab, and National Center for Computational Toxicology); an ORD briefing on revisions to the program review process; a briefing from the BOSC Decision Analysis Workgroup and discussion of draft workgroup product; an ORD update; an update on EPA's Science Advisory Board activities; and future issues and plans. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski (202) 564–3408 or *kowalski.lorelei@epa.gov*. To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Notice of this meeting was originally submitted in a timely manner and would have been published more than 15 days prior to the meeting date. However, due to an unexpected error, the notice had to be re-submitted for publication. Notice of this meeting is also provided on the BOSC Web site at *http://www.epa.gov/osp/bosc.*

Dated: September 2, 2009.

Fred Hauchman,

Director, Office of Science Policy.

[FR Doc. E9–21517 Filed 9–2–09; 4:15 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0045; FRL–8434–4]

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 October 5, 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 a typical 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 Tolerances

1. *PP 8E7495.* (EPA–HQ–OPP–2009–0552). Syngenta Crop Protection, P. O. Box 18300, Greensboro, NC 27409, proposes to establish an import tolerance in 40 CFR part 180 for residues of the fungicide fludioxonil, 4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, in or on canola, seed at 0.01 parts per million (ppm). Syngenta has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG-597B) has passed an Agency petition method validation for several commodities, and is currently the enforcement method for fludioxonil. This method has also been forwarded to the Food and Drug Administration (FDA) for inclusion into the Pesticide Analytical Manual, Volume II (PAM II). An extensive database of method validation data using this method on various crop commodities is available. Contact: Lisa Jones, (703) 308–9424; *jones.lisa@epa.gov*.

2. *PP 8E7502.* (EPA–HQ–OPP–2009–0551). Syngenta Crop Protection, P. O. Box 18300, Greensboro, NC 27409, proposes to establish an import tolerance in 40 CFR part 180 for residues of the fungicide cyprodinil, 2-Pyrimidinamine, 4-cyclopropyl-6-methyl-*N*-phenyl-, in or on canola, seed at 0.03 ppm. Syngenta Crop Protection has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG-631B) has passed an Agency petition method validation for several commodities and is currently the enforcement method for cyprodinil. An extensive database of method validation data using this method on various crop commodities is available. Contact: Lisa Jones, (703) 308–9424; *jones.lisa@epa.gov*.

3. *PP 9E7542.* (EPA–HQ–OPP–2009–0553). Nichino America, Inc., 4550 New Linden Hill Rd., Suite 501, Wilmington, DE 19808, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide flutolanil, (*N*-(3-(1-methylethoxy) phenyl) -2-(trifluoromethyl) benzamide) and its metabolite, M-4, desisopropylflutolanil (*N*-(3-hydroxyphenyl)-2-(trifluromethyl) benzamide), expressed as 2-trifluoromethyl benzoic acid and calculated as flutolanil, in or on cotton, seed and soybean, seed at 0.05 ppm. A previously submitted analytical method designated AU-95R-04, a gas chromatography, mass spectrometry detection method has been

independently validated and is adequate for enforcement purposes for flutolanil residue detection in soybean and wheat raw agricultural commodities. A multi-residue method for flutolanil has been previously submitted. The method is for use only by experienced chemists who have demonstrated knowledge of the principals of trace organic analysis and have proven skills and abilities to run a complex residue analytical method obtaining accurate results at the part per billion level. Users of this method are expected to perform additional method validation prior to using the method for either monitoring or enforcement. The method can detect gross misuse. Contact: Lisa Jones, (703) 308–9424; *jones.lisa@epa.gov*.

4. *PP 9E7566*. (EPA–HQ–OPP–2009–0623). Gowan Company, 370 South Main Street, Yuma, AZ 85364, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide fenarimol, and its metabolites in or on cucurbits at 0.2 ppm. Analytical methodology used for cucurbit crops is a slight modification of the basic Pesticide Analytical Manual (PAM II) method for fenarimol (Method R039). Residues are extracted with methanol. Aqueous sodium chloride 5% is added and the extract is partitioned with dichloromethane. Residues are cleaned up on a Florisil column and detected by gas chromatography/electron capture detector (GC/ECD). Recoveries ranged from 84 – 97% in samples fortified with fenarimol at 0.02 ppm to 0.2 ppm. The limit of detection (LOD) is 0.01 ppm. Contact: Tamue L. Gibson, (703) 305–9095; *gibson.tamue@epa.gov*.

5. *PP 8F7468*. (EPA–HQ–OPP–2009–0622). Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide pyrimethanil, (4,6-dimethyl-*N*-phenyl-2-pyrimidinamine) in or on caneberries, subgroup 13–07A at 12 ppm and bushberries, subgroup 13–07B at 6 ppm. Pyrimethanil was extracted from apples by homogenization with acetone. An aliquot of the extract was diluted with a mixture of acetonitrile and water with subsequent residue determination by high performance liquid chromatography-mass spectrometry/mass spectrometry (HPLC-MS/MS). The method allows the detection and measurement of residues in or on agricultural commodities at or above the proposed tolerance level. Contact: Tamue L. Gibson, (703) 305–9095; *gibson.tamue@epa.gov*.

6. *PP 9F7515*. (EPA–HQ–OPP–2009–0611). Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide tebuconazole, in or on vegetables, fruiting, group at 1.4 ppm. An enforcement method for plant commodities has been validated on various commodities. It has undergone successful EPA validation and has been submitted for inclusion in the PAM II. The animal method has also been approved as an adequate enforcement method. Contact: Tracy Keigwin, (703) 305–6605; *keigwin.tracy@epa.gov*.

7. *PP 9F7543*. (EPA–HQ–OPP–2009–0616). Elanco Animal Health via Technology Sciences Group Inc., 4061 North 156th Drive, Goodyear, AZ 85395, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide spinosad, a fermentation product of *Saccharopolyspora spinosa* which consists of two related active ingredients:
Spinosyn A (Factor A: CAS No. 131929–60–7) or 2–[(6–deoxy-2,3,4-tri-O-methyl-α-L-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione;
and Spinosyn D (Factor D; CAS No. 131929–63–0) or 2–[(6–deoxy-2,3,4-tri-O-methyl-α-L-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione, in or on milk at 5 ppm; milk, fat at 40 ppm; cattle, goat, and sheep, fat at 30 ppm; hog, meat and poultry, meat byproducts at 0.2 ppm; hog, meat byproducts at 0.6 ppm; poultry, fat at 1.5 ppm; and hog, fat at 2.0 ppm. The supporting assessment includes the Agency conclusion that spinosad is considered toxicologically identical to another pesticide, spinetoram. EPA has determined adequate analytical methods are available for enforcement purposes for spinosad in plant and animal matrices. Methods include an immunoassay particle-based method 97.05 and an high performance liquid chromatography/ultraviolet (HPLC/UV) method GRM 03.15 and a suite of specific crop methods: GRM 94.02 (cottonseed and related commodities), GRM 95.17 (leafy vegetables), GRM 96.09 (citrus), GRM 96.14 (tree nuts), GRM 95.04 (fruiting vegetables), GRM 94.02.S1 (cotton gin byproducts). GRM 94.02 has a successful independent lab validation and was submitted for inclusion in PAM II as Method I. EPA recently concluded that for water, residues should be estimated using total spinosad residue method (EPA, D316077, August 2, 2006). An updated Dow AgroSciences method GRM 06.13 for the determination of residues of spinosad and its metabolites in poultry tissues and eggs by liquid chromatography with tandem mass spectrometry supports this petition. Contact: Samantha Hulkower, (703) 603–0683; *hulkower.samantha@epa.gov*.

8. *PP 9F7563*. (EPA–HQ–OPP–2009–0575). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide sodium salt of fomesafen, 5-[2-cloro-4-(trifluoromethyl)phenoxy]-*N*-(methylsulfonyl)-2-nitrobenzamide, in or on potato at 0.025 ppm; and tomato at 0.025 ppm. The analytical method used for analysis of the potato tubers, tomato fruit and related processed fractions was based upon methodology previously utilized for analysis of fomesafen in soybeans. Contact: Michael Walsh, (703) 308–2972; *walsh.michael@epa.gov*.

9. *PP 9F7565*. (EPA–HQ–OPP–2009–0550). Devgen US, Inc., 413 McFarlan Road, Suite B, Kennett Square, PA 19348, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide iprodione, in or on cucurbit crop group at 0.3 ppm; and fruiting vegetables, except cucurbits at 2.0 ppm. An adequate analytical method, gas liquid chromatography using an electron-capture detector, is available in the PAM II for enforcement purposes. Contact: Lisa Jones, (703) 308–9424; *jones.lisa@epa.gov*.

New Tolerance Exemptions

1. *PP 9E7575*. (EPA–HQ–OPP–2009–0478). BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932, proposes to establish an exemption from the requirement of a tolerance for residues of carbonic acid, diethyl ester, polymer with alpha-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)] ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol (3:1), ester with alpha-[[[[5-(carboxyamino)-1,3,3-trimethylcyclohexyl methyl]amino]carbonyl]-omega-methoxypoly(oxy-1,2-ethanediyl) (CAS No. 1147260–65–8) under 40 CFR 180.960 when used as an inert ingredient as a surfactant in pesticide formulations without limitation. 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 9E7581*. (EPA–HQ–OPP–2009–0610). Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268, proposes to establish an exemption from the requirement of a tolerance for residues of the dibenzylidene sorbitol (DBS) (CAS No. 32647–67–9); IUPAC D–Glucitol, bis–O-(phenylmethylene) (CAS No. 32647–67–9) under 40 CFR 180.920 when used as an inert ingredient in a pesticide formulation. A limitation to herbicides only with a 3% formulation cap is proposed. 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 24, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–21395 Filed 9–3–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8953–5]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by Colorado Citizens Against ToxicWaste and Rocky Mountain Clean Air Action (collectively ''Plaintiffs'') in the United States District Court for the District of Colorado: *Colorado Citizens Against ToxicWaste et al.* v. *Jackson,* No. 08–cv–1787 (D. Colo). On or about August 21, 2008, Plaintiffs filed a Complaint alleging that EPA failed to perform a non-discretionary duty to review, and if appropriate revise, 40 CFR Part 61, Subpart W, National Emission Standards for Radon Emissions from Operating Mill Tailings, to comply with the requirements of CAA section 112(d). Under the terms of the proposed settlement agreement, Plaintiffs shall file a motion for voluntary dismissal of the Complaint, with prejudice, within 10 business days after publication in the **Federal Register** of either: EPA's issuance of a final determination not to revise Subpart W; or EPA's promulgation of a final revision of Subpart W.

DATES: Written comments on the proposed settlement agreement must be received by *October 5, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0679, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Susan Stahle, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–1272; fax number (202) 564–5603; *e-mail address: stahle.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

This proposed settlement agreement would settle a deadline suit filed by Plaintiffs for EPA's failure to review, and if appropriate revise, 40 CFR Part 61, Subpart W, National Emission Standards for Radon Emissions from Operating Mill Tailings, to comply with the requirements of CAA section 112(d). Under the terms of the proposed settlement agreement, within 10 business days after Plaintiffs and EPA have signed this agreement, the Parties shall file a joint motion with the Court notifying it of this agreement and request that this case be stayed pending completion of the process under section 113(g) of the CAA as set forth in Paragraph 12 of this agreement. Within 10 business days of the date this agreement becomes final, Plaintiffs shall file a motion to administratively close this case. If EPA signs and submits for publication in the **Federal Register** EPA's promulgation of either (1) EPA's issuance of a final determination not to revise Subpart W or (2) EPA's promulgation of a final revision of Subpart W, Plaintiffs shall file a motion for voluntary dismissal of the Complaint, with prejudice, pursuant to Fed. R. Civ. P. 41(a), within 10 business days of such publication. Paragraph 3 contains additional steps that EPA will complete under the agreement.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How Can I Get a Copy of the Settlement Agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0679) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: September 1, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–21400 Filed 9–3–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8952–9]

Notice of Proposed Settlement Agreement and Opportunity for Public Comment: Coeburn Produce Disposal Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(h)(1), notice is hereby given of a Proposed Settlement Agreement and Administrative Order, Docket No. CERC–03–2009–0076CR (Proposed Settlement Agreement), that is intended to resolve the potential liability under CERCLA of two parties for response costs incurred by EPA and the United States Department of Justice on behalf of EPA, in connection with the Coeburn Produce Disposal Site, Coeburn, Wise County, Virginia (Site).

DATES: Written comments on the Proposed Settlement Agreement must be received by October 5, 2009.

ADDRESSES. Submit your comments, identified by Docket No. CERC–03–2009–0076–CR, by mail to: Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

FOR FURTHER INFORMATION CONTACT: James Van Orden (3RC42), Office of Regional Counsel, U.S. EPA, 1650 Arch Street, Philadelphia, PA 19103–2029, telephone: (215) 814–2693, fax number (215) 814–2603 e-mail address: *Vanorden.james@epa.gov.*

Maria Goodine (3HS62), U.S. EPA, 1650 Arch Street, Philadelphia, PA 19103–2029, telephone: (215) 814–2488, fax number (215) 814–2603, e-mail address: *Goodine.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

Notice is hereby given of a Proposed Settlement Agreement and Administrative Order, Docket No. CERC–03–2009–0076CR, among the United States Environmental Protection Agency, Fuller Investments, Inc. and the Town of Coeburn, that has been approved, subject to public comment, pursuant to Section 122(h)(1) of CERCLA. The Proposed Settlement Agreement was signed by the Director of the Hazardous Site Cleanup Division, EPA Region III, on August 5, 2009. The Proposed Settlement Agreement provides for recovery of $185,000.00 from Fuller Investments, Inc., which represents approximately 7.11% of the $2,600,864.50 in costs incurred by EPA and the U.S. Department of Justice on behalf of EPA in connection with the Site. The Town of Coeburn will not make any payment, but will be required to impose institutional controls at the Site and to maintain the remedy at the Site.

The Environmental Protection Agency will receive written comments on the Proposed Settlement Agreement for a period of thirty (30) days from the date of publication of this Notice. EPA or the Department of Justice may withdraw or withhold consent to the Proposed Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of CERCLA. Unless EPA or the Department of Justice determines, based on any comments which may be submitted, that consent to the Proposed Settlement Agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How Can I Get A Copy of the Proposed Settlement Agreement?

A copy of the Proposed Settlement Agreement can be obtained from the United States Environmental Protection Agency, Region III, Office of Regional Counsel (3RC00), 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029 by contacting James Van Orden, Assistant Regional Counsel, at (215) 814–2693, or via e-mail at *Vanorden.James@epa.gov.* It is important to note that it is EPA's policy to make public comments, whether submitted electronically or in paper, available to the public, unless the comment contains copyrighted material,

CBI, or other information whose disclosure is restricted by statute.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the 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.

Dated: August 28, 2009.

Paul Leonard,

Acting Director, Hazardous Site Cleanup Division, Region III.

[FR Doc. E9–21397 Filed 9–3–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8952–7]

Adequacy Status of the Metropolitan Washington DC Area (DC–MD–VA) Area 8-Hour Ozone Non-Attainment Area's Reasonable Further Progress Plan Vehicle Emission Budgets for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found the Motor Vehicle Emissions Budgets (MVEBs) in the 2008 Reasonable Further Progress (RFP) Plan, submitted on June 4, 2007, by the Maryland Department of the Environment (MDE) and on June 12, 2007 by the Virginia Department of Environmental Quality (VADEQ) and the District of Columbia Department of the Environment (DCDOE) are adequate for transportation conformity purposes. As a result of EPA's finding, the Metropolitan Washington, DC area must use the MVEBs from the 2008 RFP Plan for future conformity determinations for the 8-hour ozone standard.

DATES: These MVEBs are effective September 21, 2009.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–3335 or by e-mail at: *kotsch.martin@EPA.gov.* The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. The word ''budgets'' refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NOx). The word ''SIP'' in this document refers to the RFP Plan for the Metropolitan Washington DC 8-hour Ozone Nonattainment Area submitted to EPA as SIP revisions on June 4 and June 12, 2007.

Today's notice is simply an announcement of a finding that EPA has already made. EPA sent a letter to MDE, VADEQ and DCDOE on July 29, 2009 stating that the MVEBs in the RFP Plan are adequate for transportation conformity purposes. As a result of EPA's finding, the State of Maryland, the Commonwealth of Virginia and the District of Columbia must use the MVEBs from the 2008 RFP Plan for future conformity determinations for the 8-hour ozone standard. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/pastsips.htm.* The adequate MVEBs are provided in the following table:

WASHINGTON D.C. MOTOR VEHICLE EMISSIONS BUDGETS

Nonattainment area	2008 Reasonable Further Progress	
	VOC (tpd)	NO_X (tpd)
Washington D.C.	70.8	159.8

Transportation conformity is required by section 176(c) of the Clean Air Act, as amended in 1990. EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedure for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission Budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved. We have described our process for determining the adequacy of submitted SIP budgets in 40 CFR 93.118(f), and have followed this rule in making our adequacy determination.

Dated: August 21, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9–21396 Filed 9–3–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

09/01/2009.

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 November 3, 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), 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), 445 12th Street, S.W., Washington, D.C. 20554. To submit your comments by e–mail send then 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 or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0634.

Title: Section 73.691, Visual Modulation Monitoring.

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: 20 respondents; 46 responses.

Estimated Hours per Response: One hour.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 46 hours.

Total Annual Cost: None.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 73.691(b) requires TV stations to enter into the station log the date and time of the initial technical problems that make it impossible to operate a TV station in accordance with the timing and carrier level tolerance requirements. If this operation at variance is expected to exceed 10 consecutive days, a notification must be sent to the FCC. The licensee must also notify the FCC upon restoration of normal operations. Furthermore, a licensee must send a written request to the FCC if causes beyond the control of the licensee prevent restoration of normal operations within 30 days. The FCC staff use the data to maintain accurate and complete technical information about a station's operation. In the event that a complaint is received from the public regarding a station's operation, this information is necessary to provide an accurate response.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E9–21384 Filed 9–3–09; 8:45 am]

BILLING CODE: 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted to the Office of Management and Budget for Review and Approval, Comments Requested

September 1, 2009.

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 5, 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), 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), 445 12th Street, S.W., Washington, D.C. 20554. To submit your comments by e–mail send then to: PRA@fcc.gov and to Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward–pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

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: 3060–0029.

Title: Application for DTV Broadcast Station License, FCC Form 302–DTV; Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340; Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349.

Form Number: FCC Forms: 302–DTV, 340 and 349.

Type of Review: Revision 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: 5,170 respondents and 5,170 responses.

Estimated Time per Response: 1–4 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 11,080 hours.

Total Annual Costs: $19,096,297.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On June 29, 2009, the Commission adopted a Report and Order, Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, MB Docket No. 07–172, FCC 09–59. In the Report and Order, the Commission adopted changes to the FM translator rules that would allow AM stations to use authorized FM translator stations to rebroadcast the AM signal locally, retransmitting their AM programming as a ''fill–in'' service. The adopted cross service translating rules limit FM translators to providing ''fill–in'' service only, specifically within the AM primary station's authorized service area. In addition, the Commission limited the cross–service rule changes to ''currently authorized FM translators,'' that is, those translators with licenses or permit in effect as of May 1, 2009. Therefore, the rule changes affecting this information collection will add a new universe of filers – AM stations – to this information collection. AM stations will use Form 349 to apply for authorizations to operate such FM translator stations.

Consistent with actions taken by the Commission in the Report and Order, the following changes are made to Form 349: Sections II and III of Form 349 include new certifications concerning compliance with the AM station ''fill–in'' service requirements. Specifically, in the AM service, applicants certify that the coverage contour of the FM translator station is contained within the lesser of: (a) the 2 mV/m daytime contour of the AM primary station being rebroadcast, or (b) a 25–mile radius centered at the AM station's transmitter site. The instructions for Sections II and III have been revised to assist applicants with completing the new questions.

FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations. This form also includes the third party disclosure requirement of 47 CFR 73.3580. Section 73.3580 requires local public notice in a newspaper of general circulation of all application filings for new or major change in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three–week period. A copy of this notice must be placed in the public inspection file along with the application.

FCC Form 302–DTV is used by licensees and permittees of Digital TV (''DTV'') broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of those stations. It may be used: (1) To cover an authorized construction permit (or auxiliary antenna), provided that the facilities have been constructed in compliance with the provisions and conditions specified on the construction permit; or (2) To implement modifications to existing licenses as permitted by 47 CFR 73.1675(c) or 73.1690(c).

FCC Form 340 is used by licensees and permittees to apply for authority to construct a new noncommercial educational (''NCE'') FM, TV, and DTV broadcast station, or to make changes in the existing facilities of such a station. The FCC Form 340 is only used if the station will operate on a channel that is reserved exclusively for noncommercial educational use, or in the situation where applications for NCE stations on non–reserved channels are mutually exclusive only with one another.

Revisions to this information collection are due to revisions being made only to FCC Form 349.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E9–21383 Filed 9–3–09; 8:45 am]

BILLING CODE: 6712–01–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, September 1, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–21340 Filed 9–3–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than September 30, 2009.

A. Federal Reserve Bank of Kansas City (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Oklahoma Holdings, Inc., Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Glencoe State Bank, Glencoe, Oklahoma.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Mason National Bank Employee Stock Ownership Plan and Trust, Mason, Texas; to acquire additional shares up to 34.7 percent of Mason National Bancshares, Inc., Mason, Texas, and indirectly acquire The Mason National Bank, Mason, Texas

Board of Governors of the Federal Reserve System, September 1, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–21358 Filed 9–3–09; 8:45 am]

BILLING CODE 6210–01–S

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 part 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:

Inline Freight System Inc., 8518 Turpin Street, Rosemead, CA 91779, *Officers:* Chung Yan Mun, President (Qualifying Individual), Oi Ling Yeung, Secretary.

HD EXPN USA Inc., 501 Broad Avenue, Ste. 3, Ridgefield, NJ 07657, *Officers:* Man S. Kwak, President (Qualifying Individual), Dong H. Kang, Vice President.

Worldwide Cargo Services, Inc., 2 Johnson Road, Lawrence, NY 11599, *Officers:* Oscar Canjura, Int'l Logistics Coordinator, Mike Lovio, Int'l Operations Manager (Qualifying Individuals), Mark Parrotto, President.

Hondu Shipping, Inc., 31 SW 31 Court, Miami, FL 33135, *Officers:* Claudia M. Figueroa, Vice President (Qualifying Individual), Jorge A. Munoz, President.

All Trans Cargo, Corp., 10300 NW 19 Street, Ste. 104, Miami, FL 33172, *Officer:* Ana Maria Gonzalez, President (Qualifying Individual).

Wingar Logistics, Inc., 9690 Telstar Ave., Ste. 207, El Monte, CA 91731. *Officer:* Alex S. Chia, President (Qualifying Individual).

Astro TV & Appliance International Inc. dba Astro International Moving & Storage Inc., 94 Spark Street, Brockton, MA 02302, *Officers:* Peter Karys, Vice President (Qualifying Individual). Chris Karys, President.

M.G. Y Asociados Consultores Generales Del, Comercio International dba M.G. Y Asociados, Avenida Soublette Maiquetia, Casa #01PB, Caracas 1162 Venezuela, *Officers:* Marianela L. Guzman, President (Qualifying Individual). Gioheveth G. Bercowsky, Managing Director.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Pactrans Global, LLC, 950 Thorndale Avenue, Elk Grove, IL 60007, *Officer:* Ketty Y. Pon, Exec. Manager (Operations) (Qualifying Individual).

C.A.M. Logistics Inc., 1242 W. 76 Street, Hialeah, FL 33014, *Officer:* Elizabeth Alexander, President (Qualifying Individual).

Master Line Agencies, Inc. dba Master Line, 1325 N.W. 98th Court, Unit 12, Doral, FL 33172, *Officers:* Juan C. Esquivel, Vice President (Qualifying Individual), Nancy M. Esquivel, Chairman.

Livingston International, Inc. dba Livingston Customs Brokerage, 670 Young Street, Tonawanda, NY 14150, *Officer:* Dorothea J. Rucker, Dir., Process Improvement (Qualifying Individual).

AAB Logistics, L.L.C., 2371 Hurst Drive, NE., Ste. 100, Atlanta, GA 30305. *Officer:* Alexander S.M. Gibson, Director (Qualifying Individual).

Allstate Int'l Freight USA, Inc. dba A.I.F. Company, 200 E. Stanley Street, Compton, CA 90220, *Officer:* Se Hwan Park, CEO (Qualifying Individual).

Cargo Brokers International, Inc. dba Martainer, 107 Forest Parkway, Ste. 600, Forest Park, GA 30297, *Officer:* Carsten O. Steinmetz, CEO (Qualifying Individual).

MEGA Supply Chain Solutions, Inc., 9449 8th Street, Rancho Cucamonga, CA 91730, *Officer:* Alan J. Moore, Vice President (Qualifying Individual).

NTL Naigai Trans Line (USA) Inc., 970 West 190th Street, Ste. 580, Torrance, CA 90502, *Officers:* Kumiko Shimoharai, Vice President, Yoji Kurita, President (Qualifying Individual).

Promax Automotive, Inc., 5265 E. Provident Drive, Cincinnati, OH 45246, *Officer:* Richard Doran, Sr. Vice President (Qualifying Individual).

Pacific Power Logistics, Inc., 880 Apollo Street, Ste. 217, El Segundo, CA 90245. *Officer:* Anthony Rimland, President (Qualifying Individual).

Liz International Group, Corp., 10100 NW 116 Way, Ste. 15, Medley, FL 33178. *Officer:* Manuel P. Liz, President (Qualifying Individual).

RDR Worldwide, LLC., 1230 West Bagley Road, Berea, OH 44017, *Officers:* Theresa Karnavas, Member (Qualifying Individual), Richard A. Gareau, Member.

Air Sea Trading Group Corp., 7508 N.W. 54th Street, Miami, FL 33166, *Officer:* Gilberto Lopez, Treasurer (Qualifying Individual), Claudia Lopez, President.

May International, Inc. dba Seamount, Transportation Systems, 10465 N. 114th Street, Ste. 116, Scottsdale, AZ 85259, *Officer:* Kevin B. May, President (Qualifying Individual).

Algis Freight LLC, 2412 Country Club Prado, Coral Gables, FL 33134, *Officers:* Giselle Sanchez, Director (Qualifying Individual), Alvaro Sanchez, Manager.

Freight To Go.Com, Inc., 12254 S.W. 117th Terrace, Miami, FL 33186, *Officers:* Leo W. Jiram, Vice President (Qualifying Individual), Karl J. Jiram, President.

SPG Logistics, Inc., 8081 N.W. 67th Street, Miami, FL 33166, *Officer:* Santiago Lostorto, Secretary (Qualifying Individual).

Transport Logistics Inc., 2500 Southbranch Blvd., Ste. A, Oak Creek, WI 53154, *Officer:* Wanda Chapala, Dir. Int'l. Operations (Qualifying Individual).

Heneways U.S.A. Inc., 1400 Mittel Blvd., Ste. C, Wood Dale, IL 30191, *Officer:* Theresa D. Haney, Vice President (Qualifying Individual).

Transaction Publishers, Inc. dba Express Book, Freight A Division of

Transaction Publishers, Inc., 35 Berrue Circle, Piscataway, NJ 08854, *Officers:* Lori A. Fellmer, Secretary (Qualifying Individual), Mary E. Curtis, President.

Logistics Innovators, Inc., 16600 E. 33rd Drive, Unit 26, Aurora, CO 80011, *Officers:* Toni R. Brock, President (Qualifying Individual), Robert A. Brock, Secretary.

Vencel Colombia Corp., 106 14 Corona Ave., Corona Queens, NY 11368, *Officers:* Jason Fernandez, Operations Director (Qualifying Individual), David Fernandez, CEO.

Manray Express Freight Systems, Inc., 5959 N.W. 37th Ave., Miami, FL 33142, *Officer:* Robert E. Hamer, President (Qualifying Individual).

Damca International, LLC dba Blue Project Cargo, 1335 NW 98th Court, Ste. 1 & 2, Doral, FL 33172, *Officer:* Nils Ekman, President (Qualifying Individual).

A&A Contract Customs Brokers USA, Inc., dba A&A International Freight Forwarding, 2 12th Street, Blaine, WA 98230, *Officer:* Beau Rogers, Vice President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Q&C Global Corporation, 2112 San Antonio Dr., Montebello, CA 90640, *Officers:* Clay F. Wong, President (Qualifying Individual), Quan Li Smith, Vice President.

Geek Investments LLC, 1826 Rambling Rose Lane, Mishawaka, IN 46544, *Officer:* Patience Taruwinga, Member (Qualifying Individual).

GTO Autotrade Inc dba Global Trade Organization, 8113 NW 68th Street, Miami, FL 33166, *Officers:* Juan F. Sierra, President (Qualifying Individual), Luz M. Arango, Vice President.

Min American Inc., 11357 Nuckols Road, Ste. 200, Glen Allen, VA 23059, *Officer:* Gina M. Cianelli, CEO (Qualifying Individual).

Waled International, LLC, 319 Nadia Way, Stafford, TX 77477, *Officer:* Abdurahman Esmael, Member/Manager (Qualifying Individual).

Dated: August 31, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–21331 Filed 9–3–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Thursday, October 29, 2009, and Friday, October 30, 2009. The meeting will be held from 9 a.m. until 5 p.m. on both days.

ADDRESSES: Department of Health and Human Services; Room 800, Hubert H. Humphrey Building; 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr.P.H.; Executive Secretary, Chronic Fatigue Syndrome Advisory Committee, Department of Health and Human Services; 200 Independence Avenue, SW., Hubert Humphrey Building, Room 712E; Washington, DC 20201; (202) 690–7650.

SUPPLEMENTARY INFORMATION:

CFSAC was established on September 5, 2002. The Committee was established to advise, consult with, and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including (1) The current state of the knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about advances in chronic fatigue syndrome.

The agenda for this meeting is being developed. The agenda will be posted on the CFSAC Web site, *http://www.hhs.gov/advcomcfs,* when it is finalized. In addition, the meeting will be WebCast. Details will be posted to the CFSAC Web site as they become available.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the building where the meeting is scheduled to be held. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Individuals who wish to address the Committee during the public comment session must pre-register by October 14, 2009. Any individual who wishes to participate in the public comment session should call the telephone number listed in the contact information or send an e-mail to *cfsac@hhs.gov* to register. Public comments will be limited to five minutes per speaker.

Members of the public who wish to have printed material distributed to CFSAC members for discussion should submit, at a minimum, one copy of the material to the Executive Secretary, CFSAC, prior to close of business on October 15, 2009. Submissions are limited to five typewritten pages. Contact information for the Executive Secretary is listed above.

Dated: August 20, 2009.

Wanda K. Jones,

Executive Secretary, CFSAC.

[FR Doc. E9–21334 Filed 9–3–09; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Annual Aggregate Report—ACF–800.

OMB No.: 0970–0150.

Description: Section 658K of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858) requires that States and Territories submit annual aggregate data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Annual aggregate reports include data elements represented in the ACF–800 reflecting the scope, type, and methods of child care delivery. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and

regulations, ACF requests extension of the ACF–800. With this extension, ACF is proposing several changes and clarifications to the reporting requirements and instructions.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–800	56	1	40	2,240

Estimated Total Annual Burden Hours: 2,240

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: September 1, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–21410 Filed 9–3–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0098]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Evaluation of Potential Data Sources for the Sentinel Initiative

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 5, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title, ''Evaluation of Potential Data Sources for the Sentinel Initiative.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794, *JonnaLynn.Capezzuto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Evaluation of Potential Data Sources for the Sentinel Initiative

In September 2005, the Secretary of Health and Human Services (the Secretary) asked FDA to expand its current system for monitoring medical product performance. The Secretary asked FDA to explore the possibility of working in collaboration with multiple healthcare data systems to augment FDA's capability of identifying and evaluating product safety information beyond its existing voluntary reporting systems. Such a step would strengthen FDA's ability, ultimately, to monitor the performance of a product after marketing approval. The Secretary recommended that FDA explore creating a public-private collaboration as a framework for such an effort leveraging increasingly available large, electronic healthcare databases and taking advantage of emerging technologies and building on existing systems and efforts, rather than creating new systems.

In 2006, the Institute of Medicine (IOM) issued a report entitled ''The Future of Drug Safety—Promoting and Protecting the Health of the Public.''[1] Among other suggestions, this IOM report recommended FDA identify ways to access other health-related databases and create a public-private partnership to support safety and efficacy studies.

In 2007, Congress enacted the Food and Drug Administration Amendments Act of 2007[2] (FDAAA). Section 905 of FDAAA calls for the Secretary to develop methods to obtain access to disparate data sources and to establish an active postmarket risk identification and analysis system that links and analyzes healthcare data from multiple sources. The law sets a goal of access to data from 25 million patients by July 1, 2010, and 100 million patients by July 1, 2012. The law also requires FDA to work closely with partners from public, academic, and private entities. FDA views the Sentinel Initiative as a mechanism through which this mandate can be carried out.

Consistent with FDA's mission to protect and promote the public health, FDA is embarking on the Sentinel Initiative to create a national, electronic distributed system, strengthening FDA's ability to monitor the post-market performance of a product. As currently envisioned, the Sentinel Initiative will enable FDA to capitalize on the capabilities of multiple, existing data systems (e.g. electronic health record systems and medical claims databases)

[1] Institute of Medicine, ''The Future of Drug Safety—Promoting and Protecting the Health of the Public,'' September 22, 2006, *http://www.iom.edu/* . (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

[2] Food and Drug Administration Amendments Act of 2007, Public Law 110–85, was signed into law in September 2007. See Title IX, Section 905.

to augment the agency's current surveillance capabilities. The proposed system will enable queries of distributed data sources quickly and securely for relevant product safety information. Data will continue to be managed by its owners, and only data of organizations who agree to participate in this system will be included. Operations will adhere to strict privacy and security safeguards.

The success of this Initiative will depend largely on the content, quality, searchability, and responsiveness of participating data sources and/or data environments. It is essential that FDA understand the strengths and limitations of potential data sources that might be included in the Sentinel Initiative. This survey will be used to collect information from potentially participating data sources and/or environments. The data we are seeking will describe the characteristics of the data available, not personally identifiable information. The findings will help FDA plan for this proposed system and for future work related to the Sentinel Initiative.

This survey will collect information on the scope, content, structure, quality, and timeliness of data; patient population(s), duration of followup, and capture of care across all settings; availability, experience, and interest of investigators with knowledge of the data in using it for post-market product safety surveillance as well as plans for further data source enhancements; availability, experience, and interest of investigators with knowledge of the data in participating in a distributed data system; and barriers that exist to including each data source in the Sentinel Initiative.

In the **Federal Register** of March 9, 2009 (74 FR 10053), FDA published a 60-day notice requesting public comment on the information collection provisions to which one comment was received but was outside the scope of the PRA.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Data Source and/or Environment Survey	250	1	250	24.5	6,125

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that approximately 250 respondents will participate in this voluntary survey. These respondents will consist mostly of other Federal agencies, health plan data sources, health information exchanges, large multi-specialty medical groups and academic medical centers, large hospital systems, pharmacies, medical societies, consumer-oriented Web sites, commercial data sets, research networks, lab data, and registries.

Each respondent will extend approximately 24.5 hours to complete one survey for a total of 6,125 hours (250 x 1 x 24.5 = 6,125).

Dated: August 27, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–21364 Filed 9–3–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–09BW]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Postural Analysis in Low-Seam Mines—Existing collection without an OMB control number—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH, under Public Law 91–596, sections 20 and 22 (section 20–22, Occupational Safety and Health Act of 1970) has the responsibility to conduct research relating to innovative methods, techniques, and approaches dealing with occupational safety and health problems.

According to the Mining Safety and Health Administration (MSHA) injury database, 227 knee injuries were reported in underground coal mining in 2007. With data from the National Institute for Occupational Safety and Health (NIOSH), it can be estimated that the financial burden of knee injuries was nearly three million dollars in 2007.

Typically, mine workers utilize kneepads to better distribute the pressures at the knee. The effectiveness of these kneepads is to be investigated in a study by NIOSH. Thus, NIOSH will be determining the forces, stresses, and moments at the knee while in postures associated with low-seam mining. At this time, the postures utilized by low-seam mine workers and their frequency of use are unknown. Therefore, before conducting this larger, experimental study, the existing collection without an OMB control number was required.

The aim of the field study described in this document was to determine the postures predominantly used by low-seam mine workers such that they may complete the various tasks associated with their job duties. A questionnaire was developed for each of the major job types seen in low-seam mines with continuous miners (continuous miner operator, roof bolter operator, shuttle car operator, mobile bridge operator, mechanic, beltman, maintenance shift worker, foreman). The questionnaire asked basic demographic information (*e.g.*, time in job type, years in mining, age). Additionally, a series of questions were asked such that it could be determined if a mine worker is likely to have a knee injury, even if it is undiagnosed. These questions were developed with the help of a physical therapist. A schematic of possible postures was then presented to the mine workers and they were asked to identify the primary two postures they utilize to complete their job duties. The questionnaire then asked mine workers to identify the primary postures they utilize to complete specific tasks (*e.g.*, hanging curtain, building stoppings) that are part of their job duties. Finally,

mine workers were asked to identify those postures that are least and most comfortable/stressful. There is no cost to respondents other than their time. The total estimated annual burden hours are 12.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Continuous miner operator	Continuous Miner Operator Form	5	1	10/60
Foreman	Foreman Form	5	1	10/60
Maintenance Shift Worker	Maintenance Shift Worker Form	10	1	10/60
Mobile Bridge Operator	Mobile Bridge Operator Form	10	1	10/60
Roof Bolter Operator	Roof Bolter Operator Form	14	1	10/60
Scoop Operator	Scoop Operator Form	6	1	10/60
Shuttle Car Operator	Shuttle Car Operator Form	6	1	10/60
Mechanic	Mechanic Form	6	1	10/60
Beltman	Beltman Form	2	1	10/60

Dated: August 27, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–21376 Filed 9–3–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10079 and CMS–10293]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital Wage Index Occupational Mix Survey and Supporting Regulations in 42 CFR, Section 412.64; *Use:* Section 304(c) of Public Law 106–554 amended section 1886(d)(3)(E) of the Social Security Act to require CMS to collect data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index, for application beginning October 1, 2004 (the FY 2005 wage index). The purpose of the occupational mix adjustment is to control for the effect of hospitals' employment choices on the wage index. Refer to the summary of changes document for a list of current changes. *Form Number:* CMS–10079 (OMB#: 0938–0907); *Frequency:* Reporting—Yearly, Biennially and Occasionally; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 3,522; *Total Annual Responses:* 3,522; *Total Annual Hours:* 1,690,560. (For policy questions regarding this collection contact Taimyra Jones at 410–786–1562. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Tribal Consultation State Plan Amendment Template; *Use:* Effective July 1, 2009, section 5006 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) amended section 1902(a)(73) of the Act to require that certain States utilize a process for the State to seek advice on a regular, ongoing basis from designees of the Indian Health Service (IHS) and Urban Indian Organizations concerning Medicaid and Children's Health Insurance Program (CHIP) matters having a direct effect on them. The consultation process is required for the 37 States in which 1 or more Indian Health Programs or Urban Indian Organizations furnish health care services. The State Medicaid agency for each of these States will complete the template page and submit it for approval as part of a State plan amendment, to document how it meets the requirements for tribal consultation. *Form Number:* CMS–10293 (OMB#: 0938–NEW); *Frequency:* Reporting—Once and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 37; *Total Annual Responses:* 37; *Total Annual Hours:* 37. (For policy questions regarding this collection contact Mary Corddry at 410–786–6618. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by November 3, 2009:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development,

Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 28, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–21425 Filed 9–3–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10285]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Request for Expedited Review of Denial of Premium Assistance; *Use:* The American Recovery and Reinvestment Act of 2009 provides for premium assistance and expanded eligibility for health benefits under both the Consolidated Omnibus Budget Reconciliation Act of 1986, commonly called COBRA, and comparable State continuation coverage programs. This premium assistance is not paid directly to the covered employee or the qualified beneficiary, but instead is in the form of a tax credit for the health plan, the employer, or the insurer. ''Assistance eligible individuals'' pay only 35% of their continuation coverage premiums to the plan and the remaining 65% is paid through the tax credit.

If an individual requests treatment as an assistance eligible individual and the employee's group health plan, employer, or insurer denies him or her the reduced premium assistance, the Secretary of Health and Human Services must provide for expedited review of the denial upon application to the Secretary in the form and manner the Secretary provides. The Secretary is required to make a determination within 15 business days after receipt of an individual's application for review.

The *Request for Review If You Have Been Denied Premium Assistance* (the ''application'') is the form that will be used by individuals to file their expedited review appeals. Each individual must complete all information requested on the application in order for CMS to begin reviewing his or her case. An application cannot be reviewed if sufficient information is not provided. Refer to the supporting document ''Crosswalk of Changes Between Request for Expedited Review of Denial of Premium Assistance (4/09) and Request for Review if You Have Been Denied Premium Assistance (6/09)'' for a list of changes: *Form Number:* CMS–10285 (OMB#: 0938–1062); *Frequency:* Reporting—Once; *Affected Public:* Individuals and households; *Number of Respondents:* 12,000; *Total Annual Responses:* 12,000; *Total Annual Hours:* 12,000. (For policy questions regarding this collection contact Jim Mayhew at 410–786–9244. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on October 5, 2009: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: August 28, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–21423 Filed 9–3–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–0818]

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 I. Daneshvar, CDC Acting 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

Cost and Follow-up Assessment of Administration on Aging (AoA)-Funded Fall Prevention Programs for Older Adults—Extension—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC received OMB approval for Control number 0920–0818 to collect data for the Cost and Follow-up

Assessment of Fall Prevention Programs. This approval expires on 7/31/10. At this time we are requesting a two year extension to collect data. NCIPC seeks to examine cost of implementing each of the three AoA-funded fall prevention programs for older adults (Stepping On, Moving for Better Balance and Matter of Balance) and to assess the maintenance of fall prevention behaviors among participants six months after completing the Matter of Balance program.

To assess the maintenance of fall prevention behaviors, CDC's contractor, Booz Allen Hamilton, will conduct telephone interviews of 300 Matter of Balance program participants six months after they have completed the program. The interview will assess their knowledge and self-efficacy related to falls as taught in the course, their activity and exercise levels, and their reported falls both before and after the program. The results of the follow-up assessment will determine the extent to which preventive behaviors learned during the Matter of Balance program are maintained and can continue to reduce fall risk.

The cost assessment will calculate the lifecycle cost of the Stepping On, Moving for Better Balance, and Matter of Balance programs. The cost analysis will include calculating the investment costs required to implement each program, as well as the ongoing operational costs associated with each program. These costs will be allocated over a defined period of time, depending on the average or standard amount of time these programs continue to operate (standard lifecycle analysis ranges from five to 10 years). The data obtained from the lifecycle cost calculation will allow us to compare program costs and to identify specific cost drivers, cost risks, and unique financial attributes of each program.

Local program coordinators for the 200 sites in each of the AoA-funded states will collect the cost data using lifecycle cost spreadsheets that will be returned to CDC's contractor for analysis. Booz Allen Hamilton has been contracted by CDC to conduct the data collection and analysis.

The results of these studies will support the replication and dissemination of these fall prevention programs and enable them to reach more older adults. States require data on impact and cost in order to obtain sustainable and supplemental funding to maintain programs after funding from AoA ends.

There are no costs to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses	Average burden per response (in hours)	Total burden (in hours)
Program Coordinators	Cost Assessment	200	1	2	400
Program Participants	Impact Survey	300	1	1	300
Total					700

Dated: August 28, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–21377 Filed 9–3–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; NCCAM Customer Service Data Collection

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Center for Complementary and Alternative Medicine (NCCAM), the National Institutes of Health (NIH), will submit to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. A notice of this proposed information collection was previously published in the **Federal Register** on June 26, 2009 (Volume 74, Number 122, page 30577). To date, no public comments have been received. The purpose of this notice is to announce a final 30 days for public comment. NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: NCCAM Customer Service Data Collection.

Type of Information Collection Request: Revision.

Need and Use of Information Collection: NCCAM provides the public, patients, families, health care providers, complementary and alternative medicine (CAM) practitioners, and others with the latest scientifically based information on CAM and information about NCCAM's programs through a variety of channels, including its toll-free telephone information service. NCCAM wishes to continue to measure customer satisfaction with NCCAM telephone interactions and to assess which audiences are being reached through these channels. This effort involves a telephone survey consisting of 10 questions, which 25 percent of all callers are asked to answer, for an annual total of approximately 983 respondents. NCCAM uses the data collected from the survey to help program staff measure the impact of their communication efforts, tailor services to the public and health care providers, measure service use among special populations, and assess the most effective media and messages to reach these audiences.

Frequency of Response: Once.

Affected Public: Individuals and households.

Type of Respondents: Patients, spouses/family/friends of patients, health care providers, physicians, CAM practitioners, or other individuals contacting the NCCAM Clearinghouse.

The annual reporting burden is as follows:

A.12–1—ESTIMATES OF HOUR BURDEN

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Telephone survey				
Individuals or households	919	1	0.075	69
Physicians	44	1	0.075	3
CAM/health practitioners	20	1	0.075	1

The annualized cost to respondents is estimated at $1,479 for the telephone survey. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Christy Thomsen, Director, Office of Communications and Public Liaison, NCCAM, 31 Center Drive, Room 2B–11, Bethesda, MD 20892–2182; or fax your request to 301–402–4741; or e-mail *thomsenc@mail.nih.gov*. Ms. Thomsen can be contacted by telephone at 301–451–8876.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: August 27, 2009.

Christy Thomsen,

Director, Office of Communications and Public Liaison, National Center for Complementary and Alternative Medicine, National Institutes of Health.

[FR Doc. E9–21479 Filed 9–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–E–0266]

Determination of Regulatory Review Period for Purposes of Patent Extension; DORIBAX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DORIBAX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product DORIBAX (doripenem monohydrate). DORIBAX is indicated in the treatment of the following infections caused by designated susceptible bacteria: complicated intra-abdominal infections, and complicated urinary tract infections, including pyelonephritis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DORIBAX (U.S. Patent No. 5,317,016) from Shionogi Seiyaku Kabushiki Kaisha, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 18, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the

approval of DORIBAX represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DORIBAX is 1,746 days. Of this time, 1,442 days occurred during the testing phase of the regulatory review period, while 304 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: January 2, 2003. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 2, 2003.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 13, 2006. The applicant claims December 12, 2006, as the date the new drug application (NDA) for DORIBAX (NDA 22–106) was initially submitted. However, FDA records indicate that NDA 22–106 was submitted on December 13, 2006.

3. *The date the application was approved*: October 12, 2007. FDA has verified the applicant's claim that NDA 22–106 was approved on October 12, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,025 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 3, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 3, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 23, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–21365 Filed 9–3–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0056]

Determination of Regulatory Review Period for Purposes of Patent Extension; BANZEL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for BANZEL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product BANZEL (rufinamide). BANZEL is indicated for adjunctive treatment of seizures associated with Lennox-Gastaut syndrome in children 4 years and older and adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for BANZEL (U.S. Patent No. 6,740,669) from Novartis AG, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 26, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of BANZEL represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for BANZEL is 6,595 days. Of this time, 5,501 days occurred during the testing phase of the regulatory review period, while 1,094 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 27, 1990. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 27, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: November 17, 2005. FDA has verified the applicant's claim that the new drug application (NDA) 21–911 for BANZEL was initially submitted on November 17, 2005.

3. *The date the application was approved*: November 14, 2008. FDA has verified the applicant's claim that NDA 21–911 was approved on November 14, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 819 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 3, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 3, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 23, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–21428 Filed 9–3–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–E–0568]

Determination of Regulatory Review Period for Purposes of Patent Extension; TALENT ABDOMINAL STENT GRAFT SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TALENT ABDOMINAL STENT GRAFT SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device, TALENT ABDOMINAL STENT GRAFT SYSTEM. The TALENT ABDOMINAL STENT GRAFT SYSTEM is indicated for the endovascular treatment of abdominal aortic aneurysms with or without iliac involvement having: Iliac/femoral access vessel morphology that is compatible with vascular access techniques, devices, and/or accessories; a proximal aortic neck length of ≥ 10 millimeters (mm); proximal aortic neck angulation ≤ 60° distal iliac artery fixation length of ≥ 15 mm; an aortic neck diameter of 18 to 32 mm and iliac artery diameters of 8 to 22 mm; and vessel morphology suitable for endovascular repair. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TALENT ABDOMINAL STENT GRAFT SYSTEM (U.S. Patent No. 6,306,141) from Medtronic, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 18, 2009, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of TALENT ABDOMINAL STENT GRAFT SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TALENT ABDOMINAL STENT GRAFT SYSTEM is 4,024 days. Of this time, 3,843 days occurred during the testing phase of the regulatory review period, while 181 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) involving this device became effective*: April 11, 1997. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section

520(g) of the act for human tests to begin became effective April 11, 1997.

2. *The date an application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: October 18, 2007. FDA has verified the applicant's claim that the premarket approval application (PMA) for TALENT ABDOMINAL STENT GRAFT SYSTEM (PMA P070027) was initially submitted October 18, 2007.

3. *The date the application was approved*: April 15, 2008. FDA has verified the applicant's claim that PMA P070027 was approved on April 15, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,183 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 3, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 3, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 8, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–21424 Filed 9–3–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Antigenic Chimeric Tick-Borne Encephalitis Virus/Dengue Virus Type 4 Recombinant Viruses

Description of Technology: The tick-borne encephalitis virus (TBEV) complex is a group of viruses that can cause severe neutrotropic disease and up to thirty percent (30%) mortality. While these viruses can be found in many parts of the world, the largest impact of the disease occurs in Europe and Russia, where approximately fourteen thousand (14,000) hospitalized TBEV cases occur annually. TBEV is in the family Flaviviridae, genus flavivirus and is composed of a positive-sense single stranded RNA genome that contains 5′ and 3′ non-coding regions and a single open reading frame encoding ten (10) proteins. At present, a vaccine or FDA approved antiviral therapy is not available.

The inventors have previously developed a WNV/Dengue4Delta30 antigenic chimeric virus as a live attenuated virus vaccine candidate that contains the WNV premembrane and envelope (prM and E) proteins on a dengue virus type 4 (DEN4) genetic background with a thirty nucleotide deletion (Delta30) in the DEN4 3′-UTR. Using a similar strategy, the inventors have generated an antigenic chimeric virus, TBEV/DEN4Delta30. This chimeric virus also contains attenuating mutations within the E and nonstructural NS5 proteins. Preclinical testing results with the derived virus indicate that chimerization of TBEV with DEN4Delta30 and introduction of the attenuating mutations decreased neuroinvasiveness and neurovirulence in mice. The TBEV/DEN4delta30 vaccine candidate was safe, immunogenic, and provided protection in monkeys against challenge with TBE viruses.

This application claims live attenuated chimeric TBEV/DEN4Delta30 vaccine compositions. Also claimed are methods of treating or preventing TBEV infection in a mammalian host, methods of producing a subunit vaccine composition, isolated polynucleotides comprising a nucleotide sequence encoding a TBEV immunogen, methods for detecting TBEV infection in a biological sample and infectious chimeric TBEV.

Applications: Development of Tick-Borne Encephalitis Virus vaccines, therapeutics and diagnostics.

Advantages: Live attenuated chimeric vaccine, known regulatory pathway, potential for lasting immunity with fewer doses.

Development Status: Vaccine candidates have been synthesized and preclinical studies have been performed.

Inventors: Alexander G. Pletnev, Amber R. Engel, Brian R. Murphy (NIAID).

Patent Status: U.S. Provisional Application No. 61/181,982 filed 28 May 2009 (HHS Reference No. E–078–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The NIAID is seeking statements of capability or interest from parties interested in collaborative research in preclinical study of the long-term immunity induced by the TBEV/DEN4 vaccine candidate against highly virulent TBE viruses and in the clinical trials of this vaccine in humans. Please contact Michael Piziali, NIAID Office of Technology Development, at 301–496–2644 for more information.

Monoclonal Antibodies That React With the Capsule of *Bacillus anthracis*

Description of Technology: Bacillus anthracis is the causative agent of anthrax and is surrounded by a

polypeptide capsule of poly-γ-D-glutamic acid (γDPGA). γDPGA is poorly immunogenic and has antiphagocytic properties. The bacterial capsule is essential for virulence. Antibodies to the capsule have been shown to enhance phagocytosis and killing of encapsulated bacilli. These antibodies in combination with antibodies that neutralize the toxins of *B. anthracis* could provide enhanced protection by their dual antibacterial and antitoxic activities. Such antibodies would be especially useful for antibiotic-resistant strains.

In order to obtain therapeutically useful anti-γ DPGA monoclonal antibodies (MAbs), the inventors immunized chimpanzees with conjugates of 15-mer glutamic acid polymers to immunogenic protein carriers (recombinant protective antigen (PA) of *B. anthracis*). After several immunizations, chimpanzees developed strong immune responses to γDPGA. A combinatorial Fab library of mRNA derived from the chimpanzee's bone marrow was prepared and eight (8) distinct Fabs reactive with native γDPGA were recovered. Two (2) of the Fabs were converted into full-length IgG with human γ1 heavy chain constant regions. These two (2) MAbs showed strong opsonophagocytic killing of bacilli in an *in vitro* assay. These two (2) MAbs were also tested for protection of mice challenged with virulent anthrax spores and results showed that both MAbs provided full or nearly full protection at a dose of 0.3 mg, the lowest dose tested, which is much more potent than previously reported murine anti-PGA MAbs. Since chimpanzee immunoglobulins are virtually identical to human immunoglobulins, these chimpanzee anticapsule MAbs may have clinically useful applications.

This application claims the antibody compositions described above. Also claimed are methods of treating or preventing *B. anthracis* infection in a mammalian host and isolated polynucleotides comprising a nucleotide sequence encoding the antibodies of the technology.

Applications: Development of anthrax vaccines, therapeutics and diagnostics.

Advantages: Strongly neutralizing antibodies, known regulatory pathway, potential for use as both a prophylaxis and therapy.

Development Status: Preclinical studies have been performed utilizing the monoclonal antibodies of this technology.

Inventors: Zhaochun Chen (NIAID), Robert H. Purcell (NIAID), Joanna Kubler-Kielb (NICHD), Lily Zhongdong Dai (NICHD), Rachel Schneerson (NICHD).

Patent Status: U.S. Provisional Application No. 61/116,222 filed 19 Nov 2008 (HHS Reference No. E–125–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize MAbs neutralizing anthrax toxins and capsule for comprehensive protection against anthrax. Please contact Bill Ronnenberg, NIAID Office of Technology Development, at 301–451–3522 for more information.

Dated: August 28, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–21482 Filed 9–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Health Promotion and Disease Prevention Research Centers, Special Interest Project Competitive Supplements (SIPS) (U48 Panels A–M), RFA–DP09–101SUPP09, Initial Review

Cancellation: The notice was originally published in the **Federal Register** on July 14, 2009 (Volume 74, Number 133) [page 34026]. The following panels are cancelled: D, F, K, L and M.

Contact Person for More Information: Brenda Colley-Gilbert, PhD, Director, Extramural Research Program Office, CCCH, 4770 Buford Highway, MS K–92, Atlanta, GA 30341, Telephone (770) 488–6295.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 26, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–21379 Filed 9–3–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0233]

Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Requirements and Commitments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: Under the Food and Drug Administration Modernization Act of 1997 (Modernization Act), the Food and Drug Administration (FDA) is required to report annually in the **Federal Register** on the status of postmarketing requirements and commitments required of, or agreed upon, by holders of approved drug and biological products. This is the agency's report on the status of the studies and clinical trials that applicants have agreed to or are required to conduct.

FOR FURTHER INFORMATION CONTACT:

Cathryn C. Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6464, Silver Spring, MD 20993–0002, 301–796–0700; or

Robert Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1400 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Modernization Act

Section 130(a) of the Modernization Act (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding a new provision requiring reports of certain postmarketing studies, including clinical trials, for human drug and biological products (section 506B of the act (21 U.S.C. 356(b)). Section 506B of the act provides FDA with additional authority to monitor the progress of a postmarketing study or clinical trial that an applicant has been required to or has agreed to conduct by requiring the applicant to submit a report annually

providing information on the status of the postmarketing study/clinical trial. This report must also include reasons, if any, for failure to complete the study/clinical trial. These studies and clinical trials are intended to further define the safety, efficacy, or optimal use of a product and therefore play a vital role in fully characterizing the product.

Under the Modernization Act, commitments to conduct postmarketing studies or clinical trials included both studies/clinical trials that applicants agreed to conduct as well as studies/clinical trials that applicants were required to conduct under FDA regulations.[1]

B. The Food and Drug Administration Amendments Act of 2007

On September 27, 2007, the President signed Public Law 110–85, the Food and Drug Administration Amendments Act of 2007 (FDAAA). Section 901, in Title IX of FDAAA, created a new section 505(o) of the act authorizing FDA to require certain studies and clinical trials for human drug and biological products approved under section 505 of the act or section 351 of the Public Health Service Act. Under FDAAA, FDA has been given additional authority to require applicants to conduct and report on postmarketing studies and clinical trials to assess a known serious risk, assess signals of serious risk, or identify an unexpected serious risk related to the use of a product. This new authority became effective on March 25, 2008. FDA may now take enforcement action against applicants who fail to conduct studies and clinical trials required under FDAAA, as well as studies and clinical trials required under FDA regulations (see sections 505(o)(1), 502(z), and 303(f) of the act; 21 U.S.C. 355(o)(1), 352(z), and 333(f)).

Although regulations implementing the Modernization Act postmarketing authorities use the term ''postmarketing commitment'' to refer to both required studies and studies applicants agree to conduct, in light of the new authorities enacted in FDAAA, FDA has decided it is important to distinguish between enforceable postmarketing requirements and unenforceable postmarketing commitments. Therefore, in this notice and report, FDA refers to studies/clinical trials that an applicant is required to conduct as ''postmarketing requirements'' (PMRs) and studies/clinical trials that an applicant agrees to but is not required to conduct as ''postmarketing commitments'' (PMCs). Both are addressed in this notice and report.

C. FDA's Implementing Regulations

On October 30, 2000 (65 FR 64607), FDA published a final rule implementing section 130 of the Modernization Act. This rule modified the annual report requirements for new drug applications (NDAs) and abbreviated new drug applications (ANDAs) by revising § 314.81(b)(2)(vii) (21 CFR 314.81(b)(2)(vii)). The rule also created a new annual reporting requirement for biologics license applications (BLAs) by establishing § 601.70 (21 CFR 601.70). The rule described the content and format of the annual progress report, and clarified the scope of the reporting requirement and the timing for submission of the annual progress reports. The rule became effective on April 30, 2001. The regulations apply only to human drug and biological products that are approved under NDAs, ANDAs, and BLAs. They do not apply to animal drugs or to biological products regulated under the medical device authorities.

The reporting requirements under §§ 314.81(b)(2)(vii) and 601.70 apply to PMRs and PMCs made on or before the enactment of the Modernization Act (November 21, 1997), as well as those made after that date. Therefore, studies and clinical trials required under FDAAA are covered by the reporting requirements in these regulations.

Sections 314.81(b)(2)(vii) and 601.70 require applicants of approved drug and biological products to submit annually a report on the status of each clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology study/clinical trial that is required by FDA or that they have committed to conduct either at the time of approval or after approval of their NDA, ANDA, or BLA. The status of PMCs concerning chemistry, manufacturing, and production controls and the status of other studies/clinical trials conducted on an applicant's own initiative are not required to be reported under §§ 314.81(b)(2)(vii) and 601.70 and are not addressed in this report. It should be noted, however, that applicants are required to report to FDA on these commitments made for NDAs and ANDAs under § 314.81(b)(2)(viii). Furthermore, section 505(o)(1)(E) of the act as amended by FDAAA requires that applicants report periodically on the status of each required study/clinical trial and each study/clinical trial ''otherwise undertaken * * * to investigate a safety issue * * * .''

According to the regulations, once a PMR has been required or a PMC has been agreed upon, an applicant must report on the progress of the PMR/PMC on the anniversary of the product's approval until the PMR/PMC is completed or terminated and FDA determines that the PMR/PMC has been fulfilled or that the PMR/PMC is either no longer feasible or would no longer provide useful information. The annual progress report must include a description of the PMR/PMC, a schedule for completing the PMR/PMC, and a characterization of the current status of the PMR/PMC. The report must also provide an explanation of the PMR/PMC status by describing briefly the progress of the PMR/PMC. A PMR/PMC schedule is expected to include the actual or projected dates for the following: (1) Submission of the final protocol to FDA, (2) completion of subject accrual or initiation of an animal study, (3) completion of the study/clinical trial, and (4) submission of the final report to FDA. The status of the PMR/PMC must be described in the annual report according to the following definitions:

- *Pending*: The study/clinical trial has not been initiated (i.e., no subjects have been enrolled or animals dosed), but does not meet the criteria for delayed (i.e., the original projected date for initiation of subject accrual or initiation of animal dosing has not passed);
- *Ongoing*: The study/clinical trial is proceeding according to or ahead of the original schedule;
- *Delayed*: The study/clinical trial is behind the original schedule;
- *Terminated*: The study/clinical trial was ended before completion, but a final report has not been submitted to FDA; or
- *Submitted*: The study/clinical trial has been completed or terminated, and a final report has been submitted to FDA.

Databases containing information on PMRs/PMCs are maintained at the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER).

II. Summary of Information From Postmarketing Status Reports

This report, published to fulfill the annual reporting requirement under the Modernization Act, summarizes the status of PMRs and PMCs as of September 30, 2008. If a requirement or commitment did not have a schedule, or

[1] FDA could require postmarketing studies and clinical trials under the following circumstances: To verify and describe clinical benefit for a human drug approved in accordance with the accelerated approval provisions (21 U.S.C. 356(b)(2)(A); 21 CFR 314.510 and 601.41); for a drug approved on the basis of animal efficacy data because human efficacy trials are not ethical or feasible (21 CFR 314.610(b)(1) and 601.91(b)(1)); and for marketed drugs that are not adequately labeled for children (Pediatric Research Equity Act (21 U.S.C. 355B; Public Law 108–155)).

a postmarketing progress report was not received in the previous 12 months, the PMR/PMC is categorized according to the most recent information available to the agency.

Information in this report covers any PMR/PMC that was made, in writing, at the time of approval or after approval of an application or a supplement to an application, including PMRs required under FDAAA (section 505(o)(3) of the act), PMRs required under FDA regulations (e.g., PMRs required to demonstrate clinical benefit of a product following accelerated approval (see footnote 1 of this document)), and PMCs agreed to by the applicant.

Information summarized in this report includes the following: (1) The number of applicants with open (uncompleted) PMRs/PMCs, (2) the number of open PMRs/PMCs, (3) the status of open PMRs/PMCs as reported in § 314.81(b)(2)(vii) or § 601.70 annual reports, (4) the status of concluded PMRs/PMCs as determined by FDA, and (5) the number of applications with open PMRs/PMCs for which applicants did not submit an annual report within 60 days of the anniversary date of U.S. approval.

Additional information about PMRs/PMCs submitted by applicants to CDER and CBER is provided on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Post-marketingPhaseIVCommitments/default.htm*. Neither the Web site nor this notice include information about PMCs concerning chemistry, manufacturing, and controls. It is FDA policy not to post information on the Web site until it has been reviewed for accuracy. Numbers published in this notice cannot be compared with the numbers resulting from searches of the Web site because this notice incorporates totals for all PMRs/PMCs in FDA databases, including PMRs/PMCs undergoing review for accuracy. In addition, the report in this notice will be updated annually while the Web site is updated quarterly (i.e., January, April, July, and October).

Many applicants have more than one approved product and for many products there is more than one PMR or PMC. Specifically, there were 158 unique applicants with 297 NDAs/ANDAs that had open PMRs/PMCs. There were 54 unique applicants with 94 BLAs that had open PMRs/PMCs.

Annual status reports are required to be submitted for each open PMR/PMC within 60 days of the anniversary date of U.S. approval of the original application. In fiscal year (FY) 2008, 27 percent (59/215) of NDA/ANDA and 52 percent (43/83) of BLA annual status reports were reported late or were overdue at the close of the FY, September 30, 2008. Of the annual status reports due but not submitted within 60 days of the anniversary date of U.S. approval of the original application, 100 percent (59/59) of the NDA/ANDA and 42 percent (18/43) of the BLA reports were submitted before September 30, 2008.

Most PMRs are progressing on schedule (95 percent for NDAs/ANDAs; 89 percent for BLAs). Most PMCs are also progressing on schedule (96 percent for NDAs/ANDAs; 78 percent for BLAs). Most of the PMCs that are currently listed in the database were developed before the postmarketing requirements section of FDAAA took effect.[2]

III. What's New About This Report

This report now provides six separate tables instead of one summary table. The tables distinguish between PMRs and PMCs and between on-schedule and off-schedule PMRs and PMCs according to the original schedule milestones. On-schedule PMRs/PMCs are categorized as pending, ongoing, or submitted. Off-schedule PMRs/PMCs that have missed one of the original milestone dates are categorized as delayed or terminated. The tables include data as of September 30, 2008.

Table 1 of this document provides an overall summary of the data on all PMRs and PMCs. Tables 2 and 3 of this document provide detail on PMRs. Table 2 of this document provides additional detail on the status of on-schedule PMRs.

Table 1 of this document shows that most PMRs (95 percent for NDAs/ANDAs and 89 percent for BLAs) and most PMCs (96 percent for NDAs/ANDAs and 78 percent for BLAs) are on schedule. Overall, of the PMRs that are pending (i.e., have not been initiated), 73 percent were created within the past 3 years.

Table 2 of this document shows that most pending PMRs for both drug and biological products are in response to the Pediatric Research and Equity Act (PREA), under which FDA requires sponsors to study new drugs, when appropriate, for pediatric populations. Under section 505B(a)(3) of the act, the initiation of these studies generally is deferred until required safety information from other studies has first been submitted and reviewed. PMRs for products approved under the animal efficacy rule (21 CFR 314.600 for drugs; 21 CFR 601.90 for biological products) can be conducted only when the product is used for its indication as a counterterrorism measure. In the absence of a public health emergency, these studies/clinical trials will remain pending indefinitely. The next largest category of pending PMRs comprises those studies/clinical trials required by FDA under FDAAA, which became effective on March 25, 2008.

Section 921 of FDAAA requires FDA to review the backlog of postmarketing safety commitments and report to Congress. CDER contracted with an external group to review the backlog of its PMRs/PMCs as well as PMR/PMC annual status reports.[3] The contractors's report was recently completed and can be found on the FDA Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Post-marketingPhaseIVCommitments/ucm064436.htm*. As Exhibit 9 of the report shows, the external review has resulted in a decreased number of NDA PMRs/PMCs categorized as pending because their statuses have been updated to other categories (e.g., submitted). Some of this decrease is reflected in the NDA statistics reported in this notice, which shows the status of the PMRs/PMCs as of September 30, 2008, and additional status changes will be reflected in the statistics reported in the next annual notice showing the status of the PMRs/PMCs as of September 30, 2009.

[2] Although there are PMCs that might meet FDAAA standards for required safety studies/clinical trials under section 505(o)(3)(B) of the act (21 U.S.C. 355(o)(3)(B)) if they were first determined to be necessary today, they may be converted to PMRs only if FDA becomes aware of new safety information.

[3] The external backlog review covered PMRs/PMCs for NDAs and CDER-regulated BLAs. CBER conducted a separate backlog review of the CBER-regulated BLAs.

Table 3 of this document provides additional detail on the status of off-schedule PMRs. The majority of off-schedule PMRs (which account for only 5 percent of the total for NDAs/ANDAs and 11 percent for BLAs) are delayed according to the original schedule milestones (93 percent (13/14) for NDAs/ANDAs; 71 percent (5/7) for BLAs). However, after discussion between FDA and applicants, the original schedules may have been adjusted for unanticipated delays in the progress of the study/clinical trial (e.g., difficulties with subject enrollment in a trial for a marketed drug or need for additional time to analyze results). In this report, study status reflects the status in relation to the original study schedule regardless of whether adjustments to the schedule have been made.

Tables 4 and 5 of this document provide additional detail on the status of PMCs. Table 4 provides additional detail on the status of on-schedule PMCs. Pending PMCs comprise 56 percent (544/965) of the on-schedule NDA and ANDA PMCs and 40 percent (112/279) of the on-schedule BLA PMCs.

Table 5 of this document provides additional details on the status of off-schedule PMCs. The majority of off-schedule PMCs (which account for only 4 percent for NDAs/ANDAs and 22 percent for BLAs) are delayed according to the original schedule milestones (91 percent (39/43) for NDAs/ANDAs; 97 percent (76/78) for BLAs). However, after discussion between FDA and applicants, the original schedules may have been adjusted for unanticipated delays in the progress of the study/clinical trial (e.g., difficulties with subject enrollment in a trial for a marketed drug or need for additional time to analyze results).

Table 6 of this document provides details about PMRs and PMCs that were concluded in the previous year. Most concluded PMRs and PMCs were fulfilled (80 percent of NDA/ANDA PMRs and 70 percent of BLA PMRs; 86 percent of NDA/ANDA PMCs and 97 percent of BLA PMCs).

TABLE 1.—SUMMARY OF POSTMARKETING REQUIREMENTS AND COMMITMENTS (NUMBERS AS OF SEPTEMBER 30, 2008)

	NDA/ANDA (% of Total PMR or % of Total PMC)	BLA (% of Total PMR or % of Total PMC)[1]
Number of open PMRs	306	65
On-schedule open PMRs (see table 2 of this document)	292 (95%)	58 (89%)
Off-schedule open PMRs (see table 3 of this document)	14 (5%)	7 (11%)
Number of open PMCs	1,008	357
On-schedule open PMCs (see table 4 of this document)	965 (96%)	279 (78%)
Off-schedule open PMCs (see table 5 of this document)	43 (4%)	78 (22%)

[1] On October 1, 2003, FDA completed a consolidation of certain therapeutic products formerly regulated by CBER into CDER. Consequently, CDER now reviews many BLAs. Fiscal year statistics for postmarketing requirements and commitments for BLAs reviewed by CDER are included in BLA totals in this table.

TABLE 2.—SUMMARY OF ON-SCHEDULE POSTMARKETING REQUIREMENTS (NUMBERS AS OF SEPTEMBER 30, 2008)

On-Schedule Open PMRs	NDA/ANDA (% of Total PMR)	BLA (% of Total PMR)[1]
Pending by type		
Accelerated approval	15	3
PREA[2]	194	24
Animal efficacy[3]	2	0
FDAAA safety (since March 25, 2008)	30	12
Total	241 (79%)	39 (60%)
Ongoing		
Accelerated approval	17	3
PREA[2]	13	6
Animal efficacy[3]	0	0
FDAAA safety (since March 25, 2008)	0	4
Total	30 (10%)	13 (20%)
Submitted		
Accelerated approval	12	2
PREA[2]	9	4

TABLE 2.—SUMMARY OF ON-SCHEDULE POSTMARKETING REQUIREMENTS (NUMBERS AS OF SEPTEMBER 30, 2008)—Continued

On-Schedule Open PMRs	NDA/ANDA (% of Total PMR)	BLA (% of Total PMR)[1]
Animal efficacy[3]	0	0
FDAAA safety (since March 25, 2008)	0	0
Total	21 (12%)	6 (9%)
Combined Total	292 (95%)	58 (89%)

[1] See note 1 for table 1 of this document.
[2] Many PREA studies have a pending status. PREA studies are usually deferred because the product is ready for approval in adults. Initiation of these studies also may be deferred until additional safety information from other studies has first been submitted and reviewed.
[3] PMRs for products approved under the animal efficacy rule (21 CFR 314.600 for drugs; 21 CFR 601.90 for biological products) can be conducted only when the product is used for its indication as a counterterrorism measure. In the absence of a public health emergency, these studies/clinical trials will remain pending indefinitely.

TABLE 3.—SUMMARY OF OFF-SCHEDULE POSTMARKETING REQUIREMENTS (NUMBERS AS OF SEPTEMBER 30, 2008)

Off-Schedule Open PMRs	NDA/ANDA (% of Total PMR)	BLA (% of Total PMR)[1]
Delayed		
Accelerated approval	4	2
PREA	9	3
Animal efficacy	0	0
FDAAA safety (since March 25, 2008)	0	0
Total	13 (4%)	5 (8%)
Terminated	1 (0.3%)	2 (3%)
Combined total	14 (5%)	7 (11%)

[1] See note 1 for table 1 of this document.

TABLE 4.—SUMMARY OF ON-SCHEDULE POSTMARKETING COMMITMENTS (NUMBERS AS OF SEPTEMBER 30, 2008)

On-Schedule Open PMCs	NDA/ANDA (% of Total PMC)	BLA (% of Total PMC)[1]
Pending	544 (54%)	112 (31%)
Ongoing	166 (17%)	93 (26%)
Submitted	255 (25%)	74 (21%)
Combined total	965 (96%)	279 (78%)

[1] See note 1 for table 1 of this document.

TABLE 5.—SUMMARY OF OFF-SCHEDULE POSTMARKETING COMMITMENTS (NUMBERS AS OF SEPTEMBER 30, 2008)

Off-Schedule Open PMCs	NDA/ANDA (% of Total PMC)	BLA (% of Total PMC)[1]
Delayed	39 (4%)	76 (21%)
Terminated	4 (0.4%)	2 (1%)
Combined total	43 (4%)	78 (22%)

[1] See note 1 for table 1 of this document.

TABLE 6.—SUMMARY OF CONCLUDED POSTMARKETING REQUIREMENTS AND COMMITMENTS (OCTOBER 1, 2007 TO OCTOBER 1, 2008)

	NDA/ANDA (% of Total)	BLA (% of Total)[1]
Concluded PMRs		
Requirement met (fulfilled)	12 (80%)	7 (70%)

TABLE 6.—SUMMARY OF CONCLUDED POSTMARKETING REQUIREMENTS AND COMMITMENTS (OCTOBER 1, 2007 TO OCTOBER 1, 2008)—Continued

	NDA/ANDA (% of Total)	BLA (% of Total)[1]
Requirement not met (released and new revised requirement issued)	1 (7%)	0
Requirement no longer feasible or product withdrawn (released)	2 (13%)	3 (30%)
Total	15	10
Concluded PMCs		
Commitment met (fulfilled)	94 (86%)	30 (97%)
Commitment not met (released and new revised requirement/commitment issued)	3 (3%)	0
Commitment no longer feasible or product withdrawn (released)	12 (11%)	1 (3%)
Total	109	31

[1] See note 1 for table 1 of this document.

Dated: August 31, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–21302 Filed 9–3–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Allowance in Duties

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information: 1651–0007.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Allowance in Duties. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 3, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or recordkeepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Allowance in Duties.

OMB Number: 1651–0007.

Form Number: CBP Form 4315.

Abstract: Form 4315 is required by CBP in instances of claims of damaged or defective imported merchandise on which an allowance in duty is made in the liquidation of an entry. The information is used to substantiate an importer's claim for such duty allowances.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 1,600.

Dated: September 1, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–21366 Filed 9–3–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–28]

Notice of Proposed Information Collection: Comment Request; Request for Approval of Advance of Escrow Funds

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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: November 3, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Joyce Allen, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Approval of Advance of Escrow Funds.

OMB Control Number, if applicable: 2502–0018.

Description of the need for the information and proposed use: The information collected on the ''Request for Approval of Advance of Escrow Funds'' form is to ensure that escrowed funds are disposed of correctly for completion of offsite facilities, construction changes, construction cost not paid at final endorsement, non-critical repairs and capital needs assessment. The mortgagor must request withdrawal of escrowed funds through a depository (mortgagee). The HUD staff, Mortgage Credit Examiner, Inspector, and Architect, must use information collected to approve the withdrawal of escrowed funds for each item.

Agency form numbers, if applicable: HUD–92464.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 1,872. The number of respondents is 624, the number of responses is 1,872, the frequency of response is monthly, and the burden hour per response is 2.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 28, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E9–21431 Filed 9–3–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–34]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for

use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COAST GUARD: Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593; (202) 475–5609; GSA: Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS2603, Washington, DC 20240; (202) 208–5399; NAVY: Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: August 27, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program; Federal Register Report for 09/04/2009

Suitable/Available Properties

Building

Idaho

Bldg. CF–602,
Idaho National Lab,
Idaho Falls, ID 83415.
Landholding Agency: GSA.
Property Number: 54200920012.
Status: Excess.
GSA Number: 9–B–ID–569.
Comments: 4224 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldg. ARA–617,
Idaho National Lab,
Idaho Falls, ID 83415.
Landholding Agency: GSA.
Property Number: 54200920013.
Status: Excess.
GSA Number: 9–B–ID–571.
Comments: 1631 sq. ft., needs repair, presence of asbestos/possible contamination, off-site use only.

Bldg. PBF–619,
Idaho National Lab,
Idaho Falls, ID 83415.
Landholding Agency: GSA.
Property Number: 54200920014.
Status: Excess.
GSA Number: 9–B–ID–568.
Comments: 5704 sq. ft., needs repair, presence of asbestos/lead paint, possible contamination, off-site use only.

Iowa

U.S. Army Reserve,
620 West 5th St.,
Garner, IA 50438.
Landholding Agency: GSA.
Property Number: 54200920017.
Status: Excess.
GSA Number: 7–D–IA–0510.
Comments: 5743 sq. ft., presence of lead paint, most recent use—offices/classrooms/storage, subject to existing easements.

U.S. Army Reserve Center,
904 W. Washington St.,
Mount Pleasant, IA 52641.
Landholding Agency: GSA.
Property Number: 54200920018.
Status: Excess.
GSA Number: 7–D–IA–0509.
Comments: Approx. 5811 sq. ft., presence of lead paint, most recent use—admin/maint/storage, license/easement, published incorrectly on 7/10/09.

Maine

3 Bldgs.,
Acadia National Park,
Hancock, ME.
Landholding Agency: Interior.
Property Number: 61200930005.
Status: Unutilized.
Directions: 82338, 82339, 82340.
Comments: 80/600/1480 sq. ft., off-site use only.

Montana

Raymond MT Property,
1559 Hwy 16 North,
Raymond, MT 59256.
Landholding Agency: GSA.
Property Number: 54200920019.
Status: Surplus.
GSA Number: 7–X–MT–630.
Comments: 650 sq. ft., most recent use—office, off-site use only.

Land

Texas

Bee Cave Natl. Guard Property,
408 St. Stephens School Rd.,
Austin, TX 78746.
Landholding Agency: GSA.
Property Number: 54200930007.
Status: Surplus.
GSA Number: 7–D–TX–1108.
Comments: 0.67 acres.

West Virginia

6 Tracts,
Matewan, WV.
Landholding Agency: GSA.
Property Number: 54200930008.
Status: Excess.
GSA Number: 4–D–WV–0556–1.
Directions: 1149, 1159, 1161, 1166, 1181, 1187.
Comments: 4.57 acres, subject to building restrictions.

Suitable/Unavailable Properties

Building

Arizona

Water Conservation Lab,
4331 E. Broadway Rd.,
Phoenix, AZ 85040.
Landholding Agency: GSA.
Property Number: 54200820013.
Status: Excess.
GSA Number: 9–A–AZ–846–1.
Comments: 11365 sq. ft. main bldg w/11 additional bldgs. & 66 paved parking spaces, easement restrictions, zoning issue.

Arkansas

Job Corps Center,
2020 Vance St.,
Little Rock, AR 72206.
Landholding Agency: GSA.
Property Number: 54200920003.
Status: Surplus.
GSA Number: 7–L–AR–0573.
Comments: 74,570 sq. ft., 6 bldgs. most recent use—office/residential.

California

Social Security Building,
505 North Court Street,
Visalia Co: Tulare, CA 93291.
Landholding Agency: GSA.
Property Number: 54200610010.
Status: Surplus.
GSA Number: 9–G–CA–1643.
Comments: 11,727 sq. ft., possible lead paint, most recent use—office.

Old Customs House,
12 Heffernan Ave.,
Calexico, CA 92231.
Landholding Agency: GSA.
Property Number: 54200710016.
Status: Surplus.
GSA Number: 9–G–CA–1658.
Comments: 16,108 sq. ft., possible asbestos/lead paint, zoned commercial, major repairs for long term use, historic building.

Defense Fuel Support Pt.,
Estero Bay Facility,
Morro Bay, CA 93442.
Landholding Agency: GSA.
Property Number: 54200810001.
Status: Surplus.
GSA Number: 9–N–CA–1606.
Comments: Former 10 acre fuel tank farm w/associated bldgs/pipelines/equipment, possible asbestos/PCBs.

Boyle Heights SSA Bldg.,
N. Breed St.,
Los Angeles, CA 90033.
Landholding Agency: GSA.
Property Number: 54200840010.
Status: Surplus.
GSA Number: 9–G–CA–1676.
Comments: 10,815 sq. ft., requires seismic strengthening to satisfy substantial life-safety criteria; expected lateral loads in structure rather high.

Indiana

Radio Tower,

Cannelton Locks & Dam,
Perry, IN.
Landholding Agency: GSA.
Property Number: 54200830020.
Status: Excess.
GSA Number: 1–D–IN–569E.
Comments: Tower/88 sq. ft. comm storage bldg., heavily wooded area.

John A. Bushemi USARC,
3510 W. 15th Ave.,
Gary, IN 46404.
Landholding Agency: GSA.
Property Number: 54200830027.
Status: Excess.
GSA Number: 1–D–IN–0602.
Comments: 18,689 sq. ft. admin bldg & 3780 sq. ft. maintenance bldg.

Maryland

Federal Office Building,
7550 Wisconsin Ave.,
Bethesda, MD 20814.
Landholding Agency: GSA.
Property Number: 54200920007.
Status: Surplus.
GSA Number: GMR–1101–1.
Comments: 100,000 sq. ft., 10-story, requires major renovation, limited parking.

Massachusetts

Federal Office Bldg.,
Main & Bridge St.,
Springfield, MA 01101.
Landholding Agency: GSA.
Property Number: 54200740002.
Status: Excess.
GSA Number: MA–6262–1.
Comments: 30,000 sq. ft., 27% occupied, recommend complete system upgrade.

Michigan

Social Security Bldg.,
929 Stevens Road,
Flint, MI 48503.
Landholding Agency: GSA.
Property Number: 54200720020.
Status: Excess.
GSA Number: 1–G–MI–822.
Comments: 10,283 sq. ft., most recent use—office.

Trenton Border Patrol Station,
23100 West Road,
Brownstown, MI 48183.
Landholding Agency: GSA.
Property Number: 54200910003.
Status: Excess.
GSA Number: 1–X–MI–828–1.
Comments: 3989 sq. ft., possible asbestos/lead paint, most recent use—office/storage.

Missouri

Federal Bldg/Courthouse,
339 Broadway St.,
Cape Girardeau, MO 63701.
Landholding Agency: GSA.
Property Number: 54200840013.
Status: Excess.
GSA Number: 7–G–MO–0673.
Comments: 47,867 sq. ft., possible asbestos/lead paint, needs maintenance & seismic upgrades, 30% occupied—tenants to relocate within 2 yrs.

Nebraska

Environmental Chemistry,
Branch Laboratory,
420 South 18th St.,
Omaha, NE 68102.
Landholding Agency: GSA.
Property Number: 54200810010.
Status: Excess.
GSA Number: 7–D–NE–532.
Comments: 11,250 sq. ft., needs repair, frequent basement flooding, requires large sump pumps, most recent use—laboratory.

New Hampshire

Federal Building,
719 Main St.,
Parcel ID: 424–124–78,
Laconia, NH 03246.
Landholding Agency: GSA.
Property Number: 54200920006.
Status: Excess.
GSA Number: 1–G–NH–0503.
Comments: 31,271 sq. ft., most recent use—office bldg., National Register nomination pending.

New Jersey

Camp Pedricktown Sup. Facility,
U.S. Route 130,
Pedricktown, NJ 08067.
Landholding Agency: GSA.
Property Number: 54200740005.
Status: Excess.
GSA Number: 1–D–NJ–0662.
Comments: 21 bldgs., need rehab, most recent use—barracks/mess hall/garages/quarters/admin., may be issues w/right of entry, utilities privately controlled, contaminants.

New York

Fleet Mgmt. Center,
5–32nd Street,
Brooklyn, NY 11232.
Landholding Agency: GSA.
Property Number: 54200620015.
Status: Surplus.
GSA Number: 1–G–NY–0872B.
Comments: 12,693 sq. ft., most recent use—motor pool, heavy industrial.

Federal Building,
Brinkerhoff/Margaret Streets,
Plattsburgh, NY 12901.
Landholding Agency: GSA.
Property Number: 54200820005.
Status: Surplus.
GSA Number: 1–G–NY–0898–1A.
Comments: 13,833 sq. ft., eligible for National Register of Historic Places w/National Ranking of 5, most recent use—office, Federal tenants to relocate in August 2008.

Agriculture Inspection Station,
193 Meridan Road,
Champlain, NY 12919.
Landholding Agency: GSA.
Property Number: 54200910004.
Status: Excess.
GSA Number: 1–G–NY–0950–1.
Comments: 2869 sq. ft., possible asbestos/lead paint.

North Carolina

USCG Station Bldgs.,
Cape Hatteras,
Buxton Co: Dare, NC.
Landholding Agency: GSA.
Property Number: 54200720002.
Status: Excess.
GSA Number: 4–U–ND–0747A.
Comments: 5 bldgs./11 Other structures, contamination.

North Dakota

North House,
10951 County Road,
Hannah Co: Cavalier, ND 58239.
Landholding Agency: GSA.
Property Number: 54200720008.
Status: Surplus.
GSA Number: 7–X–ND–0515–1A.
Comments: 1128 sq. ft. residence, off-site use only.

South House,
10949 County Road,
Hannah Co: Cavalier, ND 58239.
Landholding Agency: GSA.
Property Number: 54200720009.
Status: Surplus.
GSA Number: 7–X–ND–0515–1B.
Comments: 1128 sq. ft. residence, off-site use only.

North House,
Highway 40,
Noonan Co: Divide, ND 58765.
Landholding Agency: GSA.
Property Number: 54200720010.
Status: Surplus.
GSA Number: 7–X–ND–0517–1A.
Comments: 1564 sq. ft. residence, off-site use only.

South House,
Highway 40,
Noonan Co: Divide, ND 58765.
Landholding Agency: GSA.
Property Number: 54200720011.
Status: Surplus.
GSA Number: 7–X–ND–0517–1B.
Comments: 1564 sq. ft. residence, off-site use only.

North Dakota

North House,
Rt. 1, Box 66,
Sarles Co: Cavalier, ND 58372.
Landholding Agency: GSA.
Property Number: 54200720012.
Status: Surplus.
GSA Number: 7–X–ND–0516–1B.
Comments: 1228 sq. ft. residence, off-site use only.

South House,
Rt. 1, Box 67,
Sarles Co: Cavalier, ND 58372.
Landholding Agency: GSA.
Property Number: 54200720013.
Status: Surplus.
GSA Number: 7–X–ND–0516–1A.
Comments: 1228 sq. ft. residence, off-site use only.

House #1,
10925 Hwy 28,
Sherwood Co: Renville, ND 58782.
Landholding Agency: GSA.
Property Number: 54200720014.
Status: Surplus.
GSA Number: 7–X–ND–0518–1B.
Comments: 1228 sq. ft. residence, off-site use only.

House #2,
10927 Hwy 28,
Sherwood Co: Renville, ND 58782.
Landholding Agency: GSA.
Property Number: 54200720015.
Status: Surplus.
GSA Number: 7–X–ND–0518–1A.
Comments: 1228 sq. ft. residence, off-site use only.

North House,
10913 Hwy 83,
Westhope Co: Bottineau, ND 58793.
Landholding Agency: GSA.
Property Number: 54200720016.
Status: Surplus.
GSA Number: 7–X–ND–0519–1B.
Comments: 1218 sq. ft. residence, off-site use only.

South House,
10909 Hwy 83,
Westhope Co: Bottineau, ND 58793.
Landholding Agency: GSA.
Property Number: 54200720017.
Status: Surplus.
GSA Number: 7–X–ND–0519–1A.
Comments: 1218 sq. ft. residence, off-site use only.

Ohio

NIKE Site Cd–46,
Felicity, OH.
Landholding Agency: GSA.
Property Number: 31200740015.
Status: Excess.
GSA Number: 1–D–OH–0832.
Comments: 8 bldgs., most recent use—Ohio Air Natl. Guard site.

PFC Joe R. Hastings Army Reserve Center,
3120 Parkway Dr.,
Canton, OH 44708.
Landholding Agency: GSA.
Property Number: 54200840008.
Status: Excess.
GSA Number: 1–D–OH–835.
Comments: 27,603 sq.ft./admin bldg. & vehicle maint. bldg., presence of asbestos/lead paint/radon/PCBs.

Oregon

3 Bldgs./Land,
OTHR–B Radar,
Cty Rd 514,
Christmas Valley, OR 97641.
Landholding Agency: GSA.
Property Number: 54200840003.
Status: Excess.
GSA Number: 9–D–OR–0768.
Comments: 14,000 sq. ft. each/2626 acres, most recent use—radar site, right-of-way.

U.S. Customs House,
220 NW. 8th Ave.,
Portland, OR.
Landholding Agency: GSA.
Property Number: 54200840004.
Status: Excess.
GSA Number: 9–D–OR–0733.
Comments: 100,698 sq. ft., historical property/National Register, most recent use—office, needs to be brought up to meet earthquake code and local bldg codes, presence of asbestos/lead paint.

Rhode Island

Former SSA Bldg.,
Broad & Exchange Streets,
Pawtucket, RI.
Landholding Agency: GSA.
Property Number: 54200920008.
Status: Excess.
GSA Number: 1–G–RI–0518.
Comments: 6254 sq. ft., most recent use—office.

Tennessee

NOAA Admin. Bldg.,
456 S. Illinois Ave.,
Oak Ridge, TN 38730.
Landholding Agency: GSA.
Property Number: 54200920015.
Status: Excess.
GSA Number: 4–B–TN–0664–AA.
Comments: 15,955 sq. ft., most recent use—office/storage/lab.

Texas

Bldgs. 5, 6, 7, Federal Center,
501 West Felix Street,
Ft. Worth Co: Tarrant, TX 76115.
Landholding Agency: GSA.
Property Number: 54200640002.
Status: Excess.
GSA Number: 7–G–TX–0767–3.
Comments: 3 warehouses with concrete foundation, off-site use only.

Border Patrol Station,
Sanderson, TX 79843.
Landholding Agency: GSA.
Property Number: 54200910006.
Status: Excess.
GSA Number: 7–X–TX–1097.
Comments: 1500 sq. ft., most recent use—office/garage.

Washington

Blaine Parking Lot,
SR 543,
Blaine, WA 98230.
Landholding Agency: GSA.
Property Number: 54200830028.
Status: Excess.
GSA Number: 9–G–WA–1242.
Comments: 2665 sq. ft., border crossing.

Land

Arizona

Parking Lot,
322 N. 2nd Ave.,
Phoenix, AZ 85003.
Landholding Agency: GSA.
Property Number: 54200740007.
Status: Surplus.
GSA Number: AZ–6293–1.
Comments: Approx. 21,000 sq. ft., parcel in OU3 study area for clean-up.

SRP Ditch,
24th St. & Jones Ave.,
Phoenix, AZ 85040.
Landholding Agency: GSA.
Property Number: 54200840001.
Status: Surplus.
GSA Number: AZ–0849–AA.
Comments: Approx. 4131 sq. ft. unimproved land, floodplain.

Salt River Project,
Pecos/Alma School Road,
#USBR–08–020,
Chander, AZ 85225.
Landholding Agency: GSA.
Property Number: 54200920001.
Status: Surplus.
GSA Number: 9–I–AZ–0850.
Comments: Approx. 34,183 sq. ft., ranges from 10–20 ft. wide, very long and narrow.

California

Tract 1607,
Lake Sonoma,
Rockpile Rd.,
Geyserville, CA 85746.
Landholding Agency: GSA.
Property Number: 54200840011.
Status: Surplus.
GSA Number: 9–GR–CA–1504.
Comments: Approx. 139 acres, northern portion not accessible because of steep slopes, rare manzanita species.

Connecticut

MYQ Outer Marker Facility,
Enfield, CT 06082.
Landholding Agency: GSA.
Property Number: 54200920004.
Status: Surplus.
GSA Number: 1–U–CT–0561–1A.
Comments: 0.341 acres, only accessible via right of way easement.

Massachusetts

FAA Site,
Massasoit Bridge Rd.,
Nantucket, MA 02554.
Landholding Agency: GSA.
Property Number: 54200830026.
Status: Surplus.
GSA Number: MA–0895.
Comments: Approx. 92 acres, entire parcel within MA Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program.

FAA Locator Antenna LOM,
Coleman Road,
Southampton, MA 01073.
Landholding Agency: GSA.
Property Number: 54200920005.
Status: Excess.
GSA Number: MA–0913–AA.
Comments: 1.41 acres.

Michigan

Former Elf Comm. Facility,
3041 County Road,
Republic, MI 49879.
Landholding Agency: GSA.
Property Number: 54200840012.
Status: Excess.
GSA Number: 1–N–MI–0827.
Comments: 6.69 acres w/transmiter bldg, support bldg., gatehouse, endangered species.

Oregon

20 acres,
Cow Hollow Park,
Nyssa, OR 97913.
Landholding Agency: GSA.
Property Number: 54200820007.
Status: Excess.
GSA Number: 9–I–OR–769.
Comments: 20 acres w/shower/restroom, eligible for listing on Historic Register.

Pennsylvania

Approx. 16.88,
271 Sterrettania Rd.,
Erie, PA 16506.
Landholding Agency: GSA.
Property Number: 54200820011.
Status: Surplus.
GSA Number: 4–D–PA–0810.
Comments: Vacant land.

Texas

FAA Outer Marker 18 R/L VYN,
1420 Lakeside Pkwy,
Flower Mound, TX 75028.
Landholding Agency: GSA.
Property Number: 54200820017.
Status: Surplus.
GSA Number: 7–U–TX–1090.

Comments: 1.428 acres, radar facility, published incorrectly on 8/15/08 as available.

Unsuitable Properties

Building

California

Tract 114–04,
Santa Monica NRA,
Agoura, CA 91301.
Landholding Agency: Interior.
Property Number: 61200930007.
Status: Unutilized.
Reasons: Extensive deterioration.

Trailers 4, 5, 6, 7, 9, 11, 12,
National Park,
Death Valley, CA 92328.
Landholding Agency: Interior.
Property Number: 61200930008.
Status: Unutilized.
Reasons: Extensive deterioration.

Connecticut

Boathouse,
USCG Academy,
New London, CT 06320.
Landholding Agency: Coast Guard.
Property Number: 88200930001.
Status: Unutilized.
Reasons: Secured Area. Extensive deterioration.

Florida

Tracts 105–45, 107–04,
Timucuan Eco & Historic,
Preservation,
Jacksonville, FL.
Landholding Agency: Interior.
Property Number: 61200930009.
Status: Excess.
Reasons: Extensive deterioration.

Maine

3 Bldgs.,
Acadia National Park,
Hancock, ME.
Landholding Agency: Interior.
Property Number: 61200930006.
Status: Unutilized.
Directions: 82390, 101723, 101724.
Reasons: Extensive deterioration.

New York

Bldg. 53-A,
Naval Support Unit,
Saratoga Springs, NY 12866.
Landholding Agency: Navy.
Property Number: 77200930013.
Status: Excess.
Reasons: Secured Area.

Tennessee

Bldg. 35801000,
Fort Donelson National,
Battlefield,
Dover, TN 37058.
Landholding Agency: Interior.
Property Number: 61200930010.
Status: Unutilized.
Reasons: Extensive deterioration.

Texas

Excell Helium Plant,
Masterson, TX 79058.
Landholding Agency: GSA.
Property Number: 54200930006.
Status: Surplus.
GSA Number: 7–D–TX–772.
Reasons: Extensive deterioration.

Texas

Bldgs. HB046, 0074,
LBJ Natl Historic Park,
Stonewall, TX 78671.
Landholding Agency: Interior.
Property Number: 61200930011.
Status: Excess.
Reasons: Extensive deterioration.

Tracts 01–101, 01–104,
LBJ Natl. Historic Park,
Johnson City, TX 78636.
Landholding Agency: Interior.
Property Number: 61200930012.
Status: Unutilized.
Reasons: Extensive deterioration.

Land

Florida

Encroachment #34,
Gulf Intracoastal Waterway,
Perdido Key, FL.
Landholding Agency: GSA.
Property Number: 54200920016.
Status: Excess.
GSA Number: 4–D–FL–1223–AC.
Reasons: Floodway. Not accessible by road.

[FR Doc. E9–21605 Filed 9–3–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000–L10200000.DD0000; HAG 9–0348]

Notice of Public Meeting, National Historic Oregon Trail Interpretive Center Advisory Board

AGENCY: Bureau of Land Management (BLM), Vale District.

ACTION: Meeting Notice for the National Historic Oregon Trail Interpretive Center (NHOTIC) Advisory Board.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) National Historic Oregon Trail Interpretive Center Advisory Board will meet as indicated below:

DATES: The meeting will begin at 9 a.m. (Pacific Daylight Time) on September 18, 2009.

ADDRESSES: The meeting will take place at the National Historic Oregon Trail Interpretive Center, 22267 Highway 86, Baker City, Oregon.

FOR FURTHER INFORMATION CONTACT: Mark Wilkening, Public Affairs Officer, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218.

SUPPLEMENTARY INFORMATION: At the NHOTIC Advisory Board meeting we will welcome members, receive an update from the Center Manager and District Manager, talk about elements of the Strategic Plan, receive an update on the energy audit, receive an update on the American Recovery and Reinvestment Act projects at the Center, and consider other matters that may reasonably come before the Advisory Board. The meeting is open to the public and will take place from 9 a.m.to 12:05 p.m. Pacific Daylight Time (PDT). Public comment is scheduled from 11:05 a.m. to 11:20 a.m. PDT, September 18, 2009. For a copy of the information to be distributed to the Council members, please submit a written request to the Vale District Office 10 days prior to the meeting.

Dated: August 31, 2009.

David R. Henderson,

District Manager, Vale District Office.

[FR Doc. E9–21375 Filed 9–3–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0321]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: National Institute of Justice Voluntary Compliance Testing Program.

The Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the approval is valid for three years. Comments are encouraged and should be directed to the National Institute of Justice, Office of Justice Programs, Department of Justice, Attention: Debra Stoe, 810 7th St., NW., Washington, DC 20531. Comments will be accepted for 30 days until October 5, 2009. This process is conducted in accordance with 5 CFR 1320.10. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 125, page 31466 on July 1, 2009, allowing for a 60-day comment period.

All comments and suggestions, or questions regarding additional

information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to NIJ at the above address.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Existing Collection.

(2) *The title of the form/collection:* NIJ Body Armor Compliance Testing Program.

This collection consists of five forms: Compliance Testing Program Applicant Agreement; Ballistic Body Armor Model Application and Body Armor Build Sheet; Declaration for Ballistic Body Armor; Compliance Testing Program Conformity Assessment Follow-up Agreement; NIJ-Approved Laboratory Application and Agreement.

(3) *Agency Form Number:* None. Component Sponsoring Collection: National Institute of Justice, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Body Armor Manufacturers and Testing Laboratories. *Other:* None. The purpose of the NIJ Voluntary Compliance Testing Program (CTP) is to ensure to the degree possible that body armor used for law enforcement and corrections applications is safe, reliable, and meets performance requirements over the declared performance period. Body armor models that are successfully tested by the CTP and listed on the NIJ Compliant Products List are eligible for purchase with grant funding through the Ballistic Vest Partnership.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Total of 60 respondents estimated.

CTP Applicant Agreement: Estimated 50 respondents; 1 hour each;

Ballistic Body Armor Model Application and Body Armor Build Sheet: Estimated 50 respondents (estimated 250 responses) at 30 minutes each;

Declaration for Ballistic Body Armor: Estimated 50 respondents (estimated 250 responses) at 15 minutes each;

CTP Conformity Assessment Follow-up Agreement: Estimated 50 respondents (estimated 250 responses) at 15 minutes each;

NIJ-Approved Laboratory Application and Agreement: Estimated 8 to 10 respondents at 1 hour each.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information is 310 hours in the first year and 100 hours each subsequent year.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 31, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–21333 Filed 9–3–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

[OMB Control No. 1205–0224]

Comment Request for Proposed Information Collection for Title 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship and Training, Extension Without Changes

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data concerning Title 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship Training, Form ETA–9039, that expires on December 31, 2009. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before November 3, 2009.

ADDRESSES: Submit written comments to John V. Ladd, Administrator, Office of Apprenticeship, Room N–5311, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–2796 (this is not a toll-free number). Fax: 202–693–2808. E-mail: *ladd.john@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The National Apprenticeship Act of 1937, Section 50 (29 U.S.C. 50), authorizes and directs the Secretary of Labor ''to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education in accordance with Section 17 of Title 20.'' Section 50a of the Act authorizes the Secretary of Labor to ''publish information relating to existing and proposed labor standards of apprenticeship,'' and to ''appoint national advisory committees * * *'' (29 U.S.C. 50a).

Title 29 CFR Part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State Apprenticeship Agencies. These policies and procedures apply to

recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering non-complying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of State agencies which register apprenticeship programs for Federal purposes.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without changes.

Title: Title 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship Training.

OMB Number: 1205–0224.

Affected Public: Applicants, Apprentices, Sponsors, State Apprenticeship Agencies or Councils, Tribal Government.

Form: ETA 9039.

Total Respondents: 26,700.

Estimated Total Burden Hours: 5,562.

SUMMARY OF BURDEN FOR 29 CFR PART 30

Sec.	Total respondents	Frequency	Total responses	Average time per response	Burden (In hrs)
30.3	1,290	1-time basis	1,290	½ hr/spon	645
30.4	180	1-time basis	180	1 hr/spon	180
30.5	5,900	1-time basis	5,900	½ hr/spon	2,950
30.6	50	1-time basis	50	5 hrs/spon	250
30.8	26,700	1-time/program	26,700	1 min/spon	445
30.8	28 State Agencies	1-time basis	12,800	5 min/spon	1,067
30.11	26,700	1 time	26,700	Handout.	
ETA 9039	50 appl/appr.	1-time basis	50	½ hr	25
30.15	30 State Agencies	1 time	(1)		
30.19	28 State Agencies	Varies			
Totals	26,700		46,920		5,562

[1] Completed.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed the 28th day of August 2009, in Washington, DC.

Jane Oates,

Assistant Secretary.

[FR Doc. E9–21342 Filed 9–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 31, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Mary Beth Smith-Toomey on 202–693–4223 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Wage and Hour Division.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Application to Employ Homeworkers; Piece Rate Measurements; and Homeworker Handbooks.

OMB Control Number: 1215–0013.

Agency Form Numbers: WH–46 and WH–75.

Affected Public: Private Sector—Businesses and other for-profits.

Total Estimated Number of Respondents: 302,080.

Total Estimated Annual Burden Hours: 614,241.

Total Estimated Annual Costs Burden (does not include hourly wage costs): $11.

Description: The reporting and recordkeeping requirements for employers and employees in industries employing homeworkers are necessary to insure employees are paid in compliance with the Fair Labor Standards Act (29 U.S.C. 211(d)). For additional information, see related notice published at Volume 74 FR 17544 on April 15, 2009.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Overpayment Recovery Questionnaire.

OMB Control Number: 1215–0144.

Agency Form Number: OWCP–20.

Affected Public: Individuals and households.

Total Estimated Number of Respondents: 4,020.

Total Estimated Annual Burden Hours: 4,020.

Total Estimated Annual Costs Burden (does not include hourly wage costs): $1,889.

Description: Information collected on OWCP 20 is used to evaluate the financial profile of OWCP beneficiaries who have been overpaid benefits, and their ability to repay. OWCP beneficiaries are typically retired coal miners disabled by black lung disease, Federal employees injured on the job, and their survivors. For additional information, see related notice published at Volume 74 FR 15004 on April 2, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–21362 Filed 9–3–09; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 1, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Revision of a currently approved collection.

Title of Collection: National Medical Support Notice—Part B.

OMB Control Number: 1210–0113.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 433,000.

Total Estimated Annual Burden Hours: 896,207.

Total Estimated Annual Costs Burden (excludes hourly wage costs): $5,807,421.

Description: Section 609 of the Employee Retirement Income Security Act of 1974 (ERISA) and 29 CFR 2590.609–2 establish a National Medical Support Notice. Part B of which is used to implement coverage of children under ERISA covered group health plans pursuant to ''Qualified Medical Child Support Orders.'' For additional information, see related notice published at Vol. 74 FR 13476 on March 27, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–21361 Filed 9–3–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review: Comment Request

August 27, 2009.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval has been requested by 9/28/2009. A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.* Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ESA, Office of Management and Budget,

Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–7245 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov.* Comments and questions about the ICR listed below should be received 5 days prior to the requested OMB approval date.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Division of Federal Employment Compensation.

Title of Collection: Death Gratuity Benefit.

OMB Control Number: 1215–AB66.

Frequency of Collection: On Occasion.

Affected Public: Individuals or household; Federal Government.

Estimated Time Per Respondent: 15 minutes.

Total Estimated Number of Respondents: 2,635.

Total Estimated Annual Burden Hours: 659.

Total Estimated Annual Costs Burden (excluding hour costs): $0.

Description: The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, was enacted on January 28, 2008. Section 1105 of Public Law 110–181 amended the Federal Employees' Compensation Act (FECA) creating a new section 8102a effective upon enactment. This section will establish a new FECA death gratuity benefit for eligible beneficiaries of federal employees and Non-Appropriated Fund Instrumentality (NAFI) employees who die from injuries incurred in connection with service with an Armed Force in a contingency operation. Section 8102a also permits agencies to authorize retroactive payment of the death gratuity for employees who died on or after October 7, 2001, in service with an Armed Force in the theater of operations of Operation Enduring Freedom and Operation Iraqi Freedom. To help it exercise its responsibility to administer this benefit, the Office of Workers' Compensation Programs (OWCP) has promulgated an interim final rule. The statute and regulations allow for employees to vary the statutory order of precedence for beneficiaries and to designate alternative recipients of this benefit. Form CA–40 requests the information necessary from the employee to accomplish this variance. Form CA–41 provides the means for those named beneficiaries and possible recipients to file claims for those benefits and requests information from such claimants so that OWCP may determine their eligibility for payment. Furthermore, the statute and regulations require agencies to notify OWCP immediately upon the death of a covered employee. CA–42 provides the means to accomplish this notification and requests information necessary to administer any claim for benefits resulting from such a death.

Why are we requesting Emergency Processing? In accordance with 5 CFR 1320.13, emergency processing of this collection is essential to the mission of the agency, and the agency cannot reasonably comply with the normal clearance procedures under this Part because the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory deadline to be missed. The agency has taken all practicable steps to consult with interested agencies and members of the public to minimize the burden of the collection of this information.

Under 5 CFR 1320.13, it is requested that this collection be submitted and approved on an emergency basis. Under the National Defense Authorization Act for FY2008, an amendment to the FECA allows for immediate death gratuity payments to eligible survivors of Federal employees and employees of nonappropriated funded instrumentalities (NAFI) who die of injuries sustained in connection with the employee's service with an Armed Force serving in a contingency operation. While the Public Law became effective January 28, 2008, it also provides a provision in which a death gratuity may also be paid to eligible survivors of employees from certain agencies who died on or after October 7, 2001, due to injuries incurred in connection with the service of an Armed Force in the theatre of operations of Operation Enduring Freedom and Operation Iraqi Freedom.

The OWCP FECA has been delegated the authority to administer the adjudication of claims and payment of the death gratuity under new section 5 U.S.C. 8102a, and has initiated a new collection with 3 distinct forms to meet stature requirements. Because of the immediate and retroactive provisions of this Law, the Agency requests that an immediate review and authorization of this collection be approved for 180 days to implement section 8102a. The agency will subsequently follow up with normal processing procedures to allow for the routine three-year extension of this collection.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–21344 Filed 9–3–09; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0029]

OSHA Data Initiative; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements for OSHA's Data Initiative program.

DATES: Comments must be submitted (postmarked, sent, or received) by November 3, 2009.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0029, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210.

Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2009–0029). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Rex Tingle at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Rex Tingle at Office of Statistical Analysis, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–1926. or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

To meet many of OSHA's program needs, OSHA is proposing to continue its collection of occupational injury and illness data and information on the number of workers employed and the number of hours worked from establishments in portions of the private sector and from some state and local government agencies. OSHA will collect the data on an annual basis from up to 100,000 employers already required to create and maintain records pursuant to 29 CFR Part 1904. These data will allow OSHA to calculate occupational injury and illness rates and to focus its efforts on individual workplaces with ongoing serious safety and health problems. Successful implementation of this data collection is critical to OSHA's outreach and enforcement efforts and the data requirements tied to the Government Performance and Results Act (GPRA).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

This notice requests public comments on an extension of the current OMB approval of the paperwork requirements for the OSHA Data Initiative program.

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: OSHA Data Initiative.

OMB Number: 1218–0209.

Affected Public: Business or other for-profits, Farms, and State, Local and Tribal Government.

Cite/Reference/Form/etc.: OSHA Form 196A and OSHA Form 196B.

Number of Respondents: 100,000.

Frequency: Annually.

Average Time Per Response: 10 minutes.

Estimated Total Burden Hours: 16,667 hours.

Total Estimated Cost: $399,008.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov*, which is the Federal e-Rulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0029). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* web-site to submit

comments and access the docket is available through the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, on August 28th, 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–21330 Filed 9–3–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0017]

The Standard on Personal Protective Equipment (PPE) for Shipyard Employment; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Standard on Personal Protective Equipment (PPE) for Shipyard Employment (29 CFR part 1915, subpart I).

DATES: Comments must be submitted (postmarked, sent, or received) by November 3, 2009.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0017, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2009–0017). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Subpart I specifies several paperwork requirements, which are described below.

(A) *Hazard Assessment and Verification (§ 1915.152(b)).* Section 1915.152(b) requires the employer to assess work activities to determine whether there are hazards present, or likely to be present, which necessitate the worker's use of PPE. If such hazards are present, or likely to be present, the employer must: (1) Select the type of PPE that will protect the affected workers from the hazards identified in the occupational hazard assessment; (2) communicate selection decisions to affected workers; (3) select PPE that properly fits each affected worker; and (4) verify that the required occupational hazard assessment has been performed. The verification must contain the following information: Occupation or trade assessed, the date(s) of the hazard assessment, and the name of the person performing the hazard assessment.

(B) *Training and Verification (§ 1915.152(e)).* Section 1910.152(e) requires that employers provide training for each worker who is required to wear PPE (§ 1915.152(e)(1)). Paragraph (e)(3) requires that employers also provide retraining when there are certain changes in workplace conditions or there is reason to believe that any previously trained worker does not have the understanding or skill to use PPE properly. Circumstances where such retraining is required include changes in the workplace that render prior training obsolete, certain changes in the types of PPE used, and inadequacies in the worker's knowledge or use of PPE that indicate the worker had not retained the requisite understanding or skill.

Paragraph (e)(4) requires that the employer verify that each affected worker has received the required PPE training. The verification must contain the following information: Name of each worker trained, the date(s) of training,

and the type of training the worker received.

The standards on PPE protection for the eyes and face (§ 1915.153), head (§ 1915.155), feet (§ 1915.156), hands and body (§ 1915.157), lifesaving equipment (§ 1915.158), personal fall arrest systems (§ 1915.159), and positioning device systems (§ 1915.160) do not contain any separate information collection requirements.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the collection of information requirements contained in the Standard on Personal Protective Equipment (PPE) for Shipyard Employment (29 CFR part 1915, subpart I). The Agency is requesting an adjustment to the burden hours from 2,041 to 2,827 hours (an increase of 786 hours). The increase in the burden hours can be attributed to the number of existing workers increasing from 62,191 to 86,764.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the information collection requirements contained in the Standard on Personal Protective Equipment (PPE) for Shipyard Employment (29 CFR Part 1915, Subpart I).

Type of Review: Extension of a currently approved collection.

Title: Personal Protective Equipment Standard for Shipyard Employment (29 CFR part 1915, subpart I).

OMB Number: 1218–0215.

Affected Public: Business or other for-profits.

Total Responses: 108,335.

Frequency: On occasion.

Estimated Time per Response: Varies from 1 minute (.02 hour) for employers to maintain the certification record for each worker to 5 minutes to record the hazard assessment for each occupation covered.

Total Burden Hours: 2,827.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal e-Rulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and OSHA docket number for the ICR (Docket No. OSHA–2009–0017). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publically available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available through the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 28th day of August 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–21332 Filed 9–3–09; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0385]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1226.

FOR FURTHER INFORMATION CONTACT: Donald Helton, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7594 or e-mail to *Donald.Helton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), titled, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' is temporarily identified by its task number, DG–1226, which should be mentioned in all related correspondence. DG–1226 is proposed Revision 2 of Regulatory Guide 1.174, dated November 2002. The NRC's policy statement on probabilistic risk assessment (PRA) encourages greater use of this analysis technique to improve safety decisionmaking and

improve regulatory efficiency. A description of current risk-informed initiatives may be found in (1) recent updates to the NRC staff's Risk-Informed and Performance-Based Plan (RPP) formerly known as the Risk-Informed Regulation Implementation Plan, and (2) the agency Internet site at *http://www.nrc.gov/about-nrc/regulatory/risk-informed.html.*

One significant activity undertaken in response to the policy statement is the use of PRA to support decisions to modify an individual plant's licensing basis (LB). This regulatory guide provides guidance on the use of PRA findings and risk insights to support licensee requests for changes to a plant's LB, as in requests for license amendments and technical specification changes under Title 10 of the *Code of Federal Regulations* (10 CFR) Sections 50.90, ''Application for Amendment of License, Construction Permit, or Early Site Permit,'' through 50.92, ''Issuance of Amendment.'' It does not address licensee-initiated changes to the LB that do NOT require NRC review and approval (*e.g.,* changes to the facility as described in the final safety analysis report (FSAR), the subject of 10 CFR 50.59, ''Changes, Tests, and Experiments'').

II. Further Information

The NRC staff is soliciting comments on DG–1226. Comments may be accompanied by relevant information or supporting data and should mention DG–1226 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

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. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, Mail Stop: TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0385]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–1226 may be directed to the NRC contact, Donald Helton at (301) 251–7594 or e-mail to *Donald.Helton@nrc.gov.*

Comments would be most helpful if received by November 3, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1226 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML091200100.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 25 day of August 2009.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–21470 Filed 9–3–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364; NRC–2009–0375]

Southern Nuclear Operating Company; Alabama Power Company; Joseph M. Farley Nuclear Plant, Units 1 and 2; Exemption

1.0 Background

Southern Nuclear Operating Company (SNC, the licensee) is the holder of Facility Operating License Numbers NPF–2 and NPF–8, which authorize operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2 (FNP). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located in Houston County, Alabama.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, ''Physical protection of plants and materials,'' Section 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security plans.

By letter dated June 9, 2009, as supplemented by letter dated July 31, 2009 the licensee requested an exemption in accordance with 10 CFR 73.5, ''Specific exemptions.'' The licensee's June 9, 2009, letter and certain portions of its July 31, 2009 letter contain proprietary and safeguards information and, accordingly, are not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is for three requirements that would be in place by December 15, 2010, versus the March 31, 2010 deadline. Being granted this exemption for the three items will allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), ''By March 31, 2010, each nuclear power reactor licensee shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.' '' Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest. This exemption would, as noted above, allow an extension from March 31, 2010, until December 15, 2010, to allow for temporary noncompliance with the new rule in three specified areas. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule sent to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to reach full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a request to generically extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009 letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

Farley Schedule Exemption Request

The licensee provided detailed information in Enclosure 1 of its supplemental submittal to the SNC June 9, 2009, letter requesting an exemption. It describes a comprehensive plan to expand the protected area (PA) by approximately 100 percent with upgrades to the security capabilities of its Farley site and provides a timeline for achieving full compliance with the new regulation. Enclosure 1 contains proprietary information regarding the site security plan, details of specific portions of the regulation where the site cannot be in compliance by the March 31, 2010, deadline and why the required changes to the site's security configuration, and a timeline with critical path activities that will bring the licensee into full compliance by December 15, 2010. The timeline provides dates indicating when (1) construction will begin on various phases of the project (*i.e.,* new roads, buildings, and fences), (2) outages are scheduled for each unit, and (3) critical equipment will be ordered, installed, tested and become operational.

As described in its submittals, the licensee will maintain the current PA until the site modifications are completely implemented by December 15, 2010. Enclosure 2 to the July 31, 2009, submittal includes safeguards (SGI) information that describes compensatory measures the licensee will incorporate into the Joseph M. Farley Nuclear Plant Site Security Plan by the compliance date of March 31, 2010, which will supplement the protective measures already in place to maintain high assurance against radiological sabotage. The licensee indicated that with the incorporation of the extended protected area (PA) by December 15, 2010, the Farley Nuclear Plant will be in full compliance with the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittals and concludes that the licensee has justified its request for an extension of the compliance date with regard to three specified requirements of 10 CFR 73.55 until December 15, 2010.

The Commission has determined that pursuant to 10 CFR 73.5, ''Specific exemptions,'' exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The licensee has compensatory measures as described in Enclosure 2 to its supplemental letter of July 31, 2009, that the staff finds acceptable. The basis for this determination is that the current site protective strategy has been approved by the NRC staff as providing high assurance for the protection of the facility and public from the effects of radiological sabotage. As a condition of the Commission's approval, these compensatory measures must be in place by March 31, 2010, and incorporated into the site security plan in accordance with 10 CFR 50.54(p)(2) or 10 CFR 50.90, as determined by the licensee to be appropriate.

The long-term benefits that will be realized when the PA expansion is complete justifies exceeding the full compliance date in the case of this particular licensee. Therefore, it is concluded that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption to the March 31, 2010 deadline for the three items specified in Enclosure 1 of SNC letter dated July 31, 2009, the licensee is required to be in full compliance with 10 CFR 73.55 by December 15, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.*, 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, ''Find of no significant impact,'' the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment dated August 26, 2009 (74 FR 43169).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of August 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–21456 Filed 9–3–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388; NRC–2009–0389]

PPL Susquehanna, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of PPL Susquehanna, LLC, (the licensee) to withdraw its March 24, 2009, as supplemented by letters dated April 30 and May 12, 2009, application for proposed amendment to Facility Operating License Nos. NPF–14 and NPF–22 for the Susquehanna Steam Electric Station (SSES), Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendments would have changed the SSES Units 1 and 2 Technical Specifications (TSs) 3.8.1 for AC Sources—Operating, to extend the allowable Completion Time for the Required Actions associated with one offsite circuit inoperable due to the replacement of Startup Transformer Number 20 (ST No. 20). The proposed change to SSES Units 1 and 2 TS would have allowed for a one-time only extension of limiting condition for operation 3.8.1 Action A.3 to 10 days during replacement of ST No. 20, while both units remain at power.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 2, 2009 (74 FR 26434). However, by letter dated August 20, 2009, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 24, 2009, as supplemented by letters dated April 30 and May 12, 2009, and the licensee's letter dated August 20, 2009, which withdrew the application for license amendment.

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. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (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, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 31st day of August 2009.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–21441 Filed 9–3–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

[Public Notice: 6757; OMB 1405–XXXX, DS–7651]

30-Day Notice of Proposed Information Collection: Office of Language Services Contractor Application Form

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Office of Language Services Contractor Application Form.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Administration (A/OPR/LS).
- *Form Number:* DS–7651.
- *Respondents:* General Public Applying for Translator and/or Interpreter Contract.
- *Estimated Number of Respondents:* 900.
- *Estimated Number of Responses:* 900.
- *Average Hours per Response:* Thirty minutes.
- *Total Estimated Burden:* 450 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from September 4, 2009.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Ms. Keiry Carroll at 2401 E Street, NW., Fourteenth Floor, Washington, DC 20522, who may be reached on (202) 261–8777 or at *carrollkm@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

The information collected is needed to ascertain whether respondents are viable interpreting and/or translating candidates, based on their work history and legal work status in the United States. If candidates successfully become contractors for the U.S. Department of State, Office of Language Services, the information collected is used to initiate security clearance background checks and for processing payment vouchers. Respondents are typically members of the general public with varying degrees of experience in the fields of interpreting and/or translating.

Methodology

OLS makes the ''Office of Language Services Contractor Application Form'' available via the OLS Internet site. Respondents can submit it electronically via e-mail or fax.

Dated: August 21, 2009.

Matthew S. Klimow,

Director, Office of Language Services, Department of State.

[FR Doc. E9–21413 Filed 9–3–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 6740]

U.S. Department of State Advisory Committee on Private International Law: Notice of Annual Meeting

The Department of State's Advisory Committee on Private International Law (ACPIL) will hold its annual meeting on developments in private international law on Monday, October 19 and Tuesday, October 20, 2009 in Washington, DC. The meeting will be held at the Michael K. Young Faculty Conference Center, George Washington University Law School, 2000 H Street, NW., Washington, DC 20052. The program is scheduled to run from 9:30 a.m. to 5 p.m. both days.

Time permitting, we expect that the discussion will focus on developments in a number of areas, *e.g.,* federalism issues in implementing private international law conventions (including the Hague Convention on Choice of Court Agreements, the UNCITRAL E–Commerce and Letter of Credit Conventions, and others); private international law initiatives in the OAS; cross-border corporate insolvency; the new Rotterdam Rules on carriage of goods at sea; international family law; investment securities and treaty law; and commercial law treaties and trends. We encourage active participation by all those attending.

Documents on these subjects are available at *http://www.hcch.net*; *http://www.uncitral.org*; *http://www.unidroit.org*; *http://www.oas.org*, and *http://www.nccusl.org.* We may, by e-mail, supplement those with additional documents.

Please advise as early as possible if you plan to attend. The meeting is open to the public up to the capacity of the conference facility, and space will be reserved on a first come, first served basis. Persons who wish to have their views considered are encouraged, but not required, to submit written comments in advance. Those who are unable to attend are also encouraged to submit written views. Comments should be sent electronically to *smeltzertk@state.gov*. Those planning to attend should provide name, affiliation and contact information to Trish Smeltzer or Niesha Toms at 202–776–8420, or by e-mail to *tomsnn@state.gov*. You may also use those contacts to obtain additional information. A member of the public needing reasonable accommodation should advise those same contacts not later than October 12th. Requests made after that date will be considered, but might not be able to be fulfilled.

Dated: August 27, 2009.

Keith Loken,

Assistant Legal Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. E9–21414 Filed 9–3–09; 8:45 am]

BILLING CODE 7410–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2009–0198]

Senior Executive Service Performance Review Boards Membership

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental PRBs as required by 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: Nancy A. Mowry, Director, Departmental Office of Human Resource Management, (202) 366–4088.

SUPPLEMENTARY INFORMATION: The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on August 27, 2009.

Linda J. Washington,

Assistant Secretary for Administration.

Department of Transportation

Federal Highway Administration

Alicandri, Elizabeth
Arnold, Robert E.
Baxter, John R.
Brown, Janice W.
Cellini, Sue Anna
Cheatham, James A.
Conner, Clara H.
Curtis, Joyce A.
Elston, Debra S.
Ewen, Paula D.
Furst, Anthony T.
Gee, King W.
Gibbs, David C.
Griffith, Michael S.
Hedlund, Karen J.
Hochman, Jill L.
Holian, Thomas P.
Horne, Dwight A.
Johnson, Christine M.
Knopp, Martin C.
Konove, Elissa K.
Liff, Diane R.
Lindley, Jeffrey A.
Lucero, Amy C.
Lwin, Maung Myint
Marchese, April Lynn
Masuda, Allen
McElroy, Regina S.
Nadeau, Gregory G.
Nicol, David A.
Paniati, Jeffrey F.
Peters, Joseph I.
Prosperi, Patricia A.
Ridenour, Melisa Lee
Rothstein, Cliff L.
Row, Shelley J.
Saunders, Ian C.
Shepherd, Gloria Morgan
Sheridan, Margo D.
Smith, Willie H.
Solomon, Gerald L.
St. Denis, Catherine
Stephanos, Peter J.
Suarez, Ricardo
Toole, Joseph S.
Toole, Patricia Ann
Trentacoste, Michael F.
Waidelich, Jr., Walter C.
Winter, David R.
Wlaschin, Julius

Federal Motor Carrier Administration

Amos, Anna J.
Anewalt, David C.
Gunnels, Mary D.
Hartman, F. Daniel
Horan III, Charles
McMurray, Rose A.
Minor, Larry W.
O'Sullivan, Kathleen B.
Pelcovits, Pamela
Quade III, William A.
Shelton, Terry
Tochen, David
Van Steenburg, John W.

Federal Railroad Administration

Cothen, Jr., Grady
El-Sibaie, Magdy
Haley, Michael T.
Leeds, Jr., John G.
Lindsey, Seth M.
Logue, Michael
Nissenbaum, Paul
Orben, Kim
Pritchard, Edward W.
Rae, Karen J.
Reid, Margaret Bridge
Strang, Jo E.
Tesller, Mark
Yachmetz, Mark E.

Federal Transit Administration

Biehl, Scott A.
Borinsky, Susan C.
Doyle, Richard H.
Hynes-Chernin, Brigid
Linnertz, Ann M.
McMillan, Therese Watkins
Patrick, Robert C.
Rogers, Leslie T.
Schruth, Susan E.
Simon, Marisol
Taylor, Yvette
Thompson, Lettitia

Tuccillo, Robert
Valdes, Vincent
Welbes, Matthew

Maritime Administration

Bohnert, Roger
Brohl, Helen
Byrne, Joseph Andrew
Caponiti, James
Harrelson, Thomas
Jones II, Taylor E.
Kumar, Sashi
Lesnick, H. Keith
McKeever, Jean
McMahon, Christopher J.
Pixa, Rand
Rivait, David
Tokarski, Kevin
Weaver, Janice G.
Worley, Allen B.

National Highway Traffic Safety Administration

Abraham, Julie
Amoni, Marilena
Beuse, Nathaniel
Carra, Joseph
DeCarme, David
DeMeter, Kathleen C.
Donaldson, K. John
Geraci, Michael
Guerci, Lloyd S.
Harris, Claude
Hinch, John
Kratzke, Stephen R.
Maddox, John M.
Markison, Marlene
McLaughlin, Brian M.
McClaughlin, Susan
Medford, Ronald L.
Michael, Jeffrey P.
Pennington, Rebecca
Saul, Roger
Simons, James F.
Smith, Daniel C.
Walter, Gregory A.
Wood, Stephen

Office of Inspector General

Barry, Timothy M.
Beitel, Jr., Richard
Calvaresi Barr, Ann
Come, Joseph W.
Dailey, Susan
Dettelbach, Brian A.
Dixon, Lou
Dobbs, David A.
Hampton, Matthew E.
Leng, Rebecca C.
Millman, Rosalyn
Tornquist, David E.
Zabarsky, Mark H.

Office of Inspector General (not Department of Transportation employees)

Allesandrino, Matthew (Department of Energy)
Delgado, Michael (Department of the Treasury)
Ellis, Karen (Department of Agriculture)
Hardsgrove, Steve (Department of the Interior)
Hartman, John (Department of Energy)
Heist, Melissa (Environmental Protection Agency)
O'Brien, Regina (General Services Administration)
Rish, Adrienne (U.S. Agency for International Development)
Taylor, Robert (Department of the Treasury)
Young, Robert (Department of Agriculture)
Wagner, Ben (Tennessee Valley Authority)

Office of the Secretary

Allen, Bernestine
Darr, Carol
DeBoer, Joan
Eisner, Neil
Fields, George
Fornarotto, Christa
Forsgren, Janet
Geier, Paul
Gretch, Paul L.
Herlihy, Thomas W.
Heup, Ellen
Homan, Todd
Horn, Donald
Howard, Laurie
Hurdle, Lana
Jackson, Ronald
Jones, Mary N.
Jones, Maureen A.
Kaleta, Judith
Knapp, Rosalind
Lawson, Linda
Leusch Carnaroli, Herbert
Lowder, Michael W.
Matsuda, David T.
McDermott, Susan
Mowry, Nancy A.
Neal, Brandon
Newhart, Joan
Osborne, Elizabeth
Patillo, Jacquelyn
Petrosino-Woolverton, Marie
Podberesky, Samuel
Pradhan, Nitin
Schmidt, Robert T.
Streitmatter, Marlise
Szabat, Joel M.
Thomson, Kathryn B.
Washington, Keith
Washington, Linda J.
Wells, John
Ziff, Laura
Zuckman, Jill

Pipeline and Hazardous Materials Safety Administration

Douglass, Madonna C.
Richard, Robert A.
Summitt, Monica J.
Wiese, Jeffrey D.
Willke, Theodore L.

Research and Innovative Technology Administration

Brecht-Clark, Jan
Chang, William
Dillingham, Steven
Leone, Geraldine
Smith, Steven K.
Tompkins, Curtis

Saint Lawrence Seaway Development Corporation

Middlebrook, Craig H.
Pisani, Salvatore

Safety Transportation Board

Campbell, Rachel D.
Dettmar, Joseph
Gardner, Leland
Hanson, Ellen
Keats, Craig
Wallen, Matthew

[FR Doc. E9–21407 Filed 9–3–09; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–286 (Sub-No. 6X)]

The New York, Susquehanna and Western Railway Corporation—Abandonment Exemption—in Oneida County, NY

The New York, Susquehanna and Western Railway Corporation (NYS&W), has filed a verified notice of exemption under 49 CFR 1152 subpart F–*Exempt Abandonments* to abandon a .42-mile segment of its Fay Street Branch rail line between milepost 284.80 at or near Oswego Street in Utica, and milepost 285.22 at or near Warren Street in Utica, in Oneida County, NY. The line traverses United States Postal Service Zip Code 13502.

NYS&W has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line;[1] (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR

[1] NYS&W states that no local or overhead traffic has moved over the line for more than 15 years and that any previous overhead traffic has long been rerouted.

1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 7, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 14, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 24, 2009, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NYS&W's representative: Eric M. Hocky, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NYS&W has filed both an environmental report and a historic report that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 11, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NYS&W shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NYS&W's filing of a notice of consummation by September 4, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 25, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–20764 Filed 9–3–09; 8:45 am]

BILLING CODE 4915–01–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 314X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Latrobe, Westmoreland County, PA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.04-mile line of railroad between milepost XN–0.00, and milepost XN0–2.04, in Latrobe, Westmoreland County, PA. The line traverses United States Postal Service Zip Code 15650.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 7, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 14, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 24, 2009, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 11, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by September 4, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 31, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–21359 Filed 9–3–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the California High Speed Train Project From Palmdale to Bakersfield, CA

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: This notice is to advise the public that FRA and the California High-Speed Rail Authority (Authority) will jointly prepare a project Environmental Impact Statement (EIS) and project Environmental Impact Report (EIR) for the Palmdale to Bakersfield section of the Authority's proposed California High Speed Train (HST) System in compliance with relevant state and federal laws, in particular the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

In 2001, the Authority and FRA started a tiered environmental review process for the HST system and in 2005, completed the first tier California High Speed Train Program EIR/EIS (Statewide Program EIR/EIS) and approved the statewide HST system for intercity travel in California between the major metropolitan centers of Sacramento and the San Francisco Bay Area in the north, through the Central Valley, to Los Angeles and San Diego in the south. The approved HST system would be about 800-miles long, with electric propulsion and steel-wheel-on-steel-rail trains capable of maximum operating speeds of 220 miles per hour (mph) on a mostly dedicated system of fully grade-separated, access-controlled steel track and with state-of-the-art safety, signaling, communication, and automated train control systems. In approving the HST system, the Authority and FRA also selected preferred corridor alignments and station location options throughout most of the system. In 2008, the Authority and FRA completed a second program EIR/EIS to evaluate alignments and station locations within the broad corridor between and including the Altamont Pass and the Pacheco Pass to connect the Bay Area and Central Valley portions of the HST system.

The preparation of the Palmdale to Bakersfield HST Project EIR/EIS will involve the development of preliminary engineering designs and the assessment of potential environmental effects associated with the construction, operation, and maintenance of the HST system, including track and ancillary facilities along the State Route 58/14 corridor from Bakersfield to Palmdale.

DATES: Written comments on the scope of the Palmdale to Bakersfield HST Project EIR/EIS should be provided to the Authority by 5 p.m., Monday, November 2, 2009. Public scoping meetings are scheduled from September 15, 2009 to September 17, 2009, as noted below in the cities of Bakersfield, CA, Tehachapi, CA and Palmdale, CA.

ADDRESSES: Written comments on the scope should be sent to Ms. Carrie Bowen, Regional Director, ATTN: Bakersfield to Palmdale, California High Speed Rail Authority, 925 L Street, Suite 1425, Sacramento, CA 95814, or via e-mail with subject line ''Palmdale to Bakersfield HST'' to: *comments@hsr.ca.gov*. Comments may also be provided orally or in writing at the scoping meetings scheduled at the following locations:

- Red Lion Hotel, 2400 Camino Del Rio Court. Bakersfield, CA 93308, 3 p.m. to 7 p.m., September 15, 2009.
- Stallion Springs Community Center, 27850 Stallion Springs Drive, Tehachapi, CA 93561, 3 p.m. to 7 p.m., September 16, 2009.
- Chimbole Cultural Center, 38350 Sierra Highway, Palmdale, CA 93550, 3 p.m. to 7 p.m., September 17, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. David Valenstein, Environmental Program Manager, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE., (Mail Stop 20), Washington, DC 20590; Telephone: (202) 493–6368, or Ms. Carrie Bowen, Telephone: (559) 221–2636 at the above noted address.

SUPPLEMENTARY INFORMATION: The Authority was established in 1996 and is authorized and directed by statue to undertake the planning and development of a proposed statewide HST network that is fully coordinated with other public transportation services. The Authority adopted a Final Business Plan in June 2000, which reviewed the economic feasibility of an 800-mile-long HST capable of speeds in excess of 200 miles per hour on a mostly dedicated, fully grade-separated state-of-the-art track. The Authority released an updated Business Plan in November 2008.

The FRA has responsibility for overseeing the safety of railroad operations, including the safety of any proposed high-speed ground transportation system. For the proposed HST, it is anticipated that FRA would need to take certain regulatory actions prior to operation.

In 2005, the Authority and FRA completed the Statewide Program EIR/EIS for the Proposed California High Speed Train System, as the first phase of a tiered environmental review process. The Authority certified the Statewide Program EIR under CEQA and approved the proposed HST System. FRA issued a Record of Decision on the Statewide Program EIR/EIS as required under NEPA. The Statewide Program EIR/EIS established the purpose and need for the HST system, analyzed an HST system, and compared the proposed HST system with a No Project/No Action Alternative and a Modal Alternative. In approving the Statewide Program EIR/EIS, the Authority and FRA selected the HST Alternative, selected certain corridors/general alignments and general station locations for further study, incorporated mitigation strategies and design practices, and specified further measures to guide the development of the HST system during the site-specific, project level environmental review to avoid and minimize potential adverse environmental impacts. In the Statewide Program EIR/EIS, the Authority and FRA selected the State Route 58/14 corridor for the Palmdale to Bakersfield section of the HST.

The Palmdale to Bakersfield HST Project EIR/EIS will tier from the Statewide Program EIR/EIS and the Final Bay Area to Central Valley HST Program EIR/EIS in accordance with Council on Environmental Quality (CEQ) regulations, (40 CFR 1508.28) and State CEQA Guidelines (14 C.C.R. 15168(b)). Tiering ensures that the Palmdale to Bakersfield HST Project EIR/EIS builds upon all previous work prepared for, and incorporated in, the Statewide Program EIR/EIS and the Bay Area to Central Valley HST Program EIR/EIS.

The Palmdale to Bakersfield HST Project EIR/EIS will describe site-specific environmental impacts, identify specific mitigation measures to address those impacts, and incorporate design practices to avoid and minimize potential adverse environmental impacts. The FRA and the Authority will assess the site characteristics, size, nature, and timing of proposed site-specific projects to determine whether the impacts are potentially significant and whether impacts can be avoided or mitigated. This project EIR/EIS will identify and evaluate reasonable and feasible site-specific alignment alternatives, and evaluate the impacts of construction, operation, and maintenance of the HST system. Information and documents regarding this HST environmental review process will be made available through the Authority's Internet site: *http://www.cahighspeedrail.gov/.*

Purpose and Need: The purpose of the proposed HST system is to provide a new mode of high-speed intercity travel that would link major metropolitan areas of the state; interface with airports, mass transit, and highways; and provide added capacity to meet increased intercity travel demand in California in a manner sensitive to and protective of California's unique natural resources. The need for a HST system is directly related to the expected growth in population, and increases in intercity travel demand in California over the next twenty years and beyond. With the growth in travel demand, there will be an increase in travel delays arising from the growing congestion on California's highways and airports. In addition, there will be negative effects on the economy, quality of life, and air quality in and around California's metropolitan areas from an increasingly congested transportation system that will become less reliable as travel demand increases. The intercity highway system, commercial airports, and conventional passenger rail serving the intercity travel market are currently operating at or near capacity, and will require large public investments for maintenance and expansion to meet existing demand and future growth. The proposed HST system is designed to address some social, economic and environmental problems associated with transportation congestion in California.

Alternatives: The Palmdale to Bakersfield HST Project EIR/EIS will consider a No Action or No Project Alternative and an HST Alternative for the Palmdale to Bakersfield section.

No Action Alternative: The No Action Alternative (No Project or No Build) represents the conditions in the corridor as it existed in 2007, and as it would exist based on programmed and funded improvements to the intercity transportation system and other reasonably foreseeable projects through 2035, taking into account the following sources of information: The State Transportation Improvement Program (STIP) and Regional Transportation Plans (RTPs) for all modes of travel, airport plans, intercity passenger rail plans, city and county plans.

HST Alternative: The Authority proposes to construct, operate and maintain an electric-powered steel-wheel-on-steel-rail HST system, about 800 miles long, capable of operating speeds of 220 mph on mostly dedicated, fully graded-separated tracks, with state-of-the-art safety, signaling, and automated train control systems. In the Statewide Program EIR/EIS, the Authority and FRA selected the State Route 58/14 corridor for the Palmdale to Bakersfield section of the HST. Engineering studies undertaken as part of this EIR/EIS process will examine and refine alignments in the State Route 58/14 corridor. The entire alignment would be grade separated. The options to be considered for the design of grade separated roadway crossings would include (1) Depressing the street to pass under the rail line; (2) elevating the street to pass over the rail line; and (3) leaving the street as-is and constructing rail line improvements to pass over or under the local street. In addition, alternative sites for right-of-way maintenance, train storage facilities and a heavy maintenance and repair facility will be evaluated in the Palmdale to Bakersfield HST project area.

No station would be included in this section as this project connects the HST line in the Central Valley with the HST line from Los Angeles and stations are being evaluated as part of the project EIR/EISs associated with those HST sections. A station at the Palmdale Airport/Transportation Center is being evaluated in the Los Angeles to Palmdale HST Project EIR/EIS. The Truxtun station option in downtown Bakersfield at the other end of this section is being evaluated in the Bakersfield to Merced HST Project EIR/EIS. These station locations were selected by the Authority and FRA in the Program EIR/EIS documents after considering the project purpose and need, and the program objectives.

Probable Effects: The purpose of the EIR/EIS process is to explore, in a public setting, the effects of the proposed project on the physical, human, and natural environment. The FRA and Authority will continue the tiered evaluation of all significant environmental, social, and economic impacts of the construction and operation of the HST system. Impact areas to be addressed include transportation impacts; safety and security; land use and zoning; land acquisition, displacements, and relocations and cumulative and secondary impacts; agricultural land impacts; cultural resources impacts, including impacts on historical and archaeological resources and parklands/recreation areas; neighborhood compatibility and environmental justice; natural resource impacts including air quality, wetlands, water resources, noise, vibration, energy, wildlife and ecosystems, including endangered species. Measures to avoid, minimize, and mitigate adverse impacts will be identified and evaluated.

The Palmdale to Bakersfield HST Project EIR/EIS will be prepared in accordance with FRA's Procedures for Considering Environmental Impacts (64 FR 28545 (May 26, 1999)) and will address, as necessary, other applicable statutes, regulations, and executive orders, including the Clean Air Act, Section 404 of the Clean Water Act, Section 106 of the National Historic Preservation Act of 1966, Section 4(f) of the Department of Transportation Act, the Endangered Species Act, and Executive Order 12898 on Environmental Justice.

This EIR/EIS process will also continue the NEPA/Clean Water Act Section 404 integration process established through the Statewide Program EIR/EIS process. The EIR/EIS will evaluate project alignment alternatives and station and maintenance facility locations to support a determination of the Least Environmentally Damaging Practicable Alternative (LEDPA) by the U.S. Army Corps of Engineers.

Scoping and Comments: FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments are invited from all interested agencies and the public to ensure the full range of issues related to the proposed action and reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in hearing from communities whether there are areas of environmental concern where there might be a potential for significant site-specific impacts from the high-speed transportation projects in the Palmdale to Bakersfield section. Public agencies with jurisdiction are requested to advise FRA and the Authority of the applicable permit and environmental review requirements of each agency,

and the scope and content of the environmental information germane to the agency's statutory responsibilities relevant to the proposed project. Public agencies are requested to advise FRA if they anticipate taking a major action in connection with the proposed project and if they wish to cooperate in the preparation of the Project EIR/EIS. Public scoping meetings have been scheduled and are an important component of the scoping process for both the State and Federal environmental review. The scoping meetings described in this Notice will also be the subject of additional public notification.

FRA is seeking participation and input of all interested federal, state, and local agencies, Native American groups, and other concerned private organizations or individuals on the scope of the EIR/EIS. Implementation of the Palmdale to Bakersfield section of the HST system is a federal undertaking with the potential to affect historic properties. As such, it is subject to the requirements of Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f). In accordance with regulations issued by the Advisory Council on Historic Preservation, 36 CFR part 800, FRA intends to coordinate compliance with Section 106 of this Act with the preparation of the EIR/EIS, beginning with the identification of consulting parties through the scoping process, in a manner consistent with the standards set out in 36 CFR 800.8.

Issued in Washington, DC, on August 28, 2009.

Mark E. Yachmetz,

Associate Administrator for Railroad Development, Federal Railroad Administration.

[FR Doc. E9–21381 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twelfth Joint Meeting, RTCA Special Committee 205/EUROCAE WG 71: Software Considerations in Aeronautical Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 205/EUROCAE WG 71: Software Considerations in Aeronautical Systems meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 205/EUROCAE WG 71: Software Considerations in Aeronautical Systems.

DATES: The meeting will be held October 26–30, 2009, from 8:30 a.m. to 5 p.m. (variable—see daily schedule). Pre-registration Requirements: If you are planning on attending this meeting we would appreciate you providing pre-registration information.

ADDRESSES: The meeting will be held at Télécom ParisTech, 46 rue Barrault 75013 Paris, France.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*; (2) Hotel Front Desk: (602) 273–7778; fax (602) 275–5616;

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 205: EUROCAE WG 71: Software Considerations in Aeronautical Systems meeting.

The agenda will include:

Day 1—Monday, October 26

- 08:30 a.m.—Chair's Introductory Remarks;
- 09:00 a.m.—Review of Meeting Agenda and Agreement of Previous Minutes;
- 09:30 a.m.—Reports of Sub-Group Activity;
- 10:00 a.m.—Other Committee/Other Documents Interfacing Personnel Reports (CAST, Unmanned Aircraft Systems, Security, WG–63/SAE S–18);
- 10:45 a.m.—Sub-Group Break Out Sessions.

New Member Introduction Session

- 10:45 a.m.—All new committee members are invited to attend an introduction session to explain the operation of the committee, the various sub-groups and the topics they are dealing with and the Web site.
- 13:15 p.m.—Sub-Group Break Out Sessions;
- 15:15 p.m.—Plenary Session: Text Acceptance (for papers posted, commented on and reworked prior to Plenary).

Day 2—Tuesday, October 27

- 08:30 a.m.—Sub-Group Break Out Sessions;
- 12:30 p.m.—*Milestone: IP submittals due for Wednesday Plenary;*
- 13:30 p.m.—Sub-Group Break Out Sessions;
- 15:00 p.m.—Mandatory Paper Reading Session.

Day 3—Wednesday, October 28

- 08:30 a.m.—IP Comment Reply & Sub-Group Break Out Sessions (focused on finalizing any changes to papers being presented later in the morning);
- 10:30 a.m.—Plenary Text Acceptance (for papers posted, commented on and reworked prior to Plenary);
- 13:30 p.m.—Sub-Group Break Out Sessions;
- 14:45 p.m.—Break;
- 15:00 p.m.—Sub-Group Break Out Sessions.

Day 4—Thursday, October 29

- 08:30 a.m.—Sub-Group Break Out Sessions;
- 12:30 p.m.— *Milestone: IP submittals due for Friday Plenary;*
- 13:30 p.m.—Plenary Session;
- 15:00 p.m.—Mandatory Paper Reading Session.

Day 5—Friday, October 30

- 08:00 a.m.—IP Comment Reply & Sub-Group Break Out Sessions (focused on finalizing any changes to papers being presented during the morning);
- 10:00 a.m.—Plenary Text Approval (reworked and late posted papers—with late posted papers only being accepted if (a) the changes are very minor in nature, and (b) adequate time has been allowed for the review of the papers);
- 12:00 p.m.—SG1: SCWG Document Integration Sub-Group Report;
- 12:05 p.m.—SG2: Issue & Rationale Sub-Group Report;
- 12:10 p.m.—SG3: Tool Qualification Sub-Group Report;
- 12:15 p.m.—SG4: Model Based Design & Verification Sub-Group Report;
- 12:20 p.m.—SG5: Object Oriented Technology Sub-Group Report;
- 12:25 p.m.—SG6: Formal Methods Sub-Group Report;
- 12:30 p.m.—SG7: Special Considerations Sub-Group Report;
- 12:35 p.m.—Next Meeting Information;
- 12:40 p.m.—Any Other Business, Closing Remarks & Meeting Adjourned;
- 12:45 p.m.—Meeting Evaluation (Round Robin).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–21433 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Distracted Driving Summit; Notice

AGENCY: Research and Innovative Technology Administration, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation is providing notice that it intends to hold a Distracted Driving Summit (The Summit) to exchange information and ideas on the best possible methods to reduce the number of crashes and deaths due to distracted driving.

Meeting Dates: September 30 and October 1, 2009.

ADDRESSES: The Summit will be held at Renaissance Hotel in Washington, DC. The Department welcomes comments or questions prior to and during the Summit. If you would like to submit a comment or question prior to the Summit, you may submit comments/questions identified by DOT Docket ID Number RITA 2009–0003 by any of the following methods:

○ *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

○ *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

○ *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE. between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

○ *Fax:* 202–493–2251

Instructions: Identify docket number, RITA 2009–0003, at the beginning of your comments. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments/questions will be posted electronically without charge or edits, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments/questions filed in our dockets by the name of the individual submitting the comment or question (or signing the comment, if submitted on behalf of an association, corporation, business entity, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Kelly Leone, Office of Research, Development and Technology, RDT–10, Research and Innovative Technology Administration, Telephone Number (202) 366–5459, Fax Number (202) 366–3671 or e-mail—*Kelly.Leone@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Summit will bring together senior transportation officials, elected officials, safety advocates, law enforcement representatives, private sector representatives and academics to address a range of issues related to reducing accidents through enforcement, public awareness and education. Authoritative speakers from around the nation will lead interactive panel discussions on a number of key topics including the extent and impact of distracted driving, current research, regulations and best practices.

Participants will also examine distractions caused by current and planned automotive devices, such as navigational systems. The summit's second day will include a panel of state and local officials to discuss possible solutions from the state and local perspectives.

The U.S. Department of Transportation is committed to providing equal access to this Summit. Based on limited seating and to accommodate the strong interest outside the Washington area, the Summit will be available live by webcast and members of the public will be given the opportunity to submit questions or comments online for each individual panel discussion. The Department has also created a Web site to provide information and updates on the Summit as details become available: *http://www.rita.dot.gov/distracted_driving_summit/.* If you need alternative formats or services because of a disability, please contact Kelly Leone with your specific request by September 23, 2009.

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

Peter H. Appel,

Administrator.

[FR Doc. E9–21406 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Eighteenth Public Meeting of the Crash Injury Research and Engineering Network (CIREN)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting Announcement.

SUMMARY: This notice announces the Eighteenth Public Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at eight Level 1 Trauma Centers across the United States linked by a computer network. Researchers can review data and share expertise, which may lead to a better understanding of crash injury mechanisms and the design of safer vehicles. The eight centers will give presentations on current research based on CIREN data. The agenda will be posted to the CIREN Web site that can be accessed by going to the NHTSA homepage *http://www.nhtsa.dot.gov/,* click on Vehicle Safety Research on the right side of the top toolbar, then click on Crash Injury Research and Engineering Network (CIREN) in the box on the left. The agenda will be posted two weeks prior to the meeting.

Date and Time: The meeting is scheduled from 8:30 a.m. to 5 p.m. on Thursday, October 8, 2009.

ADDRESSES: The meeting will be held at: University of Maryland/National Study Center, 110 South Paca Street, Learning Center, Baltimore, MD 21201.

To Register for This Event: It is not necessary to pre-register, but attendees are strongly encouraged to do so to expedite the security process for entry to the meeting facility. Please send your name, affiliation, phone number and e-mail address to *cburch@som.umaryland.edu* (or call 410–328–2683) by Wednesday, September 30, 2009, in order to have your name added to the pre-registration list. Everyone must have a government-issued photo identification to be admitted to the facility.

For General Information: Rodney Rudd (202) 366–5932, Mark Scarboro (202) 366–5078 or Cathy McCullough (202) 366–4734.

SUPPLEMENTARY INFORMATION: NHTSA has held CIREN public meetings on a regular basis since 2000, including quarterly meetings and annual conferences. This is the eighteenth such meeting. Presentations from these meetings are available through the NHTSA Web site. NHTSA plans to continue holding CIREN meetings on a regular basis to disseminate CIREN information to interested parties. Individual CIREN cases collected since 1998 may be viewed from the NHTSA/CIREN Web site at the address provided above. At this public meeting, the CIREN Centers will be giving presentations on topics including side impact response; comparisons between anthropomorphic test device response and real-world injury; lumbar spine fractures; and evaluations of safety systems and vehicle design.

Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on CIREN's Web site as indicated above. If you do not have access to the Web site, you may call or e-mail the contacts listed in this announcement and leave your telephone number or e-mail address. You will be contacted only if the meeting is postponed or canceled.

Issued on: August 26, 2009.

John Maddox,

Associate Administrator for Vehicle Safety Research.

[FR Doc. E9–21382 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–59–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 018606F.

Name: All Merit Express, Inc.

Address: 13453 Pumice Street, Norwalk, CA 90650.

Date Revoked: August 17, 2009.

Reason: Failed to maintain a valid bond.

License Number: 002908F.

Name: Archer Freight Systems, Inc.

Address: c/o Blue Cargo Group, LLC, 20801 S. Santa Fe Ave., Carson, CA 90810.

Date Revoked: August 5, 2009.

Reason: Surrendered license voluntarily.

License Number: 020650N.

Name: ATL Global (USA) Inc.

Address: 230–59 Int'l Airport Center Blvd., Ste 190 Springfield Gardens, NY 11423.

Date Revoked: August 1, 2009.

Reason: Failed to maintain a valid bond.

License Number: 019087N.

Name: Cargo Specialists, Inc.

Address: 100 W. Imperial Ave., Unit J, El Segundo, CA 90245.

Date Revoked: August 1, 2009.

Reason: Failed to maintain a valid bond.

License Number: 021757N.

Name: Champion Xpress Shipping Inc.

Address: 106–13 Liberty Ave., Ozone Park, NY 11417.

Date Revoked: August 8, 2009.

Reason: Failed to maintain a valid bond.

License Number: 016814F.

Name: Friendly Forwarders, Inc.

Address: 7458 SW 48th Street, Miami, FL 33155.

Date Revoked: August 1, 2009.

Reason: Failed to maintain a valid bond.

License Number: 021681F.

Name: HTS, Inc. dba Harte-Hanks Logistics .

Address: 1525 NW 3rd Street, Ste. 21, Deerfield Beach, FL 33442.

Date Revoked: July 28, 2009.

Reason: Surrendered license voluntarily.

License Number: 019782NF.

Name: James Global Logistics, Inc.

Address: 405 Atlantis Road, Ste. A–107, Cape Canaveral, FL 32920.

Date Revoked: August 16, 2009.

Reason: Failed to maintain valid bonds.

License Number: 004076F.

Name: Marimar Forwarding, Inc.

Address: 806 NW 31st Ave., Miami, FL 33182.

Date Revoked: August 6, 2009.

Reason: Failed to maintain a valid bond.

License Number: 018950N.

Name: Orion Transport Corporation.

Address: 1206 Jon Street, Torrance, CA 90502.

Date Revoked: August 1, 2009.

Reason: Failed to maintain a valid bond.

License Number: 019221N.

Name: Pacific Hong International Corp. dba Charming Shipping Company.

Address: 927 South Azusa Ave., Ste. C, City of Industry, CA 91748.

Date Revoked: August 1, 2009.

Reason: Failed to maintain a valid bond.

License Number: 015489NF.

Name: Tardieu Inc. dba Tarimex.

Address: 8600 NW 30th Terrace, Ste. B, Miami, FL 33122.

Date Revoked: August 16, 2009.

Reason: Failed to maintain valid bonds.

License Number: 019290N.

Name: Tru-Line Logistics, Inc.

Address: 3025 W. Artesia Blvd., Ste. 100, Torrance, CA 90504.

Date Revoked: August 1, 2009.

Reason: Failed to maintain a valid bond.

License Number: 021230NF.

Name: Unicarga Intl' Freight Systems, Inc.

Address: 7901 NW 68th Street, Miami, FL 33166.

Date Revoked: August 7, 2009.

Reason: Failed to maintain valid bonds.

License Number: 019253N.

Name: Windsur Int'l Inc.

Address: 2570 Corporate Place, Ste. E 203, Monterey Park, CA 91754.

Date Revoked: August 1, 2009.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–21325 Filed 9–3–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/address	Date reissued
019355NF	ABAD Air, Inc., 10411 NW. 28th Street, Miami, FL 33172.	June 21, 2009.
018694NF	Global Parcel System LLC, 8304 Northwest 30th Terrace, Miami, FL 33122.	April 11, 2009.
020668N	Valcad Construction, LLC, 3211 W. Northwest Highway, Suite 200, Dallas, TX 75220.	July 22, 2009.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–21326 Filed 9–3–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License Number: 016037N.

Name: J.C. Express of Miami, Corp.

Address: 8245 NW. 72nd Street, Miami, FL 33166.

Order Published: FR: 08/12/09 (Volume 74, No. 154 Pg. 40598)

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–21329 Filed 9–3–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No: FAA–2010–22842]

Notice of Opportunity To Participate, Criteria Requirements and Application Procedure for Participation in the Military Airport Program (MAP).

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

ACTION: Notice of criteria and application procedures for designation or redesignation, in the Military Airport Program (MAP), for the fiscal year 2010.

SUMMARY: In anticipation of Congress enacting a reauthorization of the Airport Improvement Program (AIP) the FAA is publishing this annual notice. This notice announces the criteria, application procedures, and schedule to be applied by the Secretary of Transportation in designating or redesignating, and funding capital development annually for up to 15 current (joint-use) or former military airports seeking designation or redesignation to participate in the MAP. While FAA currently has continuing authority to designate or redesignate airports, FAA does not have authority to issue grants for fiscal year 2010 MAP, and will not have authority until Congress enacts legislation enabling FAA to issue grants.

The MAP allows the Secretary to designate current (joint-use) or former military airports to receive grants from the Airport Improvement Program (AIP). The Secretary is authorized to designate an airport (other than an airport designated before August 24, 1994) only if:

(1) The airport is a former military installation closed or realigned under the Title 10 U.S.C. Sec. 2687 (announcement of closures of large Department of Defense installations after September 30, 1977), or under Section 201 or 2905 of the Defense Authorization Amendments and Base Closure and Realignment Acts; or

(2) the airport is a military installation with both military and civil aircraft operations.

The Secretary shall consider for designation only those current or former military airports, at least partly converted to civilian airports as part of the national air transportation system, that will reduce delays at airports with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings, or will enhance airport and air traffic control system capacity in metropolitan areas, or reduce current and projected flight delays (49 U.S.C. 47118(c)).

DATES: Applications must be received on or before November 3, 2009.

ADDRESSES: Submit an original and two copies of Standard Form (SF) 424, ''Application for Federal Assistance,'' prescribed by the Office of Management and Budget Circular A–102, available at *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/northwest_mountain/airports_resources/forms/media/applications/application_sf_424.doc* along with any supporting and justifying documentation. Applicant should specifically request to be considered for designation or redesignation to participate in the fiscal year 2010 MAP. Submission should be sent to the Regional FAA Airports Division or Airports District Office that serves the airport. Applicants may find the proper office on the FAA Web site *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/* or may contact the office below.

FOR FURTHER INFORMATION CONTACT: Mr. Kendall Ball (*Kendall.Ball@faa.gov*), Airports Financial Assistance Division (APP–500), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC, 20591, (202) 267–7436.

SUPPLEMENTARY INFORMATION:

General Description of the Program

The MAP provides capital development assistance to civil airport sponsors of designated current (joint-use) military airfields or former military airports that are included in the FAA's National Plan of Integrated Airport Systems (NPIAS). Airports designated to the MAP may obtain funds from a set-aside (currently four percent) of AIP discretionary funds for airport development, including certain projects not otherwise eligible for AIP assistance. These airports are also eligible to receive grants from other categories of AIP funding.

Number of Airports

A maximum of 15 airports per fiscal year (FY) may participate in the MAP. There are 6 slots available for designation or redesignation in FY 2010. There is no general aviation slot available this year.

Term of Designation

The maximum term is five fiscal years following designation. The FAA can designate airports for a period of less than five years. The FAA will evaluate the conversion needs of the airport in its capital development plan to determine the appropriate length of designation.

Redesignation

Previously designated airports may apply for redesignation of an additional term not to exceed five years. Those airports must meet current eligibility requirements in 49 U.S.C. 47118(a) at the beginning of each grant period and have MAP eligible projects. The FAA will evaluate applications for redesignation primarily in terms of warranted projects fundable only under the MAP as these candidates tend to have fewer conversion needs than new candidates. The FAA's goal is to graduate MAP airports to regular AIP participation by successfully converting these airports to civilian airport operations.

Eligible Projects

In addition to eligible AIP projects, MAP can fund fuel farms, utility systems, surface automobile parking lots, hangars, and air cargo terminals up to 50,000 square feet. A designated or redesignated military airport can receive not more than $7,000,000 each fiscal year to construct, improve, and repair terminal building facilities. In addition a designated or redesignated military airports can receive not more than $7,000,000 each fiscal year for MAP eligible projects that include hangars, cargo facilities, fuel farms, automobile surface parking, and utility work.

Designation Considerations

In making designations of new candidate airports, the Secretary of Transportation may only designate an airport (other than an airport so designated before August 24, 1994) if it meets the following general requirements:

(1) The airport is a former military installation closed or realigned under:

(A) Section 2687 of Title 10;

(B) Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (BRAC) (10 U.S.C. 2687 note); or

(C) Section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); or

(2) The airport is a military installation with both military and civil aircraft operations; and

(3) The airport is classified as a commercial service or reliever airport in the NPIAS. (See 49 U.S.C. 47105(b)(2)). One of the designated airports, if included in the NPIAS, may be a general aviation (GA) airport (public airport other than an air carrier airport, 49 U.S.C. 47102(1), (20)) that was a former military installation closed or realigned under BRAC, as amended, or 10 U.S.C. 2687. (See 49 U.S.C. 47118(g)). A general aviation airport must qualify under (1) above.

In designating new candidate airports, the Secretary shall consider if a grant will:

(1) Reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or

(2) Enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays.

The application for new designations will be evaluated in terms of how the proposed projects will contribute to reducing delays and/or how the airport will enhance air traffic or airport system capacity and provide adequate user services.

Project Evaluation

Recently realigned or closed military airports, as well as active military airfields with new joint-use agreements, have the greatest need of funding to convert to, or to incorporate, civil airport operations. Newly converted airports and new joint-use locations frequently have minimal capital development resources and will therefore receive priority consideration for designation and MAP funding. The FAA will evaluate the need for eligible projects based upon information in the candidate airport's five-year Airport Capital Improvement Plan (ACIP). These projects need to be related to development of that airport and/or the air traffic control system capacity.

1. The FAA will evaluate candidate airports and/or the airports such candidate airports will relieve based on the following specific factors:

- Compatibility of airport roles and the ability of the airport to provide an adequate airport facility;
- The capability of the candidate airport and its airside and landside complex to serve aircraft that otherwise must use a congested airport;
- Landside surface access;
- Airport operational capability, including peak hour and annual capacities of the candidate airport;
- Potential of other metropolitan area airports to relieve the congested airport;
- Ability to satisfy, relieve, or meet air cargo demand within the metropolitan area;
- Forecasted aircraft and passenger levels, type of commercial service anticipated, *i.e.,* scheduled or charter commercial service;
- Type and capacity of aircraft projected to serve the airport and level of operations at the congested airport and the candidate airport;
- The potential for the candidate airport to be served by aircraft or users, including the airlines, serving the congested airport;

Ability to replace an existing commercial service or reliever airport serving the area; and

- Any other documentation to support the FAA designation of the candidate airport.

2. The FAA will evaluate the extent to which development needs funded through MAP will make the airport a viable civil airport that will enhance system capacity or reduce delays.

Application Procedures and Required Documentation

Airport sponsors applying for designation or redesignation must complete and submit an SF 424, Application for Federal Assistance, and provide supporting documentation to the appropriate FAP Airports regional or district office serving that airport.

Standard Form 424:

Sponsors may obtain this fillable form at *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/northwest_mountain/airports_resources/forms/media/applications/application_sf_424.doc*.

Applicants should fill this form out completely, including the following:

- Mark Item 1, Type of Submission as a ''pre-application'' and indicate it is for ''construction''.
- Mark item 8, Type of Application as ''new'', and in ''other'', fill in ''Military Airport Program''
- Fill in Item 11, Descriptive Title of Applicants Project. ''Designation (or redesignation) to the Military Airport Program''
- In Item 15a, Estimated Funding, indicate the total amount of funding requested from the MAP during the entire term for which you are applying.

Supporting Documentation

(A) Identification as a Current or Former Military Airport. The application must identify the airport as either a current or former military airport and indicate whether it was:

(1) Closed or realigned under Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act, and/or Section 2905 of the Defense Base Closure and Realignment Act of 1990 (Installations Approved for Closure by the Defense Base Realignment and Closure Commissions), or

(2) Closed or realigned pursuant to 10 U.S.C. 2687 as excess property (bases announced for closure by Department of Defense (DOD) pursuant to this title after September 30, 1977 (this is the date of announcement for closure and

not the date the property was deeded to the airport sponsor)), or

(3) A military installation with both military and civil aircraft operations. A general aviation airport applying for the MAP may be joint use but must also qualify under (1) or (2) above.

(B) Qualifications for MAP:

Submit documents for (1) through (7) below:

(1) Documentation that the airport meets the definition of a ''public airport'' as defined in 49 U.S.C. Sec. 47102(20).

(2) Documentation indicating the required environmental review for civil reuse or joint-use of the military airfield has been completed. This environmental review need not include review of the individual projects to be funded by the MAP. Rather, the documentation should reflect that the environmental review necessary to convey the property, enter into a long-term lease, or finalize a joint-use agreement has been completed. The military department conveying or leasing the property, or entering into a joint-use agreement, has the lead responsibility for this environmental review. To meet AIP requirements the environmental review and approvals must indicate that the operator or owner of the airport has good title, satisfactory to the Secretary, or assures that good title will be acquired.

(3) For a former military airport, documentation that the eligible airport sponsor holds or will hold satisfactory title, a long-term lease in furtherance of conveyance of property for airport purposes, or a long term interim lease for 25 years or longer to the property on which the civil airport is being located. Documentation that an application for surplus or BRAC airport property has been accepted by the Federal Government is sufficient to indicate the eligible airport sponsor holds or will hold satisfactory title or a long-term lease.

(4) For a current military airport, documentation that the airport sponsor has an existing joint-use agreement with the military department having jurisdiction over the airport. For all first time applicants a copy of the existing joint-use agreement must be submitted with the application. This is necessary so the FA can legally issue grants to the sponsor. Here and in (3) directly above, the airport must possess the necessary property rights in order to accept a grant for its proposed projects during FY 2010.

(5) Documentation that the airport is classified as a ''commercial service airport'' or a ''reliever airport'' as defined in 49 U.S.C. 47102(7) and 47102(22), unless the airport is applying for the general aviation slot.

(6) Documentation that the airport owner is an eligible airport ''sponsor'' as defined in 49 U.S.C. 47102(24).

(7) Documentation that the airport has an FAA approved airport layout plan (ALP) and a five-year airport capital improvement plan (ACIP) indicating all eligible grant projects proposed to be funded either from the MAP or other portions of the AIP.

(C) Evaluation Factors:

Submit information on the items below to assist in our evaluation:

(1) Information identifying the existing and potential levels of visual or instrument operations and aeronautical activity at the current or former military airport and, if applicable, the congested airport. Also, if applicable, information on how the airport contributes to air traffic system or airport system capacity. If served by commercial air carriers, the revenue passenger and cargo levels should be provided.

(2) A description of the airport's projected civil role and development needs for transitioning from use as a military airfield to a civil airport. Include how development projects would serve to reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or enhance capacity in a metropolitan area or reduce current and projected flight delays.

(3) A description of the existing airspace capacity. Describe how anticipated new operations would affect the surrounding airspace and air traffic flow patterns in the metropolitan area in or near the airport. Include a discussion of whether operations at this airport create airspace conflicts that may cause congestion or whether air traffic works into the flow of other air traffic in the area.

(4) A description of the airport's five-year ACIP, including a discussion of major projects, their priorities, projected schedule for project accomplishment, and estimated costs. The ACIP must specifically identify the safety, capacity, and conversion related projects, associated costs, and projected five-year schedule of project construction, including those requested for consideration for MAP funding.

(5) A description of those projects that are consistent with the role of the airport and effectively contribute to the joint-use or conversion of the airfield to a civil airport. The projects can be related to various improvement categories depending on what is needed to convert from military to civil airport use, to meet required civil airport standards, and/or to provide capacity to the airport and/or airport system. The projects selected (e.g., safety-related, conversion-related, and/or capacity-related), must be identified and fully explained based on the airport's planned use. Those projects that may be eligible under MAP, if needed for conversion or capacity-related purposes, must be clearly indicated, and include the following information:

Airside

○ Modification of airport or military airfield for safety purposes, including airport pavement modifications (e.g., widening), marking, lighting, strengthening, drainage or modifying other structures or features in the airport environs to meet civil standards for airport imaginary surfaces as described in 14 CFP, part 77.

○ Construction of facilities or support facilities such as passenger terminal gates, aprons for passenger terminals, taxiways to new terminal facilities, aircraft parking, and cargo facilities to accommodate civil use.

○ Modification of airport or military utilities (electrical distribution systems, communications lines, water, sewer, storm drainage) to meet civil standards. Also, modifications that allow utilities on the civil airport to operate independently, where other portions of the base are conveyed to entities other than the airport sponsor or retained by the Government.

○ Purchase, rehabilitation, or modification of airport and airport support facilities and equipment, including snow removal, aircraft rescue, fire fighting buildings and equipment, airport security, lighting vaults, and reconfiguration or relocation of eligible buildings for more efficient civil airport operations.

○ Modification of airport or military airfield fuel systems and fuel farms to accommodate civil aviation use.

○ Acquisition of additional land for runway protection zones, other approach protection, or airport development.

○ Cargo facility requirements.

○ Modifications, which will permit the airfield to accommodate general aviation users.

Landside

○ Construction of surface parking areas and access roads to accommodate automobiles in the airport terminal and air cargo areas and provide an adequate level of access to the airport.

○ Construction or relocation of access roads to provide efficient and convenient movement of vehicular traffic to, on, and from the airport,

including access to passenger, air cargo, fixed base operations, and aircraft maintenance areas.

○ Modification or construction of facilities such as passenger terminals, surface automobile parking lots, hangars, air cargo terminal buildings, and access roads to cargo facilities to accommodate civil use.

(6) An evaluation of the ability of surface transportation facilities (road, rail, high-speed rail, maritime) to provide intermodal connections.

(7) A description of the type and level of aviation and community interest in the civil use of a current or former military airport.

(8) One copy of the FAA-approved ALP for each copy of the application. The ALP or supporting information should clearly show capacity and conversion related projects. Other information such as project costs, schedule, project justification, other maps and drawings showing the project locations, and any other supporting documentation that would make the application easier to understand should also be included. You may also provide photos, which would further describe the airport, projects, and otherwise clarify certain aspects of this application. These maps and ALP's should be cross-referenced with the project costs and project descriptions.

Redesignation of Airports Previously Designated and Applying for up to an Additional Five Years in the Program

Airports applying for redesignation to the Military Airport Program must submit the same information required by new candidate airports applying for a new designation. On the SF 424, Application for Federal Assistance, prescribed by the Office of Management and Budget Circular A102, airports must indicate their application is for redesignation to the MAP. In addition to the above information, they must explain:

(1) Why a redesignation and additional MAP eligible project funding is needed to accomplish the conversion to meet the civil role of the airport and the preferred time period for redesignation not to exceed five years;

(2) Why funding of eligible work under other categories of AlP or other sources of funding would not accomplish the development needs of the airport; and

(3) Why, based on the previously funded MAP projects, the projects and/or funding level were insufficient to accomplish the airport conversion needs and development goals.

This notice is issued pursuant to Title 49 U.S.C. 47118.

Issued at Washington, DC, on August 28, 2009.

Wayne Heibeck,

Deputy Director, Office of Airport Planning and Programming.

[FR Doc. E9–21301 Filed 9–3–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–37]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR 21.435 (c). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before September 24, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0758 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Ralph Meyer, Aircraft Certification Service—Delegation and Airworthiness Programs Branch, AIR–140, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169; telephone (405) 954–7072, facsimile (405) 954–2209; e-mail *ralph.meyer@faa.gov.* This notice is published pursuant to 14 CFR 11.85.

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

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0758.

Petitioner: Delta Engineering.

Section of 14 CFR Affected: § 21.435 (c).

Description of Relief Sought: Delta Engineering seeks relief to continue to perform functions contained in its authorization until November 14, 2011.

[FR Doc. E9–21355 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–38]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR 21.151 and 21.153. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information

in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before September 24, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0772 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Aircraft Certification Service—Production Certification Branch, AIR–220, Federal Aviation Administration, 950 L'Enfant Plaza, SW., Room 514B Washington, DC 20024; telephone (202) 385–6364, facsimile (202) 267–5580; e-mail *john.linsenmeyer@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

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

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0772.

Petitioner: General Electric (GE) Aviation.

Section of 14 CFR Affected: §§ 21.151 and 21.153.

Description of Relief Sought: General Electric seeks relief to enable it to apply for and FAA to approve an expanded production limitation record issued as part of a production certificate (PC) or amended PC to include parts of type-certificated products.

[FR Doc. E9–21356 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Surface Transportation Environment and Planning Cooperative Research Program (STEP)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Section 5207 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established the Surface Transportation Environment and Planning Cooperative Research Program (STEP). The FHWA anticipates that resources for STEP or a similar program to carry out national research on issues related to planning, environment, and realty are likely to be included in future surface transportation legislation even though SAFETEA–LU expires at the end of this fiscal year. Legislation preceding SAFETEA–LU—the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA–21)—provided resources for FHWA to carry out surface transportation research initiatives that included planning, environment, and realty research. SAFETEA–LU continued FHWA's research program funding and established STEP.

The purpose of this notice is to announce the proposed FY 2010 STEP implementation strategy in anticipation that the FHWA is likely to receive resources for national research on issues related to environment and planning as a part of future transportation legislation and to request suggested lines of research for FY 2010 via the STEP Web site at: *http://www.fhwa.dot.gov/hep/step/index.htm.* Stakeholder feedback from the STEP Web site provides useful research ideas and helps to prevent redundant areas of research, saving valuable research funds.

DATES: Suggestions for lines of research should be submitted to the STEP Web site on or before December 3, 2009.

FOR FURTHER INFORMATION CONTACT: Felicia Young, Office of Interstate and Border Planning, (202) 366–1263, *Felicia.young@dot.gov*; or Grace Reidy, Office of the Chief Counsel, (202) 366–6226; Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov*.

Background

Section 5207 of SAFETEA–LU (Pub. L. 109–59, Aug. 10, 2005) established the Surface Transportation Environment and Planning Cooperative Research Program. STEP was codified in section 507 of Title 23, United States Code. The FHWA anticipates that the STEP or a similar program, to provide resources for national research on issues related to planning, environment, and realty, is likely to be included in future surface transportation legislation. The general objective of STEP is to improve understanding of the complex relationship between surface transportation, planning, and the environment.

SAFETEA–LU provided $16.875 million per year for fiscal years 2006—2009 to implement this cooperative research program. Due to obligation limitations, rescissions, and Congressional designation of Title V Research in SAFETEA–LU, on average $13 million of the $16.875 million authorized was available each fiscal year. We anticipate similar funding levels in the next authorization or related legislation to extend SAFETEA–LU.

STEP is the primary source of funds for FHWA to conduct research and develop tools and technologies to advance the state of the practice regarding national surface transportation and environmental decisionmaking. In FY 2010, the FHWA expects to seek partnerships that can

leverage limited research funding in STEP with other stakeholders and partners in order to increase the total amount of resources available to address the nation's surface transportation research needs.

In FY 2010, the FHWA anticipates that it is likely to receive funds for STEP or other research funding to:

(1) Conduct research to develop climate change mitigation and adaptation strategies;

(2) Improve state of the practice regarding livability and the impact of transportation on the environment;

(3) Develop and/or support the implementation of models and tools for evaluating transportation measures and develop indicators of economic, social, and environmental performance of transportation systems;

(4) Develop and deploy research to address congestion reduction efforts;

(5) Develop transportation safety planning strategies for surface transportation systems and improvements;

(6) Improve planning, operation, and management of surface transportation systems and rights of way;

(7) Enhance knowledge of strategies to improve transportation in rural areas and small communities;

(8) Strengthen and advance State/local and tribal capabilities regarding surface transportation and the environment;

(9) Improve transportation decisionmaking and coordination across borders;

(10) Conduct research to promote environmental streamlining/stewardship;

(11) Disseminate research results and advances in state of the practice through peer exchanges, workshops, conferences, etc;

(12) Meet additional priorities as determined by the Secretary; and

(13) Refine the scope and research emphases through active outreach and in consultation with stakeholders.

The FHWA is issuing this notice to: (1) Announce the proposed FY 2010 STEP Implementation Strategy in anticipation of future surface transportation legislation, and (2) solicit comments on proposed research activities likely to be undertaken in the FY 2010 STEP via the STEP Web site. The STEP Implementation Strategy includes updated information regarding historical planning and environment research funding and proposed FY 2010 STEP funding levels, goals, and research activities.

We invite the public to visit this Web site to obtain additional information on STEP, as well as information on the process for forwarding comments to FHWA regarding the STEP implementation plan. The URL for the STEP Web site is:*http://www.fhwa.dot.gov/hep/step/index.htm*. The FHWA will use this Web site as a major mechanism for informing the public regarding the status of STEP.

Authority: 23 U.S.C. 507.

Issued on August 31, 2009.

Victor M. Mendez,

Federal Highway Administrator.

[FR Doc. E9–21378 Filed 9–3–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Revenue Procedure 2009–37]

Proposed Collection; Comment Request for Revenue Procedure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing revenue procedure, RP 2009–37, Internal Revenue Code Section 108(i) Election.

DATES: Written comments should be received on or before November 3, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Internal Revenue Code Section 108(i) Election.

OMB Number: 1545–2147.

Regulation Project Number: Revenue Procedure 2009–37.

Abstract: The law allows taxpayers to defer for 5 years taxation of certain income arising in 2009 or 2010. Taxpayers then must include the deferred amount in income ratably over 5 years. The election statement advises that a taxpayer makes the election and the election and information statements provide information necessary to track the income. Respondents are C corporations and other persons in a business that reacquire debt instruments.

Current Actions: There is no change to this revenue procedure.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 6 hours.

Estimated Total Annual Burden Hours: 300,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 26, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–21345 Filed 9–3–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–52

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–52, Deduction for Energy Efficient Commercial Buildings.

DATES: Written comments should be received on or before November 3, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Deduction for Energy Efficient Commercial Buildings.

OMB Number: 1545–2004.

Form Number: Notice 2006–52.

Abstract: This notice sets forth a process that allows the owner of energy efficient commercial building property to certify that the property satisfies the requirements of § 179D(c)(1) and (d). This notice also provides a procedure whereby the developer of computer software may certify to the Internal Revenue Service that the software is acceptable for use in calculating energy and power consumption for purposes of § 179D of the Code.

Current Actions: There are no changes being made to this notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 21,767.

Estimated Time per Respondent: 1 hour 40 minutes.

Estimated Total Annual Burden Hours: 3,761.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 26, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–21346 Filed 9–3–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 990–PF and 4720

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt charitable Trust Treated as a Private Foundation, and Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.

DATES: Written comments should be received on or before November 3, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 990–PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation, an Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.

OMB Number: 1545–0052.

Form Numbers: 990–PF and 4720.

Abstract: Internal Revenue Code section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Form 990–PF is used for this purpose. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Form 4720 is used by foundations and/or related persons to report prohibited activities in detail and pay the tax on them.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 55,000.

Estimated Time per Respondent: 200 hours, 58 min.

Estimated Total Annual Burden Hours: 11,052,594.

The following paragraph applies to all of the collections of information covered by this notice:

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 28, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–21347 Filed 9–3–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for REG–109512–05

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG–109512–05, Information Returns Required with Respect to Certain Foreign Corporations and Certain Foreign-Owned Domestic Corporations.

DATES: Written comments should be received on or before November 3, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Returns Required with Respect to Certain Foreign Corporations and Certain Foreign-Owned Domestic Corporations.

OMB Number: 1545–2020.

Form Number: Form 8900.

Abstract: This document contains final and temporary regulations that provide guidance under sections 6038 and 6038A of the Internal Revenue Code. The final regulations under § 1.6038–2 are revised to remove and replace obsolete references to a form and IRS offices. The temporary regulations clarify the information required to be furnished regarding certain related party transactions of certain foreign corporations and certain foreign-owned domestic corporations. Specifically, in addition to the types of transactions listed in § 1.6038–2(f)(11), taxpayers are required to report the sales of tangible property other than stock in trade on Form 5471.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 5000.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 1,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 26, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–21348 Filed 9–3–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2006–31

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning

Revenue Procedure 2006–31, Revocation of Election filed under I.R.C. 83(b).

DATES: Written comments should be received on or before November 3, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revocation of Election filed under I.R.C. 83(b).

OMB Number: 1545–2018.

Form Number: Rev. Proc. 2006–31.

Abstract: This revenue procedure sets forth the procedures to be followed by individuals who wish to request permission to revoke the election they made under section 83(b).

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 26, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–21349 Filed 9–3–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,

September 4, 2009

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Part 501

Temporary Agricultural Employment of H–2A Aliens in the United States; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Part 501

RIN 1205–AB55

Temporary Agricultural Employment of H–2A Aliens in the United States

AGENCY: Employment and Training Administration, and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Labor (the Department or DOL) is proposing to amend its regulations governing the certification of temporary employment of nonimmigrant workers in temporary or seasonal agricultural employment and the enforcement of the contractual obligations applicable to employers of such nonimmigrant workers. This Notice of Proposed Rulemaking (NPRM or Proposed Rule) reexamines the process by which employers obtain a temporary labor certification from the Department for use in petitioning the Department of Homeland Security (DHS) to employ a nonimmigrant worker in H–2A status. The Department also proposes to amend the regulations at 29 CFR part 501 to provide for sufficient enforcement under the H–2A program so that workers are appropriately protected when employers fail to meet the requirements of the H–2A program.

DATES: Interested persons are invited to submit written comments on the Proposed Rule on or before October 5, 2009. Interested persons are invited to submit comments on the proposed form mentioned herein; such comments must be received on or before November 3, 2009.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB55, by any one of the following methods:

- *Federal e-Rulemaking Portal at www.regulations.gov:* Follow the Web site instructions for submitting comments.
- *Mail:* Please submit all written comments (including disk and CD–ROM submissions) to Thomas 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.
- *Hand Delivery/Courier:* Please submit all comments to Thomas 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.

Please submit your comments by only one method. Comments that are received by the Department through means beyond those listed in this Proposed Rule or that are received after the comment period has closed will not be reviewed in consideration of the Final Rule. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public on the *http://www.regulations.gov* Web site. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment.

Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the *http://www.regulations.gov* Web site.

Docket: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking portal at *http://www.regulations.gov.* The Department will also make all the comments it receives available for public inspection during normal business hours at the Employment and Training Administration (ETA) Office of Policy Development and Research at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and as electronic file on computer disk. The Department will consider providing the Proposed Rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: For further information on 20 CFR part 655, contact William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (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.

For further information on 29 CFR part 501 contact James Kessler, Farm Labor Branch Chief, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3510, Washington, DC 20210; Telephone (202) 693–0070 (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. Revisions to 20 CFR Part 655 Subpart B

A. Statutory Standard and Regulatory History

The H–2A nonimmigrant worker visa program enables United States (U.S.) agricultural employers to employ foreign workers on a temporary basis to perform agricultural labor or services in the absence of U.S. labor. Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (INA or the Act) defines an H–2A nonimmigrant as one admitted to the U.S. on a temporary or seasonal basis to perform agricultural labor or services. 8 U.S.C. 1101(a)(15)(H)(ii)(a); *see* also 8 U.S.C. 1184(c)(1) and 1188. The H–2A class of admission is rooted in the Immigration and Nationality Act of 1952, which created an H–2 visa for nonimmigrant admission for all types of temporary labor. The Immigration Reform and Control Act of 1986 (IRCA), three decades later, amended the INA to establish a separate H–2A visa classification for agricultural labor under INA sec. 101(a)(15)(H)(ii)(A). Public Law 99–603, Title III, 100 Stat. 3359 (November 6, 1986).

The INA authorizes the Secretary of DHS to permit employers to import foreign workers to perform temporary agricultural services or labor of a seasonal or temporary nature if the Secretary of the United States Department of Labor (Secretary) certifies that:

(A) There are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and

(B) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

8 U.S.C. 1188(a)(1).

The INA also sets out the conditions under which a certification may not be granted, including:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H–2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H–2A workers depart for the employer's place of employment.

8 U.S.C. 1188(b).

The Secretary has delegated these responsibilities, through the Assistant Secretary, Employment and Training Administration (ETA), to ETA's Office of Foreign Labor Certification (OFLC).

The statute applies strict timelines to the processing of requests for certification. The Secretary may not require that such a request, or *Application for Temporary Labor Certification*, be filed more than 45 days before the employer's date of need, and certification must occur no later than 30 days before the date of need, provided that all the criteria for certification are met. 8 U.S.C. 1188(c). If the *Application for Temporary Labor Certification* fails to meet threshold requirements for certification, notice must be provided to the employer within 7 days of the date of filing, and a timely opportunity to cure deficiencies must be provided to the employer.

To obtain a temporary labor certification, the employer must demonstrate that the need for the services or labor is of a temporary or seasonal nature. The employer must also establish that the job opportunity for the temporary position is full-time. The statute also institutes certain employment-related protections, including workers' compensation insurance, recruitment, and housing, to which H–2A employers must adhere. 8 U.S.C. 1188(c).

B. Current Regulatory Framework

The Department operated the H–2A program for more than two decades under regulations promulgated in the wake of IRCA or earlier. For the most part, the regulations at title 20 of the Code of Federal Regulations (CFR) part 655 were published at 52 FR 20507, Jun. 1, 1987 (the 1987 Rule). On December 18, 2008, the Department published final regulations revising these regulations and also revising the companion regulations at 29 CFR part 501 governing the enforcement responsibilities of the Department's Wage and Hour Division (WHD) under the H–2A program (the 2008 Final Rule). Included in that rulemaking were revisions to Fair Labor Standards Act (FLSA) regulations at 29 CFR parts 780 and 788. 73 FR 77110, Dec. 18, 2008.

The 2008 Final Rule made several significant changes in the processing of H–2A *Application for Temporary Labor Certification (Application).* The 2008 Final Rule uses an attestation-based model, unlike the previous rule, which mandated a fully-supervised labor market test. Under the 2008 Final Rule, employers conduct the required recruitment and, based upon the results of that effort, apply for a number of needed foreign workers. Thereafter, employers attest that they have undertaken the necessary activities and made the required assurances to workers, rather than have such actual efforts reviewed by a Federal or State official, as was the process in the 1987 Rule. The 2008 Final Rule relies largely on post-adjudication integrity measures to review selected documentation from a percentage of employers to compensate for a lack of hands-on review. It also reflects several significant policy shifts; chief among these was the decision to base the Adverse Effect Wage Rate (AEWR), which is the wage determined by the Department to be the minimum below which adverse impact to domestic workers would accrue, on the Occupational Employment Statistics (OES) Wage Survey collected by the Department's Bureau of Labor Statistics (BLS), rather than data compiled by the U.S. Department of Agriculture (USDA), National Agriculture Statistics Service (NASS) in its quarterly Farm Labor Survey Reports, which was what was relied upon in the 1987 Rule.

Following the issuance of the 2008 Final Rule, a lawsuit was filed in the U.S. District Court for the District of Columbia challenging the H–2A Final Rule. *United Farm Workers, et al.* v. *Chao, et al.*, Civil No. 09–00062 RMU (D.D.C.). The plaintiffs asserted that in promulgating the 2008 Final Rule, the Department violated 8 U.S.C. 1188 and the Administrative Procedures Act (APA). The plaintiffs requested a temporary restraining order and preliminary injunction, along with a permanent injunction that would prohibit DOL from implementing the 2008 Final Rule. The plaintiffs' requests for a temporary restraining order and preliminary injunction were denied and the 2008 Final Rule went into effect as scheduled on January 17, 2009.

The Administration, however, desired to review the policy decisions emanating from the 2008 Final Rule, made by a prior Administration, particularly on the role of the H–2A program in supplying foreign workers in agricultural activities, and with specific review of the protections afforded under that rule to all agricultural workers in general and the domestic workforce in particular. This review was believed to be particularly timely in light of the rising unemployment among U.S. workers and their apparent increasing availability for these jobs. Regardless, the Department upon review has determined the current level of worker protections and incentives for U.S. workers to accept employment in agriculture require expansion and are accordingly addressed in this NPRM. The Department's concern is that our agricultural economy should to the fullest extent feasible employ U.S. workers and they be granted a level of worker safety and protection

characterized in other occupations and that the need for foreign labor be when only there are demonstrably no available domestic workers for these jobs.

Accordingly, the Department extended the transition period contained in the 2008 Final Rule. In addition, the Department proposed to suspend the 2008 Final Rule in a Notice of Proposed Suspension at 74 FR 11408, Mar. 17, 2009. After considering the comments submitted in connection with the Notice of Proposed Suspension, the Department suspended the 2008 Final Rule and reinstated the regulations in effect prior to the 2008 Final Rule in order to effectuate a thorough review of the regulatory activity undertaken and to determine whether a new rulemaking effort was appropriate. 74 FR 25972, May 29, 2009. The Department stated in the Final Suspension that it intended to reinstate the former regulations for a 9-month period, after which time it would revert to the suspended regulations, unless a new rulemaking was in place. On June 29, 2009, the United States District Court for the Middle District of North Carolina issued a preliminary injunction enjoining the implementation of the Final Suspension. *North Carolina Growers' Association* v. *Solis,* 1:09–cv–00411 (June 29, 2009). As a result of that order, as of the date of publication of this Proposed Rule, the 2008 Final Rule remains in effect.

C. Need for New Rulemaking

The Department has determined for a variety of reasons that a new rulemaking effort is necessary for the H–2A program. The Department, upon due consideration, believes that the policy underpinnings of the 2008 Final Rule, *e.g.* streamlining the H–2A regulatory process to defer many determinations of program compliance until after an Application has been fully adjudicated, do not provide an adequate level of protection for either U.S. or foreign workers.

In addition, the usage of the program since January 2009 has demonstrated that the policy goals of the 2008 Final Rule have not been met. One of the clear goals of the 2008 Final Rule was to increase usage of the H–2A program, to make usage easier for the average employer, and more affordable. However, applications have actually decreased since the implementation of the new program. Employers filed 3,176 applications in the first three and one half months of Fiscal Year (FY) 2009, prior to the implementation of the 2008 Final Rule (October 1, 2008–January 16, 2009). In the six and one half months from January 17, 2009, to July 31, 2009, 4,214 applications were filed. When compared to the previous year (FY 2008), in which 8,360 applications were filed, employers are not increasing their usage of the program. *See* Chart of Average Monthly H–2A Applications Received by OFLC, *infra.* Not only has usage not increased under the program revisions, there has actually been a reversal of an existing multi-year trend toward increased program utilization. While factors other than the regulatory changes may play a role in this decrease, without accomplishing the prior rules' goal of increasing program usage, the Department can no longer justify the significant decrease in worker protections.

The Department also feels that there are insufficient worker protections in the attestation-based model in which employers merely confirm, and do not actually demonstrate to the satisfaction of an objective government observer, that they have performed an adequate test of the U.S. labor market. Even in the first year of the attestation model it has come to the Department's attention that employers, either from a lack of understanding or otherwise, are attesting to compliance with program obligations with which they have not complied. Specific situations have been reported to the Department of employers who have imposed obstacles in the way of U.S. workers seeking employment. Examples of this have included the requirement of interviewing in-person at remote interview sites that require payment to access; multiple interview processes for job opportunities requiring no skills or experience; test requirements that are not disclosed to the applicants; contact information that is disconnected, is located outside the U.S., or proves incorrect; farm labor contractors who attest to a valid license who in fact have none; and contractors who have not obtained surety bonds . This anecdotal evidence from different geographical sectors, representative of both new filers and experienced program users, has been obtained by the Department in the course of its activities in processing cases (in responses to requests for modifications), auditing certified cases, and in complaints from U.S. workers since the effective date of the 2008 Final Rule. Such non-compliance appears to be sufficiently substantial and widespread for the Department to revisit the use of attestations, even with the use of back-end integrity measures for demonstrated non-compliance.

The Department has also determined that the area in which agricultural workers are most vulnerable—wages—has been adversely impacted to a far more significant extent than anticipated by the 2008 Final Rule. As discussed further below, the shift from the AEWR as calculated under the 1987 Rule to the recalibration of the prevailing wage as the AEWR of the 2008 Final Rule resulted in a substantial reduction of farmworker wages in a number of labor categories, and the obvious effects of that reduction on the workers' and their families' ability to meet necessary costs is an important concern to the current Administration.

In order to adequately protect U.S. and H–2A workers, the Department is proposing the changes further discussed in the subsections below. The Department is engaging in new rulemaking to provide the affected public with notice and opportunity to engage in dialogue with the Department on the H–2A program. The Department took into account both the regulations promulgated in 1987, as well as the significant reworking of the regulations in the 2008 Final Rule, in order to arrive at a Proposed Rule that balances the worker protections of the 1987 Rule and the program integrity measures of the 2008 Final Rule. Much of the 2008 Final Rule has been retained in format, as it presents a more understandable regulatory roadmap; it has been used when its provisions do not conflict with the policies proposed in this NPRM. To the extent the 2008 Final Rule presents a conflict with the policies underpinning this Proposed Rule, it has been rewritten or the provisions of the 1987 Rule have been adopted. To the extent the 1987 Rule furthers the policies that underlie this rule, those provisions have been retained. These changes are pointed out below.

D. Overview of Proposed Process

In the proposed model, an employer must initiate the request for H–2A certification 60 to 75 days prior to the date of need by submitting an Agricultural and Food Processing Clearance Order, Form ETA–790, to the State Workforce Agency (SWA) in the area of intended employment to be placed as an intrastate job order. Concurrent with submitting the job order, the employer must request a housing inspection. The SWA will review the proposed terms and conditions, ensure that the wage offered meets the required wage, and commence required recruitment by placing the job order into intrastate clearance. The housing inspection must be completed prior to the issuance of the certification, since this is a requirement to access to the interstate clearance system (*see* 20 CFR 653.501(d)(2)(xv) and 654.403(e)).

The SWA must keep the job order posted and continue to refer employment applicants until 50 percent of the employer's contract period is complete. *See* § 655.135(d).

The employer must consider all U.S. worker applicants referred throughout the recruitment period. The employer may reject candidates only for lawful, job-related reasons. If the employer hires sufficient able, willing, and qualified U.S. workers during this pre-filing recruitment period to meet its needs, then the employer does not need to file a labor certification application for foreign workers with the Department's National Processing Center (NPC).

If the employer finds an insufficient number of U.S. workers available to meet its needs, then it may seek H–2A workers by filing with the NPC an Application, ETA Form 9142, along with a copy of the ETA–790 form at least 45 days prior to the date of need and an initial recruitment report. *See* § 655.130(b). Associations, labor contractors (known as H–2ALCs in this program), and agents have specific additional requirements, outlined below. Upon review by the NPC, the employer will either receive a Notice of Acceptance or a Notice of Deficiency. If the employer receives the latter, it will have no more than 12 days to modify the Application and return it to the NPC.

Once the NPC accepts the Application, the employer will be required to begin positive recruitment as specified in the Notice of Acceptance. The employer will also be required to accept referrals not only from the local SWA, but also SWAs that the NPC has designated as traditional supply States and to which the local SWA has sent an interstate job order. As part of this positive recruitment, the employer will be required to place newspaper advertisements, which must comply with § 655.152.

By the deadline set by the NPC in the Letter of Acceptance, the employer must complete a recruitment report and submit it to the NPC. The employer continues positive recruitment until the H–2A workers leave for the employer's place of business or the first date of need, whichever is earlier. 8 U.S.C. 1188(b)(4).

During the first 50 percent of the contract period the employer must accept any referral of U.S. workers from the SWA and continue to update the recruitment report. At the end of the 50 percent period, the employer finalizes the recruitment report and retains it along with copies of the advertisements placed throughout the recruitment period in case of an audit. The NPC issues either a Certification in accordance with § 655.161 or a Denial Letter in accordance with § 655.164. Extensions can be granted only in accordance with § 655.170. Should the NPC deny the Application, the employer has the right to appeal the decision to the Office of Administrative Law Judges (ALJs). *See* § 655.171.

Should any integrity measures, by which the Department means the measures it uses to determine which employers have complied with their worker protection obligations and what actions it takes against employers who have failed to do so, such as audits, debarment, or revocation, be instituted against the employer by the Department (either by OFLC or by the WHD), the employer will have an opportunity to respond. Once a decision has been rendered, the employer has the right to appeal a negative decision to the Department's ALJ as described in § 655.171.

The following time sequence occurs generally in the proposed H–2A program:

60–75 days from date of need: Employer commences process by submitting job order for clearance.

60–75 days from date of need: SWA clears job order, employer begins accepting referrals from SWA.

45–75 days from date of need: Employer accepts referrals, conducts interviews, and begins to compile recruitment report.

45 days from date of need: Employer files Application.

38–44 days from date of need: Employer receives instructions from CO, SWA commences interstate recruitment, employer conducts positive recruitment, continues to compile recruitment report. Employer continues positive recruitment until the H–2A workers leave for the employer's place of business or the first date of need.

30–38 days from date of need: CO certifies or denies.

50 percent of contract period (past date of need): Employer continues to accept referrals of U.S. worker applicants.

II. Discussion of 20 CFR 655 Subpart B

A. Introductory Sections

1. § 655.100 Scope and Purpose of Subpart B

This provision informs the users of the regulatory part of the authority of the H–2A labor certification process, drawn directly from statute. It provides the statutory basis for the regulatory process for receiving, reviewing and adjudicating an Application for H–2A job opportunities.

2. § 655.101 Authority of the Office of Foreign Labor Certification (OFLC) Administrator

The OFLC is the office within ETA that exercises the Secretary's authority for determining the availability of U.S. workers and where there are not sufficient U.S. workers available, certifying that the employment of H–2A nonimmigrant workers will not adversely effect the wages and working conditions of similarly employed workers. Such determinations are arrived at by the OFLC acting through its Administrator. The Administrator, in turn, delegates to staff the responsibility to make these determinations. Certifying Officers (COs) in the Chicago National Processing Center (CNPC) are primarily responsible for the activities of reviewing Applications and making adjudicatory decisions.

3. § 655.102 Special Procedures

Section 655.102 proposes the establishment, continuation, revision, or revocation of special procedures. The H–2A regulations have, since their creation, included a provision for special procedures for variances from the process outlined in the regulation. These are situations where the Department recognizes that variations from the normal H–2A labor certification processes are appropriate to permit access to the program for specific industries or occupations. These include, for example, sheepherding, and occupations in range production of livestock, as well as custom combine occupations. Accordingly, the Department has always reserved the right to, in its discretion, develop and implement special procedures for H–2A Applications relating to specific occupations. Such special procedures supplement the procedures described in subpart B for all H–2A Applications.

Historically, these special procedures have encompassed the authority to establish monthly, weekly, or semi-monthly AEWR for particular occupations. That process will continue under this proposal.

4. § 655.103 Overview of This Subpart and Definition of Terms

Although the Department is proposing a number of changes to the definitions section, most of the changes are to improve clarity and do not substantively change the meaning of the term. Substantive changes to definitions are discussed below.

The Department has retained the definition of ''employee'' from the 2008

Final Rule. This definition is based on the common law definition, as set forth in the Supreme Court's holding in *Nationwide Mutual Insurance* v. *Darden*, 503 U.S. 318, 322–324 (1992), which is more consistent with the statute than the definition contained in the 1987 Rule. The Department is proposing to modify the definition of ''employer'' from that set forth in the 2008 rulemaking, in order to conform the definition to that used in most other Department-administered programs. The definition of ''successor in interest'' has been modified from that in the 2008 Final Rule to make it clearer.

Under 8 U.S.C. 1101(a)(15)(h)(ii)(A) the H–2A program encompasses agricultural services or labor defined by the Secretary to at least include agricultural labor or services as defined in the Internal Revenue Code (IRC) and the FLSA, and the pressing of apples for cider on a farm. Before the 2008 Final Rule, the Department never exercised its authority to expand the scope of the H–2A program beyond agricultural employment as defined in IRC or FLSA.

In the 2008 Final Rule, the Department changed the regulatory definition of ''agricultural labor or services'' to include work activities of the type typically performed on a farm and incidental to the agricultural labor or services for which an H–2A labor certification was approved. Because the FLSA definition of agriculture already encompasses incidental work (''and any practices * * * performed by a farmer or on a farm as an incident to or in conjunction with such farming operations''), the Department believes that inclusion of a definition of incidental activities is duplicative. The Department also views as duplicative the clarification, included in the 2008 Final Rule that an activity that meets either the IRC or the FLSA definitions of agriculture is considered agricultural labor or services for H–2A program purposes. Therefore, the Department proposes to eliminate the separate definition of incidental work and the duplicative clarification.

The Department, however, is proposing to continue to include ''logging activities'' in the definition of ''agricultural labor or services'' for the same reasons discussed in the 2008 Final Rule. Prior to 1986, the Department had applied the same standards to logging employment as it applied to traditional agricultural employment. In 1986, IRCA separated the H–2 visa category into agricultural work under the H–2A visa and nonagricultural work under the H–2B visa. As discussed above, the H–2A program was intended to cover agricultural labor or services as defined by the Secretary, including but not limited to agricultural labor or services as defined in the IRC and the FLSA. The Department chose at that time not to expand the definition of agriculture beyond the statutory minimum. Nevertheless, the Department simultaneously continued the existing regulatory H–2A-like standards for logging workers who were admitted under the H–2B program. Logging employers, therefore, have been subject to a substantially similar set of obligations and processes as H–2A employers, but their nonimmigrant employees must enter on H–2B, rather than H–2A, visas.

In the 2008 Final Rule the Department determined that there was no longer any reason to maintain two substantially similar yet slightly divergent processes for agriculture and logging, and returned to our 1965–1986 practice of treating both activities alike. The types of activities in which the employers in both fields engage—*i.e.*, harvesting of agricultural and horticultural products—and the labor certification requirements to which they are subject, are essentially the same. This proposal contains the identical provision as the 2008 Final Rule. The Department has also added a definition of ''logging operations'' consistent with that used by the Occupational Safety and Health Administration (OSHA).

In addition, the Department is now proposing to also include reforestation activities within the definition of ''agricultural labor or services.'' For purposes of the H–2A program, ''reforestation activities'' will be defined as predominately manual forestry work that includes, but is not limited to, tree planting, brush clearing, pre-commercial tree thinning, and forest fire fighting. Temporary foreign workers engaged in reforestation activities are currently admitted under the H–2B program.

Reforestation work is commonly performed by migrant crews and overseen by labor contractors. The Department's experience has been that contractor work performed by migrant crews, which carries these similar characteristics to reforestation, is subject to a higher rate of violations than that performed by work performed for fixed-site workers. For this and other reasons, the Department has imposed additional requirements and obligations on labor contractors, H–2ALCs, under the H–2A program. These reforestation crews share the same characteristics as traditional agricultural crews, and the characteristics of most reforestation contractors are nearly identical to the characteristics of farm labor contractors found in traditional agriculture, and dissimilar than other occupations found in the H–2B program. It is common for their work to be paid on a piece rate basis; they work in locations typically with no access to public transportation, and are often left to their own devices to secure housing and food. These workers generally reside in remote locations for short periods of time with little or no access to community or government resources to assist them with work-related problems. The 2008 Final Rule included logging, a sub-industry of forestry, within the scope of H–2A agricultural labor. Reforestation workers, another sub-industry of forestry, who perform work in such remote locations and for such short periods of time should have the benefit of the same terms and conditions of employment as loggers as well as other traditional migrant crews with whom they share characteristics of employment. Being dependent on the crew leader combined with being in remote locations, with little or no access to community or government resources, increases the potential to be exploited by crew leaders. Due to the isolated and often harsh nature of reforestation activities and reforestation working conditions, and the similarities in the workforce between reforestation and traditional agricultural activities, as well as the potential for exploitation of such transient crews, the Department is proposing to include reforestation activities in the definition of ''agricultural labor or services.''

For like reasons, the Department is also proposing to include ''pine straw activities'' in its definitions. Crews engaged in the raking, gathering, baling, and loading of pine straw, activities typically performed manually with hand tools, share these same characteristics of traditional agriculture crews. This is employment typically controlled by labor contractors, and as discussed above, the Department's experience has found a higher violation rate with labor contractors as opposed to fixed-site employers. These crews work in remote locations, often for short periods of time. These crews are highly transient and are typically dependent on the crew leader for all transportation, and typically in remote locations, are often left to their own devices to secure housing. They are also typically paid on a piece rate basis. Being so dependent on the crew leader combined with being in such remote locations, with little or no access to community or government resources, increases the potential to be exploited by crew leaders. Due to the

nature and working conditions of these pine straw activities, and the similarities in the workforce between pine straw and traditional agricultural activities, as well as the heightened potential for exploitation by crew leaders, the Department is proposing to include pine straw activities in the definition of agricultural labor or services.

The Department is proposing a simplified definition of a ''temporary or seasonal nature'', to track the definition found in the DHS regulations at 8 CFR 214.2(h)(5)(iv)(A). Both the 1987 Rule and 2008 Final Rule used a definition derived from the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). Upon further consideration, the Department has concluded that the MSPA definition, which is driven by the circumstances of individual workers, is not compatible with the needs of the H–2A program, which relates to the temporary/seasonal needs of employers. This has led to confusion under the previous rules, which the Department now seeks to rectify.

Also in the definitional provisions of the proposed regulations, the Department proposes to define ''corresponding employment'' to more accurately reflect the statutory requirement that, as a condition for approval of H–2A petitions the Secretary certify that the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. To ensure that similarly employed workers are not adversely affected by the employment of H–2A workers, the Department makes certain that workers engaged in corresponding employment are provided no less than the same protections and benefits provided to H–2A workers.

''Corresponding employment'' is defined as the employment of workers who are not H–2A workers by an employer whose H–2A Application was approved by OFLC in any work included in the job order, or any agricultural work performed by the H–2A workers. ''Corresponding employment'' would include non-H–2A workers employed by an employer whose Application was approved by ETA who are performing work included in the job order or any other agricultural work performed by the employer's H–2A workers as long as such work is performed during the validity period of the job order. The definition includes both non-H–2A workers hired during the recruitment period required under these regulations and non-H–2A workers already working for the employer when recruitment begins. In the 2008 Final Rule, only workers newly hired by the H–2A employer were considered as engaged in corresponding employment. However, in this NPRM the Department is proposing to define corresponding employment more in keeping with the statutory language mandating that the importation of H–2A workers not adversely impact the wages and working conditions of workers similarly employed in the U.S. Such adverse impact could include providing housing at no cost to H–2A workers while housing domestic workers performing the same work in the same housing with a housing charge or reducing wages of domestic workers in order to have more available resources in order to import H–2A workers. Some might argue that precluding domestic workers from being paid the higher rate offered to H–2A workers is an adverse impact.

B. Prefiling Requirements

1. § 655.120 Offered Wage Rate

a. The Need for an Adverse Effect Wage Rate (AEWR)

The AEWR is the minimum wage rate that agricultural employers seeking nonimmigrant alien workers must offer to and pay their U.S. and alien workers, if prevailing wages and any Federal or State minimum wage rates are below the AEWR. The AEWR is a wage floor, and the existence of the AEWR does not prevent the worker from seeking a higher wage or the employer from paying a higher wage.

The Department continues to believe that the justification for the establishment of an AEWR cited in the final rule published in 1989 specifically on the AEWR methodology, remains valid:

> Even though the evidence is not conclusive on the existence of past adverse effect, DOL still believes that its statutory responsibility to U.S. workers will be discharged best by the adoption of an AEWR set at the USDA average agricultural wage in order to protect against the possibility that the anticipated expansion of the H–2A program will itself create wage depression or stagnation.

(54 FR 28037, Jul. 5, 1989.)

The AEWR not only addresses the potential adverse effect that the use of low-skilled foreign labor may have on the wages paid to native-born agricultural workers, but also protects U.S. workers whose low skills make them particularly vulnerable to wage deflation resulting from the hiring of immigrant labor. This is true even in the event of relatively mild, and thus very difficult to measure, wage deflation. Additionally, an adverse effect wage rate will potentially result in greater employment opportunities for U.S. workers, furthering statutory intent.

The statute recognizes that U.S. agricultural workers need protection from potential adverse effects of the use of foreign temporary labor, because they generally comprise an especially vulnerable population whose low educational attainment, low skills, low rates of unionization and high rates of unemployment leave them with few alternatives in the non-farm labor market. Consequently, their ability to negotiate wages and working conditions with farm operators or agriculture services employers is quite limited. The Department therefore believes that its statutory mandate justifies returning to the previous methodology as it better ensures U.S. workers are not adversely affected. Additionally, it creates a floor below which wages cannot be negotiated, thereby strengthening the ability of this particularly vulnerable labor force to negotiate over wages with growers who are in a stronger economic and financial position in contractual negotiations for employment.

The Department has determined that the area in which agricultural workers are most vulnerable—wages—has been adversely impacted to a far more significant extent than anticipated by the 2008 Final Rule. Experience with the 2008 Final Rule to date demonstrates, that on average, required wages under the program have declined by approximately $1.44 per hour.[1] The 2008 Final Rule did not anticipate such a precipitous drop in workers' wages and as a result, the Department seeks to rectify this adverse effect on agricultural workers.

Furthermore, exclusive reliance on the traditional notion of the prevailing wage (*i.e.,* the wage paid for that occupation in area of intended employment) is inappropriate to the unique circumstances of the H–2A program. The other temporary foreign labor programs administered by the Department are subject to statutory visa caps. Historically, those programs have not involved the influx of large numbers of foreign workers into a particular labor market. In these other programs, it is realistic to conclude that payment of a prevailing wage to the foreign workers will have no adverse effect on U.S. workers. This assumption is not valid in the H–2A context. The program is uncapped and experience indicates that it can involve large numbers of foreign workers entering a specific labor market. Under these circumstances employment

[1] *See* Preamble section IV A. Administrative Information, Executive Order 12866.

of foreign workers may produce wage stagnation in the local labor market. Access to an unlimited number of foreign workers in a particular labor market at the current prevailing wage would inevitably keep the prevailing wage improperly low. The most effective way to address this problem is to superimpose a wage floor based on a survey that encompasses a wide enough geographic area so that the wage depressing effect of the use of H–2A workers will be ameliorated if not completely avoided.

b. Determining the Adverse Effect Wage Rate

In the 2008 Final Rule, the Department changed the data on which the AEWR is based from the USDA Farm Labor Survey (FLS) to data from the BLS OES. Additionally, the Department added a four-tiered set of skill levels to permit wages to be set based on the relative complexity of the job activities. As recognized in the 2008 rulemaking, the FLS and the OES survey are the leading candidates among agricultural wage surveys potentially available to the Department to set AEWRs. Although the Department solicited comment on the potential for alternative wage surveys in 2008, it received no ideas for useable alternative wage surveys. However, the Department again seeks comment on whether there are other approaches to calculating the AEWR that should be considered, as well as on its decision to revert to what it considers to be, on balance, a survey that provides more accurate and targeted data.

The OES wage survey is among the largest ongoing statistical survey programs of the Federal Government. The OES program surveys approximately 200,000 establishments every 6 months, and over 3 years collects the full sample of 1.2 million establishments. The OES program collects occupational employment and wage data in every State in the U.S. and the data are published annually. The Department already uses OES wage data to determine prevailing wages in other temporary worker programs.

The OES agricultural wage data, however, has a number of significant defects. Perhaps most significantly, BLS OES data do not include wages paid by farm employers. Rather, the OES focuses on establishments that support farm production, rather than engage in farm production. Given that the employees of non-farm establishments constitute a minority of the overall agricultural labor force, it can be argued that these data are therefore not representative of the farm labor supply, does not provide an appropriately representative sample for the labor engaged by H–2A employers.

In contrast, the USDA FLS surveys between 11,000 and 13,000 farms and ranches each quarter on multiple subjects, including the number of hired farm workers, the gross wages paid to workers, and their total hours worked. Only farms and ranches with value of sales of $1,000 or more are included in the scope of the survey. Hired farm workers are defined as ''anyone, other than an agricultural service worker, who was paid for at least 1 hour of agricultural work on a farm or ranch.'' The survey seeks data on four types of hired workers: field workers, livestock workers, supervisors, and other workers.

USDA, through the National Association of State Departments of Agriculture, uses four collection methods for the FLS: mail, CATI (computer-assisted telephone interviews), personal visits (for larger operations), and online (only about 2 percent of respondents). The FLS sample is distributed across the entire country, with the geographic detail covering 15 multistate regions and 3 stand-alone States. This broader geographic scope makes the FLS more consistent with both the nature of agricultural employment and the statutory intent of the H–2A program. Because of the seasonal nature of agricultural work, much of the labor force continues to follow a migratory pattern of employment that often encompasses large regions of the country. Congress recognized this unique characteristic of the agricultural labor market with its statutory requirement that employers recruit for labor in multistate regions as part of their labor market, prior to receiving a labor certification for employing H–2A workers. The 2008 Final Rule did not sufficiently account for this labor market attribute and the Department believes that by returning to the FLS' regionally-based methodology that inconsistency will be remedied.

USDA calculates and publishes average wage rates for four categories of workers each quarter. Wage rates are not calculated and published for supervisors or other workers, but are for field workers, livestock workers, field and livestock workers combined, and total hired workers. Within the FLS, the wage rates, or average hourly wage, by category are defined as the ratio of gross wages to total hours worked. To the extent workers receive incentive pay, the average wage rate would exceed the workers actual wage rate. Because the ratio of gross pay to hours worked may be greater than a workers' actual wage rate, some statistics agencies refer to the ratio as average hourly earnings, and not as hourly wages or wage rate.

The FLS-derived wage rate estimate for the four categories of workers is published quarterly, and annual averages are published as well. The Department has in the past used these annual averages to arrive at the annual AEWR. Before the implementation of the 2008 Final Rule, the Department used the regional annual average for the category field and livestock workers combined as the annual AEWR for each State within a given geographic region.

The FLS survey and publication schedule provides timely data for purposes of calculating the relevant State AEWRs. The FLS is the only source of data on farm worker earnings that is routinely available and published within 1 month of the survey date. The quarterly gathering of data ensures that the annual averages are more accurately reflective of the fluctuations of farm labor patterns, which are by definition seasonal and thus more subject to fluctuation than other occupations. This is in contrast to the OES data which can lag in wage rate reporting by up to 3 years and may be collected from surveys during times of the year when agricultural workers are not present in a specific geographic area, thus providing less precise calculations.

The FLS is the only annually available data source that actually uses information sourced directly from farmers. The majority of farm workers are hired directly by farm operators. The FLS reports for 2008, for example, showed that 73.4 percent (730,800 per quarter on average) of all hired workers on farms had been directly hired by farm operators. The FLS also collects data on the number of workers and wages of workers performing agricultural services on farms (*i.e.,* workers supplied by services contractors) in California and Florida. California and Florida account for the preponderance of agricultural service contract labor provided to farms. In 2008, on average, California accounted for 42.6 percent (112,750) of the estimated national total 264,700 farm workers supplied under agricultural services contracts.

The FLS is a scientifically-conducted quarterly survey of the wages of farm and livestock workers and includes small farms not covered in other surveys. The scope and frequency of the survey means that all crops and activities covered by the H–2A program are included in the survey data and that peak work periods are also covered. The Department believes that the average hourly wage, based on the FLS data, compensates for any wage depression or

stagnation resulting from the large numbers of undocumented workers in the agricultural labor market. Using this methodology, regional AEWRs will be calculated based on the previous year's annual combined average hourly wage rate for field and livestock workers in each of 15 multistate regions and 3 stand-alone States, as compiled by the USDA quarterly FLS Reports. In contrast, while the OES is an appropriate wage survey for other industries, it was not designed for the purpose of calculating an hourly wage for agricultural labor, does not survey farms and therefore does not provide data in the agricultural sector appropriate to what is needed to make the adverse effect wage determinations as required under the H–2A program. Therefore, the Department believes that the USDA FLS survey of farm and livestock workers presents the most appropriate data for determining the adverse effect wage in the agricultural sector for use in the H–2A program.

For these reasons, the Department proposes to return to its 1989 methodology for the formulation of the AEWR. The Department proposes to annually publish for each State the AEWR based on the average combined hourly wage for field and livestock workers for the four quarters of the prior calendar year from the USDA's NASS FLS. The Department seeks comments on this methodology.

The Department is also proposing to discontinue the process in the 2008 Final Rule of including within the AEWR four wage levels reflecting differences based on required skill levels and levels of responsibility. It is our experience that the majority of hired farm labor, and the vast majority of labor for which H–2A certification is sought, is in low-skilled positions where wage differences are not driven by the level of skill required and responsibility required. Such skill differences are difficult to discern and create opportunities for error, either intentional or inadvertent. In addition, and perhaps most important, to whatever extent such differences may exist, no wage data is collected that could reasonably be used to identify them.

The Department is also proposing a new provision in this NPRM: if a prevailing hourly wage or piece rate is announced by the Department as increasing during the work contract to such an extent as it becomes higher than the AEWR or the legal Federal or State minimum wage, the employer must pay the new amount for the remaining duration of the contract. This change in policy is intended to ensure workers are paid throughout the life of their contracts at an appropriate wage commensurate with the baseline of the market value of their services. The Department expects that in these rare instances it will notify employers of the new wage and allow a period of time to ensure compliance.

2. § 655.121 Job Orders

The INA requires employers to engage in recruitment through the Employment Service job clearance system, administered by the SWAs. *See* 8 U.S.C. 1188(b)(4); *see* also 29 U.S.C. 49 *et seq.,* and 20 CFR part 653, subpart F. This proposal requires the employer to place a job order with the SWA serving the area of intended employment for intrastate clearance in order to test the local labor market to confirm the lack of U.S. workers prior to filing an Application. This process is consistent with the 2008 Final Rule. This eliminates the needless expenditure of limited government resources processing Applications when U.S. workers are actually available. If the job opportunity is located in more than one State within the same area of intended employment, the employer may submit a job order to any one of the SWAs having jurisdiction over the anticipated worksites to place the job order, but that SWA must forward the job order to the companion SWAs to have it placed in all locations simultaneously.

The employer must submit the job order to the SWA no more than 75 calendar days and no fewer than 60 calendar days before the date of need. Upon clearance and placement of the job order in intrastate clearance, the SWA must keep the job order on its active file until 50 percent of the H–2A contract period is reached, and must refer each U.S. worker who applies (or on whose behalf an Application is made) for the job opportunity during that time period. Any issue with respect to whether a job order may be properly placed in the intrastate clearance system that cannot be resolved with the applicable SWA must be first brought to the attention of the CO in the NPC.

The placement of the job order in the intrastate clearance system is typically a conditional access to the employment service system, given the requirement that the employer provide housing that meets applicable standards. 20 CFR 654.403(a). When the job order is placed in intrastate clearance, the SWA must inspect the housing that is to be provided to H–2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day. 20 CFR 654.403(e).

The Department has eliminated the requirement in the 2008 Final Rule that SWAs must complete the employment eligibility verification process (Form I–9 or Form I–9 plus E–Verify) for all workers referred to the job order by the SWA. This is a reversion to the 1987 Rule, under which workers in most States self-attested that they were eligible to take up the employment, in other words that they met the definition of a U.S. worker or were authorized to be employed in the U.S. The Department has done so for several reasons. The Department, upon reconsideration of the rationale for this practice after decades of not requiring States to verify employment eligibility of referrals, has decided to again place the responsibility for H–2A employment eligibility verification back on the employer, where the statute places it as a primacy. A referral is not an offer of employment—the individual may not apply for and may reject the position, they may not even be offered the position; regardless there are legal distinctions between refer and hire which are again being separated with this decision. While the Department does not desire that SWAs should refer any undocumented workers to any H–2A job opportunities they assist, it is also a resource (both financial and human) issue for States to complete, update and maintain Forms I–9 for referrals. Most States rely on an attestation for ensuring the eligibility of applicants who utilize SWA resources other than H–2A job referrals (such as job skills training), and by returning to this practice States will ensure that no worker seeking services in the public workforce system is treated disparately.

The operational benefits address two general categories of difficulty with I–9 verification by SWAs: SWAs have been at best inconsistent in operationalizing the requirement and have reported back significant difficulties in doing so. SWAs offer decentralized services but the H–2A job orders are often handled in a central (single) location. Due to the necessity of physical inspection, more staff—some of whom are not State merit staff—must be trained to perform document inspection, especially in geographically large States. In addition, States forwarding workforce referrals to other States (*e.g.,* traditional labor supply States) carry a disproportionate share of verification because of the higher number of referrals they are charged with sending on; the receiving States cannot assist as the worker is not physically present to present the documentation. Employment verification is moreover seen as

discriminatory in that SWAs must verify eligibility of only those referrals to H–2A job orders and are not required to verify referrals for non-H–2A job orders; this is particularly an issue given the typical ethnic makeup of migrant agricultural referrals. Further, referrals are disparately impacted; individuals that show up (or are sent) to the farm as so-called gate potential hires do not get the benefit of employment verification by the SWA but must be verified by the employer. Accordingly, workers will be handled by two processes—the employer and the State referring the worker.

The 2008 Final Rule recommended use of E–Verify but did not (indeed could not) require its use by States. States have been extremely slow to use E–Verify, despite the efforts on the part of United States Citizenship and Immigration Services (USCIS) to implement access to E–Verify for SWAs and the training efforts of the Department to ensure States are comfortable in using it. This is in part because USCIS requires a State to apply equal use of E–Verify to all workers who are referred, which given the mandate for H–2A job orders only, is difficult to apply unless the State is required to (or agrees to) verify all referrals to all job orders and not only those it is required to do. In addition, the use of E–Verify requires the completion of the Form I–9, and is an extra step requiring already stretched resources.

The Department has accordingly determined that SWAs may choose to complete employment eligibility verification on those individuals it refers in accordance with USCIS regulatory procedures, but are not required to do so. The Department believes that the administrative burdens of this activity do not outweigh its benefits. The savings to SWAs in time and human capital are more effectively directed at the core functions of the nation's public workforce system, the effective placement of U.S. workers in appropriate job opportunities.

3. § 655.122 Contents of Job Offers

The job offer sets out the terms and conditions of employment contained within the job order. The employer can give this information to the workers by providing a copy of the job order or a separate work contract. A written job offer is critical to inform potential workers of the terms and conditions of employment and to demonstrate compliance with all of the obligations of the H–2A program. For H–2A program purposes, the job offer must contain, at a minimum, all of the worker protections that apply to both domestic and foreign workers pursuant to these regulations. The Department considers the job offer essential for providing the workers sufficient information to make informed employment decisions. The job order, which is the document representing the terms and conditions of the job offer, must be provided with its pertinent terms in a language the worker understands.

The Department is proposing to retain most of the 2008 Final Rule requirements concerning job offers. As these requirements are familiar to the regulated community, the Department's discussion below focuses solely on the main differences between this section and the corresponding section in the 2008 Final Rule as well as minor nuances and clarifications.

a. Prohibition against preferential treatment (§ 655.122(a)).

The Department's statutory obligation in administering the H–2A program dictates that the employer be required to extend a job offer containing the same benefits, wages and working conditions for both U.S. and foreign workers. An employer may not impose any additional restrictions or obligations on U.S. workers. Under the proposed regulations, the employer is also responsible for providing to the H–2A workers at least the same minimum level of benefits, wages, and working conditions that are being offered to U.S. workers. This additional requirement levels the playing field so that employers offer H–2A and U.S. workers the same minimum levels of benefits, wages, and working conditions. It is consistent with the approach taken by the Department in the 1987 Rule and is intended to provide parallel protections from exploitation for H–2A workers.

b. *Job qualifications and requirements (§ 655.122(b)).*

The Department proposes to retain the same requirements as in the 2008 Final Rule that the job requirements be bona fide and consistent with the normal and accepted qualifications required by employers that do not use H–2A workers for the same or comparable occupations and crops. In addition, the Department has made explicit that the CO or the SWA has the discretion to require that the employer submit documentation to justify the qualifications specified in the job order.

c. *Minimum benefits, wages, working conditions (§ 655.122(c)).*

The Department proposes to retain the identical provision from the 2008 Final Rule.

d. *Housing (§ 655.122(d)).*

The proposed regulation clarifies the employer's obligation to provide housing both to H–2A workers and to workers in corresponding employment who are not reasonably able to return to their residence within the same day, for the entire duration of the contract period. The employer's obligation to provide housing ends when the worker departs, voluntarily abandons employment, or is terminated for cause. The employer's obligations with respect to housing standards, rental or public accommodations, open range housing, deposit charges, charges for public housing, and family housing under the proposed regulations have remained the same as under the 2008 Final Rule. With respect to certified housing that becomes unavailable, the Department is retaining most of the requirements of the 2008 Final Rule but is also proposing to require the SWA to promptly notify the employer of its obligation to cure deficiencies in the substituted housing, if the housing is found to be or becomes out of compliance with applicable housing standards after an inspection. To clarify the Department's available remedies, the NPRM provides that the Department can deny a pending Application as well as revoke an existing certification.

e. *Workers' compensation (§ 655.122(e)).*

The Department is proposing to retain the 2008 Final Rule requirements regarding an employer's obligation to provide workers' compensation insurance coverage in compliance with State law. To reflect a policy change to a full adjudication model, the Department is additionally requiring employers to provide the CO with proof of workers' compensation insurance coverage, including the name of the insurance carrier, the insurance policy number, and proof that the coverage is in effect during the dates of need. This requirement is a return to the requirements of the 1987 Rule.

f. *Employer provided items (§ 655.122(f)).*

It is proposed that this section on employer-provided items be amended from the 2008 Final Rule to require employers to provide to the worker, without charge, all tools, supplies and equipment necessary to complete the job offered to them.

g. *Meals (§ 655.122(g)).*

The Department is proposing to retain identical requirements with regard to an employer's obligation to provide meals to workers as those outlined in the 2008 Final Rule.

h. *Transportation; daily subsistence (§ 655.122(h)).*

The Proposed Rule retains the 2008 Final Rule requirement for transportation and daily subsistence

costs incurred by the worker when traveling to the employer's place of employment. In addition, language has been added to place employers on notice that they may be subject to the FLSA that operates independently of the H–2A program and imposes requirements relating to deductions from wages. In providing notice to employers of companion FLSA requirements, the Department hopes to assure better protection of U.S. and foreign workers. When it is the prevailing practice among non-H–2A employers in the area of intended employment, or the employer offers the benefit to foreign workers, the employer must advance the transportation and subsistence costs to U.S. workers in corresponding employment as well. At the end of the work contract or if the employee is terminated without cause, the employer must also provide or pay for transportation costs and daily subsistence from the place of employment to the place from which the worker departed for work. In addition, the Department proposes to eliminate the limitation in the 2008 Final Rule on the employer's obligation to provide for travel expenses and subsistence for foreign workers only to and from the place of recruitment, *i.e.* the appropriate U.S. consulate or port of entry; this Proposed Rule requires the employer to pay the costs of transportation and subsistence from the worker's home to and from the place of employment, as was required under the 1987 Rule.

(i) *Transportation from place of employment.* As noted above, the Department is proposing to keep the 2008 Final Rule requirement for employers to provide transportation from the place of employment for workers who complete their work contract period. In addition, the Department proposes to include a requirement from the 1987 Rule which obligates either the initial or subsequent employer to cover the transportation and subsistence fees for the travel between the initial and subsequent worksite. The obligation to pay remains with the first H–2A employer if the subsequent H–2A employer has not contractually agreed to pay the travel expenses. In addition, this proposed paragraph incorporates a 2008 Final Rule requirement concerning displaced H–2A workers and places employers on notice that they are not relieved of their obligation to provide or pay for return transportation and subsistence if an H–2A worker is displaced as a result of an employer's compliance with the 50 percent rule.

(ii) *Employer-provided transportation.* The 2008 Final Rule imposed mandatory compliance with applicable Federal, State or local laws and regulations regarding vehicle safety, driver licensure and vehicle insurance on the transportation between the living quarters and the worksite. The Department is now proposing to ensure this provision reflects similar existing compliance requirements for all employer-provided transportation. It is less an expansion however, of the requirement as much as an acknowledgment that such compliance requirements exist elsewhere, as these already exist in Federal, State or local transportation laws and regulations. The Department is ensuring that the requirement of compliance with these transportation and safety laws is reflected in the affirmative obligations to the workers. The Department anticipates that this will further ensure worker safety.

i. *Three-fourths guarantee (§ 655.122(i)).*

The Department is proposing to retain the three-fourths guarantee from the 2008 Final Rule clarifying that the guarantee is to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the contract period, beginning with the first workday after the arrival of the worker at the place of employment. The Department proposes to retain the provision addressing displaced H–2A workers from the 2008 Final Rule, except that the provision now refers to the reinstated 50 percent rule rather than the 30 day rule contained in the 2008 Final Rule.

j. *Earnings records (§ 655.122(j)).*

This proposed section mirrors the earning records requirements in the 2008 Final Rule with one exception. Under the Proposed Rule, the employer must keep the earning records for 5 instead of 3 years.

k. *Hours and earnings statements (§ 655.122(k)).*

Under the Proposed Rule, the employer would be required to provide to each worker hours and earnings statements that consist of all elements contained in the 2008 Final Rule plus two additional pieces of information: the beginning and ending dates of the pay period, and the employer's name, address and Federal Employment Identification Number.

l. *Rate of pay (§ 655.122(l)).*

The Department is proposing to keep the 2008 Final Rule requirements regarding the rate of pay and is introducing an additional requirement to the job offer (already contained in the assurances and obligations of the 2008 Final Rule) that provides that the offered wage may not be based on commission, bonuses, or other incentives, unless the employer guarantees a wage paid on a weekly, semi-monthly or monthly basis that equals or exceeds the AEWR, prevailing hourly wage or piece rate, or the legal Federal or State minimum wage, whichever is highest. The term semi-monthly replaces the term biweekly from the 2008 Final Rule's obligation.

Additionally, the Department proposes to retain the requirement of the 2008 Final Rule that if the employer has a productivity standard associated with a piece rate payment, the productivity standard must be disclosed in the job offer. The Department also proposes to revive the requirement of the 1987 Rule that the productivity standard must also be no more than that required by the employer in 1977, or, if the employer first filed an Application after 1977, the employer's productivity standard when it first filed an Application. If the productivity standard is higher than required by the employer in 1977 or when the employer first filed an Application, the productivity standard must be approved by the OFLC Administrator.

m. *Frequency of pay (§ 655.122(m)).*

The Department is proposing to retain most of the 2008 Final Rule requirements on pay frequency, requiring employers to pay wages at least twice a month (semi-monthly) and state the pay frequency in the job offer. However, the Department is proposing to add an option from the 1987 Rule, whereby employers may set pay frequency according to the prevailing practice in the area of intended employment, and proposes to add a new requirement that they employers must pay wages when due.

n. *Abandonment of employment or termination for cause (§ 655.122(n)).*

The Department's proposal retains the requirements of the 2008 Final Rule on the abandonment of employment or termination for cause. However, one key difference from the 2008 Final Rule is that the Department has not included the express exception to abandonment or abscondment of a short-term unexcused absence; the Department is using a purely temporal (5 day) calculation to provide clarity.

o. *Contract impossibility (§ 655.122(o)).*

The Department proposes to retain the 2008 Final Rule requirements regarding contract impossibility with one additional obligation, taken from the 1987 Rule, under which an employer is required to make efforts to transfer the worker to other comparable

employment acceptable to the worker in the event the employer is prevented from fulfilling the requirements of the work contract.

p. *Deductions (§ 655.122(p)).*

Under the Proposed Rule, the employer must make all deductions required by law and must specify all other reasonable deductions in its job offer, just as under the 2008 Final Rule. In addition, subject to an employer's compliance with applicable FLSA requirements, the Department proposes to once again permit an employer to deduct the cost of worker's inbound transportation and daily subsistence expenses to the place of employment which were paid directly by the employer, but only if the worker is reimbursed the full amount of such deduction when he or she completes 50 percent of the work contract period. This reimbursement must be inserted in the job order.

q. *Disclosure of work contract (§ 655.122(q)).*

Under this proposal, as under the 2008 Final Rule, the employer must provide a copy of the work contract (or the job order in the absence of the separate, written contract) to the worker no later than on the day that work commences. As a new requirement under this NPRM, this disclosure, as necessary and reasonable, must be written in a language the worker understands. It is appropriate in a program administered by the Department that we obligate an employer to provide the terms and conditions of employment to a prospective worker in a manner permitting the worker to understand the nature of the employment being offered and the worker's commitment under that employment.

C. Application Filing Procedures

1. § 655.130 Application Filing Requirements

This provision sets out the basic requirements with which employers need to comply in order to file an Application. As discussed above, the proposed process begins with the filing of an Agricultural and Food Processing Clearance Order (Form ETA 790) with the SWA 60 to 75 days before the date of need. As discussed above, this required preliminary period permits the SWA, with its substantial knowledge of the local labor market and farming activities, to evaluate the job's requirements. As was the case in the 2008 Final Rule, a single Application is filed with only the NPC. This eliminates the duplication of effort that occurred under the 1987 regulations, in which OFLC and the SWA both received an Application and both spent time reviewing it. By requiring a submission of only one Application form with the NPC, the proposed regulation segregates the process into those activities best handled by each entity.

The proposed provision also establishes filing deadlines consistent with the 2008 Final Rule. The Department is constrained by statute from requiring employers to file an Application more than 45 days prior to the date of need. 8 U.S.C. 1188(c)(1). The Department anticipates, based on decades of program experience, that it will continue to receive requests 45 days prior to the date of need, although Applications may be voluntarily filed in advance of that date.

The Department proposes to continue to receive Applications filed in the same paper format as currently filed until such time as an electronic system can be fully implemented. The Department proposes to use the *Application for Temporary Employment Certification,* Form ETA 9142, to collect the necessary information; the form's appendices will be modified slightly to reflect changes from the 2008 Final Rule (such as a change of tense to note the pre-recruitment filing of the Application). The Department has begun efforts to establish an online format for the submission of information, but as such a system depends upon the resolution of issues in rulemaking, its implementation necessitates a period during which paper Applications will continue to be accepted. The Department contemplated in its 2008 rulemaking an electronic submission process; until such is developed, it will continue to accept paper Applications. This will assist employers familiar with the program, who are currently filing paper Applications and will thus have a less onerous transition.

The proposed provision also sets out the requirement for obtaining signatures. As in the 2008 Final Rule, the Department is proposing to require original forms and signatures. One departure from the 2008 Final Rule is the requirement that an association, filing not as an association but as an agent for it members, obtain the signatures of all its employer-members before submitting the Application to the Department, to ensure that all members are fully aware of the obligations of the Application to which each member must adhere.

The rule proposes that the employer will file the Application with an initial recruitment report, outlining the results of its initial recruitment attempts, including the results of referrals from its intrastate job order placed with the SWA, and any other efforts in which it has engaged. The employer will also file with the *Application* a copy of its ETA 790 clearance order, so that the NPC may verify the order placed with the SWA against the terms and conditions provided on the Application.

2. § 655.131 Association Filing Requirements

a. Associations (§ 655.131(a))

The Department has previously permitted associations to file on behalf of their members. The proposed provision clarifies the role of associations as filers, in order to assist both the employer-members and the Department in assessing the obligations of each party. As in the past, an association will identify in what capacity it is filing, so there is no doubt as to whether the association is subject to the obligations of an agent or an employer (whether individual or joint). Both the 1987 and 2008 regulations required an association of agricultural producers filing an Application to identify whether the association is the sole employer, a joint employer with its employer-members, or the agent of its employer-members.

b. Master Applications (§ 655.131(b))

Although the 1987 Rule did not specifically describe a master application that can be filed by associations, they are clearly contemplated by 8 U.S.C. 1188(d), and the Department has permitted master applications to be filed as a matter of practice. *See* 52 FR 20496, 20498, Jun. 1, 1987 (cited in ETA Handbook No. 398). The 2008 Final Rule explicitly permitted their use. This Proposed Rule continues to permit their use but narrows the scope of what constitutes an acceptable master application. The Proposed Rule continues to require a single date of need as a basic element for a master application. The Department proposes to retain the long-standing requirement that a master application may be filed only by an association acting as a joint employer with its members; the Proposed Rule reiterates this joint responsibility by requiring that the association identify all employer-members that will employ H–2A workers. The Application must demonstrate that each employer has agreed to the conditions of H–2A eligibility.

The Department also proposes to revert to the long-established practice of permitting a master application only for the same occupation and comparable work within that occupation. However,

the Department proposes to modify that practice to limit such Applications to a single State. Requiring comparable work on a master application also reduces overstatement of need by employers and the potential for idling of workers, both domestic and H–2A. Workers applying to a job opportunity that is the subject of a master application are thus provided a more accurate start date and can gauge their own availability accordingly. The Department notes that similar crop activities are far more likely to link to the single date of need that is required.

3. § 655.132 H–2A Labor Contractor (H–2ALC) Filing Requirements

The proposed regulation sets out additional filing requirements for H–2A Labor Contractors (H–2ALCs), building upon those outlined as attestations for H–2ALCs in the 2008 Final Rule. We are proposing that H–2ALCs be required to provide certain basic information, such as the names and locations of each fixed-site farm or agricultural operation to which the H–2ALC has contracted to send the workers, as well as information regarding crop activities the workers will be performing at each site. The Department also proposes to require H–2ALCs to submit copies of all contracts with each fixed-site entity identified in its Application. In addition, the Department proposes to continue to require the submission of the Farm Labor Contractor Certificate of Registration, if MSPA requires the H–2ALC to have one.

The Department is proposing to continue its requirement that an H–2ALC post a bond to demonstrate its ability to meet its financial obligations to its employees. This permits the Department to ensure labor contractors can meet their payroll and other obligations contained in the terms of the job order and the H–2A program obligations. Additionally, we are proposing that the H–2ALC be required to submit documentation of its surety bond.

Finally, the Department is proposing to require that in situations where the fixed-site farm with which the H–2ALC has a contractual relationship is the entity that will be providing housing and/or transportation, the H–2ALC must provide proof that the housing complies with the applicable standards, and has been approved by the SWA, and that transportation provided complies with all applicable laws and regulations.

4. § 655.133 Requirements for Agents

The Department has long accepted Applications in many of its programs from agents. The Proposed Rule continues the long-standing practice of allowing employers to utilize agents to file the Application. However, in recognition of the unique relationship an agent has with an employer it represents before the Department, the proposed rule requires an agent to provide, as a part of the Application, a copy of the agreement by which it undertakes the representation—contract, agency agreement, or other proof of the relationship and the authority of the agent to represent the employer. In addition, the Department is requiring, for those agents who are required under MSPA to register as a farm labor contractor, proof of such registration.

5. § 655.134 Emergency Situations

The Department proposes to retain from both the 2008 Final Rule and its predecessor Rule the criteria for accepting and processing Applications filed less than 45 days before date of need on an emergency basis. The Department is proposing that emergency Applications continue to be accepted for employers who did not use the H–2A program in the previous year, or for any employer that has good and substantial cause. The predicate for accepting an Application on an emergency basis continues to be sufficient time for the employer to undertake an expedited test of the labor market. To meet the good and substantial cause test, the employer must provide to the CO detailed information describing the reason(s) which led to the request. Such cause is outlined in the regulation in a non-inclusive fashion, including factors such as loss of U.S. workers from weather-related conditions and unforeseen events affecting the work activities. The discretion to determine good and substantial cause rests entirely with the CO.

6. § 655.135 Assurances and Obligations of H–2A Employers

In addition to commitments made to workers through the job order, employers seeking H–2A workers must provide additional assurances designed to ensure that the granting of the certification will not adversely affect the wages and working conditions of workers similarly employed in the U.S.

Under this Proposed Rule, the employer must assure that the job opportunity is available to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap or citizenship. Domestic applicants may only be rejected for lawful, job related reasons. Additionally, the employer must assure that there is no work stoppage or lockout at the worksite.

As under the 1987 Rule, we propose that employers continue to work with the SWA(s) and accept referrals of all eligible U.S. workers who apply for the job until the completion of 50 percent of the contract period. In addition, the employers will have to conduct positive recruitment until the actual date on which the H–2A workers depart for the place of work, or 3 calendar days before the first date the employer requires the services of workers.

In this NPRM the Department is proposing to reinstate the 50 percent rule, outlined in 8 U.S.C. 1188(c)(3)(B)(i). The 50 percent rule is a creation of statute; it was added in IRCA to enhance domestic worker access to job opportunities for which H–2A workers were recruited. In short, the rule provided that the Department was to require that an employer seeking H–2A certifications agree to accept referrals through 50 percent of the contract period outlined on the job order. The Department seeks to enhance protections for U.S. workers, to the maximum extent possible, while balancing the potential costs to employers. The Department acknowledges that such increased referral activity imposes an additional cost on both employers and on SWAs. The burden on SWAs, however, is already a core labor market exchange function which they already provide to the nation's workforce pursuant to the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*). The cost on employers is lessened, to large extent, by the ability to discharge the H–2A worker upon the referral of a U.S. worker. In addition, the Department proposes retaining from the 1987 Rule (and U.S.C. 1188(c)(3)(B)(ii)) the small farm exemption to the 50 percent rule to minimize the adverse effect on those operations least able to absorb additional workers.

The proposed regulation at § 655.135(e) requires employers to assure that they will comply with all applicable Federal, State and local laws and regulations, including health and safety laws, during the period of employment that is the subject of the labor certification. Among other obligations employers may be subject to the provisions of the FLSA. This proposed requirement is intended to emphasize the important policy objective of protecting both U.S. and foreign workers and ensuring that both groups are afforded the protections to which they are entitled.

Among other requirements, the Department is proposing to require employers to offer only full-time temporary employment of at least 35 hours per work week, an increase from

the 30 hours per week in the 2008 Final Rule. The Department believes that a 35-hour work week more accurately reflects the work patterns of farm entities and strikes an appropriate balance between the employer's needs and the employment and income needs of both U.S. and foreign workers.

As in the 2008 Final Rule, an employer must guarantee that it has not laid off and will not lay off any similarly employed U.S. worker in the occupation in which the employer is seeking to hire H–2A workers within 60 days of the date of need. If the employer has laid off U.S. workers, the Department will require the employer to demonstrate that it has offered the job opportunities created by the lay offs to those laid-off U.S. workers(s) and the U.S. worker(s) either refused the job opportunity or was rejected for lawful, job-related reasons. This proposed requirement is intended to prevent the few unscrupulous employers from firing U.S. workers, then hiring H–2A workers to perform the same services under less advantageous working conditions, including lower wages and benefits, resulting in savings for the employers.

Proposed § 655.135(h) would prohibit employers from intimidating, threatening, coercing, blacklisting, discharging or in any manner discriminating against complaining workers or former workers who file a complaint against the employer for violating 8 U.S.C. 1188 or who institute any proceeding against the employer or testify in any proceeding against the employer, or consult with an employee of a legal assistance program or an attorney on matters related to a proceeding against the employer, or exercise or assert any right or protection under the same section or under the Department's H–2A regulations.

The NPRM proposes to continue to require an employer to inform H–2A workers that they are required to depart the U.S. at the end of the certified work period, or if they become separated from the employer before the end of that period. The requirement that the workers depart applies to all H–2A workers who do not have a subsequent offer of employment from another H–2A employer. This continues a standing requirement in the program which parallels DHS regulations. Requiring employers to notify H–2A workers of their obligation to depart will help to ensure that the workers timely depart the U.S. without risking negative immigration consequences for overstays of their temporary work visas. This will enable workers to remain eligible to return the following season and assist the same or different employers if there are not sufficient qualified, able and willing U.S. workers. In addition, the proposed requirement ensures that the employers are aware that they may not offer employment to foreign workers which exceeds the period certified by the Department (and that approved by DHS) without violating their obligations under the program.

As in the 2008 Final Rule and in conjunction with similar DHS regulations, the Department proposes to prohibit employers from passing on fees associated with the recruitment of workers recruited under 8 U.S.C. 1188 to those workers, such as referral fees, retention fees, transfer fees, or similar charges. The Department proposes to define payment as monetary payments, wage concessions (including deductions from wages, salary or benefits), kickbacks, bribes, tributes, in-kind payments, and free labor. The Department believes that requiring employers to bear costs associated with the recruitment of foreign and domestic workers will incentivize employers to offer the terms and conditions that would most likely attract U.S. workers who are qualified, willing and able to perform the work. In addition, this prohibition protects the workers from becoming heavily indebted when applying for the job opportunities and vulnerable to exploitation by unscrupulous employers. As before, this provision does not prohibit employers or their agents from receiving reimbursement for costs that are the responsibility of the worker, such as government required passport fees. The Department has also removed visa fees, border inspection, and other government-mandated or authorized fees from consideration as an acceptable fee attributable to the worker. A visa fee for an H–2A visa is one directly attributable to the employer's need for the worker to enter the U.S. to work for the employer; as such it is not reimbursable from the employee to the employer.

In addition to prohibiting employers and their agents from collecting or soliciting fees from H–2A workers for the cost of recruitment, the proposed regulations require those employers to contractually forbid any foreign labor contractor or recruiter, or agent of such foreign labor contractor or recruiter, engaged in the international recruitment of H–2A workers from seeking or receiving payments, whether directly or indirectly, from prospective employees. This provision is also intended to ensure that the employer's contractual obligations do not permit the passing of recruitment fees to foreign employees.

As an additional element of worker protection, the Department proposes to require that employers post and maintain in conspicuous locations at the worksite a poster provided by the Department in English, and, to the extent necessary, language common to a significant portion of the workers if they are not fluent in English, which describes the rights and protections for workers employed pursuant to 8 U.S.C. 1188. Providing such notification to workers through a poster at the worksite of their rights is consistent with other programs administered and enforced by the Department. Such a posting requirement is even more meaningful at remote worksites where agricultural workers are often employed. The posting requirement ensures that both H–2A and corresponding workers are aware of their rights and are provided with resources (in the form of phone numbers or contact information) which they may use to notify the Department of any issues at the worksite or report employers who fail to meet their obligations under the program.

D. Processing of Applications

1. § 655.140 Review of Applications

Under the Department's proposed regulations, upon receipt of each Application, job order, and other required documentation, the CO at the NPC will promptly conduct a comprehensive review of all documentation provided by the employer to ensure that the employer has complied with all applicable requirements and obligations. The timing of the review process is defined primarily in the INA, and therefore the Department's procedures remain largely unchanged. The Proposed Rule, however, now requires that the Application be accompanied by required documentation supporting employer assurances. Additionally, the CO will have a greater role in substantively reviewing the Application for compliance with the requirements.

2. § 655.141 Notice of Acceptance

The Proposed Rule partially incorporates the requirements of the 1987 Rule with respect to the process of accepting an Application. Under the proposal, the Notice of Acceptance from the CO grants conditional access to the interstate clearance system and directs the SWA to circulate a copy of the job order to the States the CO determines to be potential sources of U.S. workers. The Notice of Acceptance also directs the employer to engage in positive recruitment of U.S. workers during the same time period. Finally, each Notice

of Acceptance informs the employer that the Department will adjudicate the certification request no later than 30 calendar days before the date of need, except in the case of modified Applications.

Under the proposed regulations, the CO will review each employer's Application to determine whether the employer has established the need for agricultural services or labor to be performed on a temporary or seasonal basis by temporary H–2A workers and met all the requirements and obligations required by these regulations. The CO will ensure that the employer has submitted the Application no less than 45 days from the date of need and that it has previously submitted a copy of the job order to the SWA serving the area of intended employment for intrastate clearance. Further, the CO will look for a complete and appropriate job description, a full number of job openings and the appropriate dates of need. Most significantly, the CO will ensure that the employer is offering prospective workers an adequate offered wage rate. While conducting its review of the employer's Application, the CO will also determine whether the employer has included complete housing information, proof of workers' compensation coverage, the guarantee to provide to the workers travel reimbursement and meals/cooking facilities, and a promise to provide tools or items required for the position, as appropriate. The CO will ensure that the employer has agreed to offer to workers a total number of work hours equal to at least three-fourths of the workdays of the total contract period.

3. § 655.142 Electronic Job Registry

The Department proposes to post employers' H–2A job orders, including modifications approved by the CO, into a national and publicly accessible electronic job registry. The job registry will be created and maintained by the Department and will serve as a public repository of H–2A job orders for the duration of 50 percent of the work contract. The job orders will be posted in the registry by a CO upon the acceptance of each submission. The posting of the job orders will not require any additional effort on the part of the SWAs or H–2A employers.

The Department intends that this new national job registry will serve as an effective, user-friendly tool for informing and attracting U.S. workers to agricultural jobs for which H–2A workers are being recruited. In addition, the Department anticipates that the job registry will contribute to increased transparency in the H–2A labor certification approval process. The Department will inform all stakeholders of the creation of the job registry through a notice in the **Federal Register** and provide access through the Department's resources, including its One-Stop Career Centers, as well as through a link to the job registry on the OFLC's Web site *http://www.foreignlaborcert.doleta.gov/.*

4. §§ 655.143 and 655.144 Notice of Deficiency and Submission of Modified Applications

As in the 2008 Final Rule, the Department proposes that if the CO determines that the Application or job order is incomplete, contains errors or inaccuracies, or fails to meet necessary regulatory requirements, the CO must notify each employer within 7 days that the Application does not meet standards for approval. This Notice of Deficiency will include the reason(s) why the Application is deficient and provide the employer with an opportunity to resubmit a modified Application. It will also identify the type of modification that is necessary in order for the CO to issue a Notice of Acceptance. In addition, the Notice of Deficiency must inform the employer that the CO will grant or deny the certification within 30 days of the date of need as long as the employer submits a modified application within 5 business days.

The Notice of Deficiency will also give an employer the opportunity to request expedited administrative review or a de novo administrative hearing before an ALJ and provide instructions on filing a written request for a hearing with the ALJ. Finally, the Notice of Deficiency will inform the employer that failing to act within 5 business days to either modify the Application or request an administrative hearing or review will result in the denial of that employer's Application.

The employer may submit a modified application within 5 business days of receiving a Notice of Deficiency. If an employer timely submits a modified application that meets conditions for acceptance, the CO will issue a Notice of Acceptance. For each day over the 5-day window, the CO may take up to one additional day to issue a Final Determination on the Application, up to a maximum of an additional 5 days. The Application will be considered to be abandoned if the employer does not submit a modified Application within 12 calendar days (allowing for two periods of 5 business days each) after the Notice of Deficiency was issued. The 12 days, which is more time than was allotted under the 2008 Final Rule, is a reasonable maximum period, given the statute's concern for prompt processing of Applications and the time needed to obtain visas and bring in the workers by the date of need.

5. § 655.145 Amendments to Applications for Temporary Employment Certification

As in the 2008 Final Rule, the Department proposes that amendments to a request for labor certification for H–2A workers are permitted in two limited instances—where an employer desires to increase the number of workers requested, and where the employer makes minor changes to the period of employment. DHS regulations at 8 CFR 214.2(h)(5)(x) provide for a limited maximum of 2-week extension in emergent circumstances (the temporary labor cert will be deemed to be approved for up to 2 weeks under such emergent circumstances (upon DHS approval of the 2-week extension request)). As proposed, an employer will be able to amend its Application with the Department at any time before the final determination without an obligation to submit a new Application (and conduct additional recruitment), to increase the number of workers requested by not more than 20 percent (50 percent for employers requesting 10 workers or less). Requests for increases above these percentages will be approved by the CO only in limited circumstances when the employer can satisfy DOL that the need could not have been foreseen and the crops or commodities would be in jeopardy before the expiration of any additional recruitment period.

For amendments to the period of employment, the Department proposes that the employer seek written approval in advance from the CO. The employer's request must be justified, taking into account the effect of the change of the period of employment on the adequacy of the labor market test. An employer must demonstrate that the change to the period of employment could not have been foreseen, and the crops or commodities will be in jeopardy prior to the commencement of an additional recruitment period. In addition, if the change involves a delay in the date of need, the employer must offer assurances that workers who have already departed for the employer's job site will be provided with housing and subsistence without cost to the workers until they begin working.

E. Positive Recruitment and Post-Acceptance Requirements

The Department proposes, under new §§ 655.150–655.159, that employers be required to conduct the majority of their

recruitment after filing their Application at the direction of the NPC. The proposed post-acceptance recruitment is similar to the process used in the 1987 Rule. The Department has determined that this oversight of recruitment is preferable to ensure the validity and adequacy of the labor market test in which the employer will engage. However, because the proposal retains the audit system introduced in the 2008 Final Rule, employers must maintain all resumes and applications filed by the U.S. workers. U.S. worker recruitment will continue to use the steps that program experience has shown are the most appropriate for agricultural employment. These include the involvement of the SWAs, placement of two newspaper advertisements, contact with former U.S. employees, advertising in traditional or expected labor supply States, and as appropriate, contacting local unions.

1. § 655.150 Interstate Clearance of Job Order

The Department proposes to require the employer to test the labor market before filing the Application by submitting a job order to the SWA in the area of intended employment. As discussed previously, the SWA will place this order only in the intrastate job clearance system. If enough U.S. workers apply for the positions available and are qualified, able, and willing to perform the duties, then the employer cannot file with the Department for a labor certification. However, if the employer still has a need for foreign workers, then the employer files an Application with the NPC. Once the CO issues the Notice of Acceptance, the NPC will instruct the SWA to post the Job Clearance Order on its interstate job clearance system. Likewise, the NPC will inform the SWA of the traditional or expected labor supply States and the SWA will send the SWAs in those States the Job Clearance Order.

2. § 655.151 Newspaper Advertisements

Newspapers remain a potential recruitment source for U.S. workers likely to be affected by the introduction of H–2A labor. As in the 2008 Final Rule, the Department proposes to require two print advertisements in the State of intended employment. The newspaper advertisements can be on two consecutive days, but one of which must be on a Sunday or the day of the week with the largest circulation if there is no Sunday edition. Employers will be required to list the specifics of the newspaper advertisement on the Application but will not be required to submit tear sheets or other documentary evidence of that recruitment when the recruitment report is submitted. However, the employer will be required to maintain documentation of the actual advertisement(s) published in the event of an audit or other review. The Department is not requiring advertising in ethnic newspapers, but allows for this option if, in the discretion of the CO, it is normal and customary in the area of intended employment.

3. § 655.152 Advertising Requirements

Proposed § 655.152 retains the requirements of the 2008 Final Rule for the information that must be contained in the advertisements. However, the Proposed Rule requires the advertisements to be placed at the direction of the CO after the Application has been accepted. It also proposes to require employers with remote worksites to provide physical space or other assistance for the interviewing of U.S. workers in a place other than the worksite that is readily accessible to the population that is most likely to apply to the job opportunity.

4. § 655.153 Contact with Former U.S. Employees

The NPRM proposes to continue to require employers to contact former U.S. employees as included in the 2008 Final Rule. These contacts must occur during the pre-filing recruitment period. Contact with previous employees will be documented by maintaining copies of correspondence with such employees (or records of attempts to contact former employees). The recruitment report must contain a description of the outcome of those contacts, including the lawful, job-related reasons for not rehiring a former employee. This will increase the likelihood that former U.S. workers of the employer will receive advance notice of available job opportunities, as well as provide them with additional information on available positions.

5. § 655.154 Additional Positive Recruitment

The statute requires the Secretary to deny a petition if the employer has not made positive recruitment efforts within a multistate region of traditional or expected labor supply States and the Secretary finds that there are a significant number of qualified U.S. workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment is in addition to and occurs within the same time period as the circulation of the job order through the interstate employment service system. The NPRM proposes that the Notice of Acceptance will instruct the employer how to conduct positive recruitment. If such traditional or expected labor supply States exist for an area of intended employment, the Notice of Acceptance will designate such States and the employer will be required to perform additional positive recruitment in those States. The type of recruitment that will be required of the employer is left to the discretion of the CO, but will be no less than the normal recruitment efforts of non-H–2A agricultural employers of comparable or smaller size in the area of intended employment. Such recruitment may include radio advertising, additional newspaper advertisements, and other targeted efforts.

6. § 655.155 Referrals of U.S. Workers

The NPRM proposes to return to the 1987 Rule standard which required the SWAs to refer only those individuals who have been apprised of all the material terms and conditions of employment. Under those provisions, only those individuals who had indicated that they were able and willing to perform such duties, qualified and eligible to take such a job and available at the time and place required in the job order were referred.

7. § 655.156 Recruitment Report

The reporting of recruitment results has always been an element of the H–2 program. Under the 1987 Rule, if the employer did not hire a referred worker, the employer was required to inform the SWA of the lawful employment-related reason(s) for not hiring the worker. The 2008 Final Rule formalized this process and required the preparation of a recruitment report, but the report was not sent to either the SWA or the NPC; instead the employer maintained the recruitment report in its records. The NPRM proposes to require that employers begin the recruitment report before they file their Application and continue to supplement it as referrals and applicants come in. The employer will be required to submit the initial recruitment report at the time of filing the Application with the NPC and to file an updated report by a date certain specified in the Notice of Acceptance. Finally, the employer will be required to continue to update the recruitment report until 50 percent of the contract period has expired at which time the SWA will cease referring U.S. workers. The complete recruitment report and all supporting documentation must be maintained by the employer for 5 years.

8. § 655.157 Withholding of U.S. Workers Prohibited

The statute prohibits willfully and knowingly withholding domestic workers until the arrival of H–2A workers in order to force the hiring of domestic workers under the 50 percent rule. Both previous rules implemented the statutory prohibition by describing the procedure for filing complaints in such instances. Because the Department has now centralized many of the functions formerly performed by the SWAs, the NPRM proposes to have such complaints filed directly with the CO rather than first going through the SWA and having the SWA refer complaints to the CO.

F. Labor Certification Determinations

1. § 655.160 Determinations

This NPRM proposes to continue to implement the Secretary's statutory mandate to make determinations on Applications no later than 30 days prior to the date of need.

2. § 655.161 Criteria for Certification

The NPRM sets out the criteria by which the CO will determine the availability of U.S. workers. As in the 2008 Final Rule, the CO will count as available those individuals who are rejected by the employer for any reason other than a lawful, job-related reason, or who are rejected and are not provided by the employer with a lawful, job-related reason for the rejection.

3. § 655.162 Approved Certification

The Department is proposing to continue the requirement from the 2008 Final Rule that the CO will send the certified Application to the employer by means assuring next-day delivery. This is to ensure employers receive expeditious handling of their certifications.

4. § 655.163 Certification Fee

The Proposed Rule continues to require, as outlined in the statute, that each employer of H–2A workers under the Application (except joint employer associations, which may not be assessed a fee in addition to the fees assessed to the members of the association) must pay to the Department the appropriate certification fee. These processing fees are authorized by statute and set by regulations originally published at 52 FR 20507, Jun. 1, 1987. The Department is updating the fees to an amount that more nearly approaches the reasonable costs of administering the H–2A program.

The fee for each employer receiving a temporary agricultural labor certification will continue to be $100 plus $10 for each H–2A worker certified under the Application. The fee to an employer for an individual Application will be continue to be capped at $1000, regardless of the number of H–2A workers that are certified. Non-payment or untimely payment of fees may be considered a violation subject to the procedures under § 655.182.

5. § 655.164 Denied Certification

The Proposed Rule retains the general provisions for denying certifications from the 2008 Final Rule. The final determination letter will state the reasons that the certification was denied and cite the relevant regulatory provisions and/or special procedures that govern. The Department will continue to provide the applicant an opportunity to appeal the determination.

6. § 655.165 Partial Certification

The Proposed Rule retains in large part the 2008 Final Rule provision explicitly providing that the CO may issue a partial certification, reducing either the period of need or the number of H–2A workers requested or both. The ability to issue a partial certification is necessary where the Department receives an Application with respect to which eligible and qualified U.S. workers have been successfully recruited prior to certification. A partial certification is issued by subtracting the number of available U.S. workers from the total number of workers requested. In addition an employer will have the ability to request administrative review.

7. § 655.167 Document Retention Requirements

The Proposed Rule retains a provision from the 2008 Final Rule requiring the retention of certain documentation demonstrating compliance with the program's requirements, but increases the period of retention. Documents must be retained in hard copy for a period of 5 years from the date of adjudication of the Application, up from the 2008 Final Rule's 3-year requirement. Document retention is a necessary component of the H–2A certification process to respond to an audit or other investigation.

G. Post-Certification Activities

Proposed §§ 655.170 through 655.173 concern various actions an employer may take after its H–2A Application has been adjudicated, including making a request for extension of certification, appealing a decision of the CO, withdrawing an Application, and petitioning for higher meal charges. Section 655.174 proposes a new publicly-accessible electronic database of employers who have applied for H–2A certification that the Department will maintain.

1. § 655.170 Extensions

Proposed § 655.170 contains the provisions governing an employer's request for an extension of the time period for which an Application has been certified. Aside from two substantive changes, the provisions of this proposed section are the same as the provisions under the 2008 Final Rule, which were themselves similar to the provisions of the 1987 Rule.

The substantive changes in the proposed section would permit the CO to notify an employer through means other than writing if time does not permit, or in writing if time permits, of the CO's decision to grant or deny an extension of certification. This would enable COs to provide a decision in the fastest manner possible, when a delay for a formal writing would otherwise hamper the ability of the employer to act on the decision. The proposed regulation also would not allow an employer to appeal a denial of an extension. Under this Proposed Rule, there is no right to appeal a denied extension request. While the Department, in its discretion, allowed for appeals of denied extensions in the 2008 Final Rule, the Department does not see sufficient justification to continue this practice.

2. § 655.171 Appeals

This section sets out the procedures for ALJ review of a decision of a CO. The substance of this section has remained the same since 1987, except that this proposed section allows an ALJ to remand a case to the CO, in addition to the ALJ's existing ability to affirm, reverse, or modify a CO's decision.

The proposed section reorganizes the text in the corresponding sections of previous rules to enhance clarity and readability. The proposed section does not list the various CO decisions that may be appealed, such as a denial of certification, a decision to decline to accept an Application for consideration, or a denial of an amendment of an Application. Rather, the Proposed Rule is structured so that the right to appeal a particular decision of the CO is discussed in the sections of the rule that discuss the CO's authority and procedure for making that particular decision.

3. § 655.172 Withdrawal of Job Order and Application for Temporary Employment Certification

Proposed § 655.172 discusses the withdrawal of Applications. An employer may withdraw a job order from intrastate posting if the employer no longer plans to file an H–2A Application. However, withdrawal of a job order does not nullify the obligations the employer has to any workers recruited in connection with the placement of the job order before it was withdrawn.

An employer may also seek to withdraw an Application after it has been accepted by the NPC. However, the employer is still obligated to comply with the terms and conditions of employment contained in the Application for workers recruited in connection with that Application.

4. § 655.173 Setting Meal Charges; Petition for Higher Meal Charges

The text of proposed § 655.173 is substantively the same as the text of the section governing meal charges in the 2008 Final Rule. The proposed section contains some minor changes to the description of an employer's right to appeal a denial of a petition for higher meal charges, primarily to refer to current appeal procedures.

5. § 655.174 Public Disclosure

This proposed section describes a new initiative of the Department: DOL will maintain an electronic database accessible to the public containing information on all employers who apply for H–2A labor certifications. The database will include information such as the number of workers the employer requests on an Application, the date an Application is filed, and the final disposition of an Application.

H. Integrity Measures

Proposed §§ 655.180 through 655.185 have been grouped together under the heading Integrity Measures, describing those actions the Department may take to ensure that Applications filed with the Department are in fact compliant with the requirements of this subpart.

1. § 655.180 Audit

This section proposes how the Department will conduct audits of applications for which certifications have been granted. The regulatory text is substantively the same as the text of the audit section of the 2008 Final Rule, with minor changes to improve organization and readability. Like the 2008 Final Rule, the proposed section states that the Department has the discretion to choose which labor certification requests will be audited. When an Application is selected for audit, the CO will send a letter to the employer (and its attorney or agent) listing the documentation the employer must submit and the date by which the documentation must be received by the CO.

An employer's failure to comply with the audit process may result in the revocation of certification or debarment, under proposed §§ 655.181 and 655.182. A CO may provide any findings made or documents received in the course of the audit to the WHD, DHS or other enforcement agency. The CO will refer any findings that an employer discriminated against an eligible U.S. worker to the Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices.

2. § 655.181 Revocation

This proposed section describes the Department's power to revoke an H–2A labor certification. The proposed section expands the grounds upon which the Department may revoke from those specified in the revocation (§ 655.117) in the 2008 Final Rule. Under the proposed section, the CO may revoke certification if the CO finds that it was not justified based on the requirements of the INA. This will allow the CO to correct situations where she finds that the labor certification should never have been granted. The CO may also revoke if the CO finds that the employer substantially violated a material term or condition of the approved labor certification. The definition of substantial violation is in the debarment section of these proposed regulations, at proposed § 655.182(d). Finally, the CO may revoke if she finds that the employer failed to cooperate with a DOL investigation, inspection, audit, or law enforcement function, or if she finds that the employer failed to comply with any sanction(s), remedy(ies), or order(s) of the Department.

The proposed procedures for revocation are largely the same as the revocation procedures in the 2008 Final Rule. They have been revised for clarity and to provide that in the event of a revocation, the employer may either take advantage of the opportunity to submit rebuttal evidence to the CO, or the employer may file an administrative appeal under proposed § 655.171.

The revocation procedure begins with the CO sending the employer a Notice of Revocation if the CO determines that certification should be revoked. Upon receiving the Notice of Revocation, the employer has two options: It may submit rebuttal evidence to the CO or the employer may appeal the revocation under the procedures in proposed § 655.171. The employer must submit rebuttal evidence or appeal within 14 days of the Notice of Revocation, or the Notice will be deemed the final decision of the Secretary, and the revocation will take effect immediately at the end of the 14-day period.

If the employer chooses to file rebuttal evidence, and the employer timely files that evidence, the CO will review it and inform the employer of her final determination on revocation within 14 calendar days of receiving the rebuttal evidence. If the CO determines that the certification should be revoked, the CO will inform the employer of its right to appeal under proposed § 655.171. The employer must file the appeal of the CO's final determination within 10 calendar days, or the CO's determination becomes the final decision of the Secretary and takes effect immediately after the 10-day period.

If the employer chooses to appeal either in lieu of submitting rebuttal evidence, or after the CO makes a determination on the rebuttal evidence, the appeal will be conducted under the procedures contained in proposed § 655.171. The timely filing of either rebuttal evidence or an administrative appeal stays the revocation pending the outcome of those proceedings. If labor certification is ultimately revoked, the CO will notify DHS and the Department of State.

Proposed § 655.181(c) lists an employer's continuing obligations if the employer's H–2A certification is revoked. These obligations are the same as those listed in § 655.117(d) of the 2008 Final Rule.

3. § 655.182 Debarment

Proposed § 655.182 describes the Department's debarment authority and procedures, pursuant to 8 U.S.C. 1188(b)(2). Sections 655.182(a–c) are substantively the same as § 655.118(a)–(c) of the Debarment section of the 2008 Final Rule; they have been revised to provide clarity. Section 655.182(a) states that the OFLC Administrator may debar an employer if the Administrator finds that the employer has committed a substantial violation. Section 655.182(b) states that the OFLC Administrator may debar an agent or attorney if the Administrator finds that the agent or attorney participated in, had knowledge of, or reason to know of an employer's substantial violation. The OFLC Administrator will not issue a future labor certification to any employer represented by a debarred agent or attorney. Under paragraph (b),

the agent or attorney is the subject of the debarment; the OFLC Administrator may issue labor certifications to the same employer(s) if they are not represented by the debarred agent or attorney (unless of course the employer itself is also debarred). The Administrator may not commence debarment proceedings against an employer, attorney, or agent any later than 2 years after the substantial violation occurred. The Administrator may not debar an employer, attorney, or agent for longer than 3 years from the date of the Department's final debarment decision.

The statute at 8 U.S.C. 1188(b)(2) directs the Secretary to debar any employer who the Secretary determines has committed a substantial violation. Proposed §§ 655.182(d) and 655.182(e) work together to describe the violations that the CO may determine are so substantial as to merit debarment. Proposed § 655.182(d) defines a violation for purposes of debarment. The text of this section is similar to the text of § 655.118(d) of the 2008 Final Rule, with the following changes:

- The proposed text of paragraph (d)(1) makes clear that there need only be one act of commission or omission that fits the criteria listed in paragraphs (d)(1)(i) through (x) to constitute a substantial violation; this replaces the 2008 Final Rule's requirement of a pattern or practice of acts.
- Proposed paragraph (d)(1)(iii) is changed to say failure to comply with recruitment obligations rather than willful failure.
- A new proposed paragraph (d)(iv) was added. Under the Proposed Rule, an employer's improper layoff or displacement of U.S. workers or workers in corresponding employment may be a debarrable violation.
- A new proposed paragraph (d)(vii) is added. Under the Proposed Rule, employing an H–2A worker outside the area of intended employment, in an activity/activities not listed in the job order, or outside the validity period of employment of the job order, including any approved extension of the job order may be a debarrable violation.
- A new proposed paragraph (d)(viii) is added. This will permit debarments based on violations of § 655.135(j) & (k) which address employer fee shifting and related matters.
- A new proposed paragraph (d)(ix) is added. Under the Proposed Rule, a violation of any of the anti-discrimination provisions listed in 29 CFR 501.4(a) may be a debarrable violation.

Proposed § 655.182(e) adds a description of the factors a CO may consider when determining when a violation is substantial for purposes of determining whether the violation merits debarment. This list of factors is not exclusive, but it offers some guidance to employers, attorneys, and agents as to what a CO commonly considers when determining whether a substantial violation has occurred. The factors are the same as those factors used by the WHD to determine whether to assess civil money penalties under 29 CFR 501.19 or whether to debar under 29 CFR 501.20.

The independent debarment authority of the WHD is a new feature of the Proposed Rule. *See* proposed language at 29 CFR 501.20 and the corresponding preamble. Because both OFLC and the WHD have concurrent debarment jurisdiction, some changes have been added to the OFLC debarment procedures in the Proposed Rule to ensure that the procedures are consistent with the WHD debarment procedures.

Proposed § 655.182(f) describes the procedures that will be followed in the event of an OFLC debarment. These procedures are the same as the debarment procedures contained in the 2008 Final Rule, but these procedures would eliminate the Notice of Intent to Debar and the employer's option to submit rebuttal evidence. Instead, the debarment procedures will begin with the OFLC Administrator sending a Notice of Debarment, and the same appeal opportunities as in the 2008 Final Rule will follow.

The Department believes that the provision for the employer to submit rebuttal evidence in response to an OFLC Notice of Debarment is unnecessary because of the reality of debarment under these proposed regulations: Most often, debarment will actually be done by the WHD. Because the WHD has more extensive investigation authority than the OFLC, any WHD debarment will come only after the WHD has conducted an extensive investigation in which the employer has many opportunities to submit evidence and otherwise communicate with the WHD official. Further, it is highly unlikely that any OFLC debarment would occur without the OFLC Administrator conducting an audit of the employer under proposed § 655.180, so the employer will have had opportunity to submit evidence before the Notice of Debarment occurs. Because of this, the Department does not believe that the employer would need an additional opportunity to submit further evidence. Also, because the employer will have already had opportunities to submit evidence to the Department, and debarment will only be conducted if the OFLC Administrator believes that the employer has committed a serious, substantial violation, the Department believes that giving the employer an additional option to submit rebuttal evidence would cause inappropriate delay in the debarment proceedings.

Another minor change was made in proposed § 655.182(f)(3), describing the ALJ's decision after a debarment hearing; it adds that the ALJ will prepare the decision within 60 days after completion of the hearing and closing of the record. This time constraint is consistent with the newly-proposed debarment hearing procedures of the WHD.

Proposed § 655.182(g) clarifies that while the WHD and OFLC will now have concurrent debarment jurisdiction, the two agencies may coordinate their activities so that a specific violation for which debarment is imposed will be cited in a single debarment proceeding.

Proposed § 655.182(h–j) state the impact a determination to debar a member of an agricultural association has on the rest of the association or its individual members, the impact that a debarment of an agricultural association acting as a joint employer has on the association's individual members, or the impact a debarment of an agricultural association acting as a sole employer has on the association. The text of these provisions is substantively the same as the text of § 655.118(f–h) of the 2008 Final Rule. The one substantive change is in proposed paragraph (i), which states that a debarment of an agricultural association acting as a joint employer with its members will apply only to that association and not to any individual employer-member of the association, unless the OFLC Administrator determines that an employer-member participated in, had knowledge of, or had reason to know of the violation. Unlike the 2008 Final Rule, an employer-member's knowledge of or reason to know of the association's debarrable violation may give rise to debarment of that member, in addition to the member's participation in the violation.

4. § 655.183 Less Than Substantial Violations

Proposed § 655.183 describes the CO's actions if she determines that a less than substantial violation has occurred. The text of this section is the same as the text of the 1987 Rule, with a few non-substantive editorial changes. If the OFLC Administrator believes that a less than substantial violation may have had or will continue to have a chilling or

otherwise negative effect on the recruitment, employment, and retention of U.S. workers, the OFLC Administrator may require the employer to follow special procedures before and after the temporary labor certification determination.

The OFLC Administrator will notify the employer (or agent or attorney) in writing of the special procedures which will be required in the coming year. The employer may request review of these special procedures according to the procedures of proposed § 655.171. If the OFLC Administrator determines that the employer has failed to comply with the special procedures, the Administrator will send a written notice to the employer, stating that the employer's otherwise affirmative H–2A certification determination will be reduced by 25 percent of the total number of H–2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year. Notice of such a reduction in the number of workers requested will be conveyed to the employer by the OFLC Administrator in the written certification determination. We have and will continue to provide for prompt notification to DHS and the Department of State (DOS) of any such determination. The employer may appeal the reduction in the number of workers according to the procedures in § 655.171. If the ALJ affirms the OFLC Administrator's determination that the employer has failed to comply with the required special procedures, the number of workers requested will be reduced.

5. § 655.184 Applications Involving Fraud or Willful Misrepresentation

Proposed § 655.184(a) is the same as § 655.113(a) in the 2008 Final Rule, discussing investigation of fraud and willful misrepresentation. The section states that if a CO discovers possible fraud or willful misrepresentation concerning an Application, the CO may refer the matter for investigation to the WHD, DHS, or to the Department's Office of Inspector General.

Proposed § 655.184(b) revises § 655.113(b) of the 2008 Final Rule to more accurately describe the ramifications of a determination of fraud or willful misrepresentation concerning an Application. If the WHD, a court, or the DHS determines that there was fraud or willful misrepresentation involving an Application, and the CO had granted certification of the fraudulent Application, the finding of fraud or misrepresentation will be grounds for the CO to revoke that certification. The finding may also merit debarment according to proposed § 655.182.

6. § 655.185 Job Service Complaint System; Enforcement of Work Contracts

Proposed § 655.185(a) contains the same provisions about complaints filed through the Job Service Complaint System as were in the 1987 Rule and the 2008 Final Rule, with one addition. Proposed § 655.185(b) states that complaints alleging that an employer discriminated against eligible U.S. workers may be referred to the U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices and was also included in the 2008 Final Rule.

The Department has added a provision permitting allegations of fraud that are part of a complaint through the Job Service Complaint System to be brought to the CO. This will permit the CO to take any such actions as necessary to determine whether such allegations have any validity, such as an audit, and if such further inquiry has yielded information so as to call a certification into question, to determine whether there are any actions (revocation and/or debarment) that can be taken as a result.

III. Revisions to 29 CFR Part 501

Section 218(g)(2) of the INA authorizes the Secretary to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to ensure compliance with terms and conditions of employment under this section of the statute. The Secretary determined that enforcement of the contractual obligations of employers under the H–2A program is the responsibility of the WHD. Regulations at 29 CFR part 501 were issued to implement the WHD's responsibilities under the H–2A program; amendment of these regulations is part of this proposed rulemaking.

Concurrent with the Department's proposed regulations in 20 CFR part 655, subpart B amending the certification of temporary employment of nonimmigrant H–2A workers, the Department proposes to amend its regulations at 29 CFR part 501 on enforcement under the H–2A program.

Changes are proposed for enhanced enforcement to complement the certification process so that workers are appropriately protected when employers fail to meet the requirements of the H–2A program. Since this NPRM would make changes to the existing regulations in 29 CFR part 501, we have included the entire text of the regulation and not just the sections with proposed changes.

A. General Provisions and Definitions

Proposed § 501.2 has been broadened to allow broader information sharing and coordination between agencies both within and outside of DOL. Both WHD and OFLC will now have the express authority to share information for enforcement purposes, both with each other and with other agencies such as DHS and DOS which play a role in immigration enforcement. In addition, because ETA and WHD will have concurrent debarment authority under the proposal, the new regulation provides that a specific violation for which debarment is imposed will be cited in a single debarment proceeding, and that OFLC and the WHD may coordinate their activities to accomplish this result. It also provides that copies of final debarment decisions will be forwarded to DHS so that it can take appropriate action.

Section 501.3 of the proposed regulations sets forth the definitions used in part 501, most of which are carried forward from § 501.10 of the 2008 Final Rule. As in the 2008 Final Rule, proposed § 501.3 sets forth the same definitions in 20 CFR part 655, subpart B that pertain to 29 CFR part 501. The discussion of definitions that are common to both 20 CFR 655.103 and 501.3 can be found in the preamble for 20 CFR part 655, subpart B above.

The Department is proposing to modify language used in the 2008 Final Rule that defined ''corresponding employment'' as including only U.S. workers who are newly hired by the employer in the occupations and during the period of time set forth in the Application and thereby excluding U.S. workers who were already employed by the H–2A employer at the time the Application was filed. The Department is proposing to define ''corresponding employment'' more in keeping with the statutory language mandating that the importation of H–2A workers not adversely impact the wages and working conditions of workers similarly employed in the U.S. Corresponding employment would include non-H–2A workers employed by an employer whose Application was approved by ETA who are performing work included in the job order or any other agricultural work performed by the employer's H–2A workers as long as such work is performed during the validity period of the job order. The definition includes both non-H–2A workers hired during the recruitment period required under these regulations and non-H–2A

workers already working for the employer when recruitment begins.

In defining an H–2A worker, the INA gives the Secretary the authority to define in regulations the term ''agricultural labor or services,'' with the requirement that the definition include agricultural labor or services as defined in the IRC, the FLSA, and the pressing of apples for cider on a farm. The work must also be of a temporary or seasonal nature. *See* 8 U.S.C. 1101(a)(15)(h)(ii)(A). The activity of ''pressing apples for cider on a farm'' was added to the statute by Public Law 109–90, (October 18, 2005). As in the 2008 Final Rule, the Department again proposes that the regulatory definition reflect the 2005 amendment, and the proposal adds an explanation of the term.

The Department is also proposing to expand the regulatory definition of ''agricultural labor or services'' to include certain reforestation activities and also pine straw activities. In addition, the Department proposes to retain the addition of logging employment that was included in the 2008 Final Rule and seeks to clarify which logging employment activities qualify for H–2A status. Finally, the proposal deletes the 2008 Final Rule's inclusion of minor and incidental work not listed on the Application and the handling, packing, processing, *etc.* of any agricultural or horticultural commodity. These changes are more fully discussed in the preamble for 20 CFR part 655, subpart B above. Section 501.6 (formerly § 501.5) has been substantially shortened and revised for clarity and to eliminate duplication. Section 501.7 (former § 501.6) is proposed to be broadened to require cooperation with any Federal official investigating, inspecting, or enforcing compliance with the statute or regulations. Section 501.8 has been renumbered from § 501.7 but is otherwise unchanged.

B. Surety Bonds for H–2ALCs

The number of Farm Labor Contractors (FLCs) applying for labor certifications enabling them to hire and employ H–2A workers has risen in recent years and is expected to continue to increase. The WHD's enforcement experience demonstrates that FLCs are generally more likely to violate applicable requirements than fixed-site agricultural employers. To address this higher violation rate of FLCs and given the transient nature of FLCs, as well as to ensure compliance with H–2A obligations and to protect the safety and security of workers, WHD proposes to continue the 2008 Final Rule's requirement that FLCs (called H–2ALCs in this Proposed Rule) must obtain and maintain a surety bond, based on the number of workers employed as listed on the Application, throughout the period the temporary labor certification is in effect, including any extensions thereof. WHD will have authority to make a claim against the surety bond to secure unpaid wages or other benefits due to workers employed under the labor certification.

The proposed text of this section is similar to the text of the 2008 Final Rule discussing the bonding requirement; however, in addition to the surety bond amounts specified in the 2008 Final Rule, the Department proposes to add larger bonding requirements applicable to H–2ALCs with larger crews. Under this proposal, H–2ALCs seeking to employ 75 to 99 workers will be required to obtain a surety bond in the amount of $50,000, and H–2ALCs seeking to employ 100 or more workers will be required to obtain a surety bond in the amount of $75,000. Hypothetically, the proposed increased amount would address 2 weeks where no wages have been paid for crews of 100 (40 hours × 2) × 9.25 (assumed AEWR) × 100 workers = $74,000. The Department specifically requests comments addressing the implications for H–2ALCs who may be subject to this requirement.

The Department also proposes to change the requirement that H–2ALCs provide written notice to the WHD Administrator of cancellation or termination of the surety bonds from a 30-day to a 45-day notice period. Finally, the proposal clarifies that the bond must remain in effect for at least 2 years. However, if WHD has commenced any enforcement proceedings by that date, the bond must remain in effect until the conclusion of those proceedings and any appeals.

The Department has not created a form specific to this bonding requirement, but instead proposes that documentation from the bond issuer be provided with the Application, identifying the name, address, phone number, and contact person for the surety, as well as providing the amount of the bond, date of its issuance and expiration and any identifying designation utilized by the surety for the bond. This requirement can be met by the applicant attaching a copy of the signed and dated document issued from the surety that shows the information required. This request for information is in keeping with the information that was required in the appendix for the ETA 9142 in the 2008 Final Rule.

C. Enforcement Provisions

In order to deter significant violations of the H–2A worker protection provisions, a number of changes and clarifications are proposed in the sanctions and remedies available under part 501 as discussed below. Most of these changes are consistent with those in the 2008 Final Rule.

Proposed § 501.16 has been amended to provide WHD with express authority to pursue reinstatement and make-whole relief in cases of discrimination, or in cases in which U.S. workers have been improperly rejected, laid off, or displaced. In addition, the proposal would allow WHD to pursue recovery of recruiter fees or other costs improperly deducted or paid in violation of regulations forbidding such payments, including where the employer has not properly contractually prohibited its recruiter and agents from seeking or receiving such payments, directly or indirectly, as set forth in proposed 20 CFR 655.135(j) and (k). Proposed § 501.17 has been changed to clarify the differing roles and responsibilities of OFLC and WHD, and to note that both agencies have concurrent jurisdiction to impose debarment. However, as explained above, § 501.2 is designed to protect an employer from being debarred twice for a single violation.

Proposed § 501.18 has been changed to conform to the statute, which provides for administrative appeals, but does not grant the Secretary independent litigating authority in civil litigation.

Proposed § 501.19 is amended to increase the maximum civil money penalty (CMP) amount from $1,000 to $1,500 for each violation, in most cases. This amount has not been adjusted since 1987. The CMP of up to $5,000 for failure to meet a condition of the work contract, or for discrimination against a U.S. or H–2A worker who, in connection with the INA or these regulations has filed a complaint, has testified or is about to testify, has exercised or asserted a protected right, has been retained from the 2008 Final Rule. The Proposed Rule increases the penalty amount to no more than $15,000 for a failure to meet a condition of the work contract that results in displacing a U.S. worker employed by the employer during the period of employment on the employer's Application, or during the period of 60 days preceding such period of employment. The Proposed Rule adds a penalty of an amount up to $15,000 for improperly rejecting a U.S. worker who has made application for employment.

These proposed penalties for violators who disregard their obligations would provide the Department with an effective tool to discourage potential abuse of the program. Such penalties will deter violations, discrimination and interference with investigations, and strengthen necessary enforcement of laws that protect workers who may be unlikely to approach government agencies to intercede on their behalf. The increase in certain penalties demonstrates the Department's commitment to protecting workers.

Further, if a violation of an applicable housing or transportation safety and health provision of the work contract causes the death or serious injury of any worker, the Department proposes a penalty of up to $50,000 per worker. Where the violation of safety and health provision involving death or serious injury is repeated or willful, the Department proposes to increase the maximum penalty to up to $100,000 per worker.

The proposed penalties for such violations of applicable safety and health provisions would provide a meaningful assurance that participants meet their obligation to see that housing and/or transportation provided to the workers meets all applicable safety and health requirements and that housing and/or vehicles used in connection with employment do not endanger workers.

The assessment of the maximum penalties available under proposed § 501.19 would not be mandatory, but rather would be based on regulatory guidelines found in paragraph (b) of this section and the facts of each individual case.

D. Debarment by the WHD

The current regulations provide OFLC the authority to deny access to future certifications (*i.e.*, debarment) and require the WHD to report findings in order to make a recommendation to OFLC to deny future certifications. Under proposed § 501.20, OFLC and WHD would have concurrent debarment authority, with WHD primarily concerned with issues arising from WHD investigations, while OFLC would focus on issues arising out of the application process. Both agencies may coordinate their activities whenever debarment is considered. The proposed standards for debarment within the WHD's purview are identical to those proposed by OFLC for debarment actions under 20 CFR part 655, thus ensuring consistency in Application. This change will allow administrative hearings and appeals relating to back wages or other relief to employees or CMP's assessed by the WHD to be consolidated with the debarment actions that arise from the same facts. This will not affect OFLC's ability to institute its own debarment proceedings on issues that arise from the Application or OFLC's proposed audits. Conforming changes are proposed to other sections in part 501 to reflect the proposed WHD debarment authority.

The Department proposes to modify the criteria for debarment to eliminate the multiple thresholds in the 2008 Final Rule, which required a pattern and practice of a violation that also must be significant. The proposed criteria require a substantial violation that includes a significant failure to comply with one or more of the provisions of the H–2A program. The criteria found in § 501.19(b) will be used in determining if a violation is substantial.

Section 501.20 (j) and (k) are proposed to conform to the proposed changes in 20 CFR part 655, which provide OFLC the authority to revoke an existing certification, by allowing the WHD to recommend revocation to OFLC based upon the WHD's investigative determinations.

E. Administrative Proceedings

The NPRM proposes few changes to the administrative proceedings set forth in §§ 501.30–501.47 of the 2008 Final Rule. Because the NPRM proposes to authorize the WHD to pursue debarment proceedings, rather than simply recommending debarment to OFLC, the NPRM adds references to debarment in §§ 501.30, 501.31, 501.32(a), and 501.41(d). Those sections of the proposal also specify that these procedures will govern any hearing on an increase in the amount of a surety bond pursuant to proposed § 501.9(c). Finally, those sections of the proposal replace the term unpaid wages with the term monetary relief to reflect the fact that WHD may seek to recover other types of relief, such as if an employer fails to provide housing or meet the three-fourths guarantee.

Proposed § 501.33 would permit hearing requests to be filed by overnight delivery, as well as by certified mail, and would reiterate that surety bonds must remain in force throughout any stay pending appeal. Section 501.34(b) provides discretion to the ALJ to ensure the production of relevant and probative evidence while excluding evidence that is immaterial, irrelevant or unduly repetitive without resort to the formal strictures of the Federal Rules of Evidence. This section conforms H–2A procedures to those used in the H–1B program.

Other than very minor editorial changes or corrections of typographical errors, the NPRM proposes no other changes to §§ 501.30–501.47.

IV. Administrative Information

A. Executive Order 12866

Under Executive Order (E.O.) 12866, the Department must determine whether a regulatory action is significant and therefore, subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). Section 3(f) of the E.O. defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as ''economically significant''); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

The Department has determined that this NPRM is not an economically significant regulatory action under sec. 3(f)(1) of E.O. 12866. The time frames and procedures for fixed-site agricultural employers, H–2ALCs, or an association of agricultural producer-members to file a job offer and Application, prepare supporting documentation, and satisfy the required assurances and obligations under the H–2A visa category, proposed under this regulation, are substantially similar to those under the 2008 Final Rule and would not have an annual economic impact of $100 million or more. The proposed regulation would not adversely affect the economy or any sector thereof, productivity, competition, jobs, the environment, nor public health or safety in a material way. In fact, this NPRM is intended to provide to agricultural employers clear and consistent guidance on the requirements for participation in the H–2A temporary agricultural worker program. The Department, however, has determined that this NPRM is a significant regulatory action under sec. 3(f)(4) of the E.O. and accordingly OMB has reviewed this NPRM.

The Department anticipates that the changes in this NPRM would have

limited net direct impact on employers, above and beyond the baseline of the current costs required by the program as it is currently implemented. Further, the Department does not anticipate that this NPRM would result in significant processing delays on its part or the SWAs, as the Department continues to operate under the statutory mandate to make a determination of whether or not the Application meets the threshold requirements for certification within 7 days of filing. The Department is requesting comment on the benefits and costs of these policies, with the goal of ensuring a thorough consideration and discussion at the Final Rule stage.

1. Need for Regulation

The Department has determined that there are significant defects in the 2008 Final Rule that necessitate new rulemaking. First, the Department has determined that there are insufficient worker protections in the attestation-based model in which employers do not actually demonstrate that they have performed an adequate test of the U.S. labor market. Even in the first year of the attestation model it has come to the Department's attention that employers, either from a lack of understanding or otherwise, are attesting to compliance with program obligations with which they have not complied. This anecdotal evidence appears to be sufficiently substantial and widespread for the Department to revisit the use of attestations, even with the use of back-end integrity measures for demonstrated non-compliance.

The Department has also determined that the area in which agricultural workers are most vulnerable—wages—has been adversely impacted to a far more significant extent than anticipated by the 2008 Final Rule. As discussed further below, the shift from the AEWR as calculated under the 1987 Rule to the recalibration of the prevailing wage as the AEWR of the 2008 Final Rule resulted in a reduction of farmworker wages in a number of labor categories, and an increase in a few others.

The 2008 Final H–2A Rule based the estimation of the AEWR on the OES Wage Survey collected by BLS. This NPRM changes the methodology for estimating the AEWR to the USDA survey.

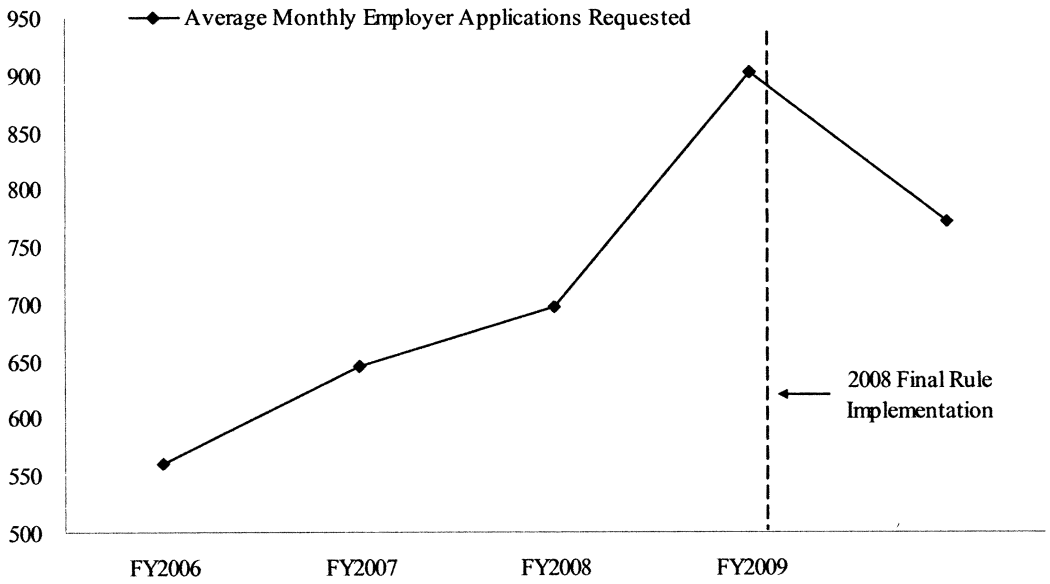
Using data from the OES Wage Survey for the States with the top-ten largest numbers of H–2A workers in the job classification of farmworkers and crop laborers (SOC–OES Code 45–2092.02), the Department estimates a weighted average hourly wage rate of $7.92. Using data from the USDA's NASS FLS for the same States, the Department estimates a weighted average hourly wage rate of $9.36. Thus, the 2008 Final Rule is associated with a lower average hourly wages of approximately $1.44, equivalent to an 18 percent decrease.

The table below displays the hourly wage rates under the two wage methodologies for the top 10 agricultural states based on the total workers certified. The estimated wage rates for each of the top ten States would be higher under the NPRM where the Department proposes to base the methodology for calculating the AEWR on the USDA's NASS FL survey.

	2008 Final rule Average hourly wage from OES survey	Proposed NPRM average hourly wage from 2009 AEWR USDA survey	Differential wage decrease for workers under 2008 final rule
North Carolina	$7.57	$9.34	−$1.77
Kentucky	7.39	9.41	−2.02
Georgia	7.44	8.77	−1.33
Louisiana	8.07	8.92	−0.85
Tennessee	7.54	9.41	−1.87
Virginia	7.46	9.34	−1.88
South Carolina	7.33	8.77	−1.44
New York	9.37	10.20	−0.83
California	9.37	10.16	−0.79
Colorado	8.72	9.88	−1.16

The graph below displays program participation in the H–2A program for FY 2006, 2007, and 2008, as well as FY 2009 before and after implementation of the 2008 Final Rule (through the end of June 2009). As shown in the graph, the H–2A program experienced increased participation from approximately 560 Applications per month on average in FY 2006 to 903 Applications per month immediately prior to the implementation of the 2008 Final Rule. After the implementation of the 2008 Final Rule, agricultural employer participation in the H–2A program decreased to approximately 773 Applications per month.[2] The Department is not certain of the source of this decrease, noting it has multiple origins, including economic weaknesses, including the relatively high rate of unemployment at that time; the presence of enhanced worker protections in the 2008 Final Rule that may have disincentivized employers from participation, the litigation to which the 2008 Final Rule was subject since prior to its implementation; and simple confusion on the part of potential program participants stemming from the new requirements.

[2] *Source:* H–2A Case Management System. Data extracted on July 10, 2009.



To adequately protect U.S. and H–2A workers, the Department is proposing the changes discussed in the subsections below. The Department is engaging in new rulemaking to provide the affected public with notice and opportunity to engage in dialogue with the Department on the H–2A program. The Department took into account both the regulations promulgated in 1987, as well as the substantive reworking of the regulations in the 2008 Final Rule, in order to arrive at an NPRM that balances the worker protections of the 1987 Rule and the program integrity measures of the 2008 Final Rule.

Much of the 2008 Final Rule has been retained in format, as it presents a more understandable regulatory roadmap; it has been used when its provisions do not conflict with the policies proposed in this NPRM. To the extent the 2008 Final Rule presents a conflict with the policies underpinning this NPRM, it has been rewritten or the provisions of the 1987 Rule have been adopted. To the extent the 1987 Rule furthers the policies that underlie this rule, those provisions have been retained. These changes are pointed out below.

2. Alternatives

The Department has considered three alternatives: (1) To make the policy changes contained in this NPRM; (2) to take no action, that is, to leave the 2008 Final Rule intact; and (3) to revert to the 1987 Rule. The Department believes that the first alternative—the policies contained in this NPRM—represents retention of the best features of both the 1987 Rule and 2008 Final Rule. The Department has, for the reasons enunciated above, chosen not to retain the 2008 Final Rule. It has also rejected the reversion to the 1987 Rule as inefficient and ineffective given societal and economic changes that have occurred since its promulgation.

The Department is requesting comment on other possible alternatives to consider, including alternatives on the specific provisions contained in this NPRM with the goal of ensuring a thorough consideration and discussion at the Final Rule stage.

3. Analysis Considerations

The economic analysis presented below covers the following economic sectors: crop production; animal production; activities for agriculture and forestry; logging; reforestation; and fishing, hunting, and trapping. In 2007, there were over 2.2 million farms of which 78 percent had annual sales of less than $50,000, 17 percent had annual sales of $50,000 to $499,999, and the remaining 5 percent had annual sales in excess of $500,000.[3]

The Department derives its estimates by comparing the baseline, that is, the program benefits and costs under the 2008 Final Rule, against the benefits and costs associated with implementation of provisions contained in this NPRM. For a proper evaluation of the benefits and costs of the NPRM, we explain how the required actions of workers, employers, government agencies, and other related entities under the NPRM are linked to the expected benefits and costs. We also consider, where appropriate, the unintended consequences of the provisions introduced by the NPRM.

The Department makes every effort, where feasible, to quantify and monetize the benefits and costs of the NPRM. Where we are unable to quantify them—for example, due to data limitations—we describe the benefits and costs qualitatively. Following OMB Circular A–4 and consistent with the Department's practice in previous labor certification rulemaking, this analysis focuses on benefits and costs that accrue to citizens and residents of the U.S. The analysis covers 10 years to ensure it captures all major benefits and costs.[4] In addition, the Department provides a qualitative assessment of transfer payments associated with the increased wages and protections of U.S. workers. Transfer payments are payments from one group to another that do not affect total resources available to society. When summarizing the benefits or costs of specific provisions of the NPRM, we present the 10-year averages to represent the typical annual effect or 10-year discounted totals to represent the overall effects.

4. Subject-by-Subject Analysis

The Department's analysis below covers expected impacts of the following proposed provisions of the NPRM against the baseline: New methodology for estimating the AEWR, an enhanced U.S. worker referral period for employers after certification, increased costs to the Department for developing and maintaining an Electronic Job Registry, changes in administrative burdens placed on SWAs by increased time frames for recruitment and benefits from eliminating employment verification requirements, enhanced worker protections through compliance certification, enhanced

[3] *Source:* 2007 Census of Agriculture, United States Department of Agriculture.

[4] For the purposes of the cost-benefit analysis, the 10-year period starts in the next fiscal year on October 1, 2009.

coverage of transportation expenses to and from the worker's place of residence, and changes in the requirement for housing inspections.

a. New Methodology for Estimating the AEWR

The 2008 Final Rule based the estimation of the AEWR on the OES Wage Survey collected by BLS, rather than data compiled by the USDA, NASS, which was what was relied upon in the 1987 Rule. This NPRM changes the methodology for estimating the AEWR to the USDA survey. As explained above, the wage survey methodology proposed in this NPRM is associated with an hourly wage that is $1.44 higher than that under the 2008 Final Rule.

1. Benefits to U.S. Workers

The higher wages for workers associated with the new methodology for estimating the AEWR represents a direct benefit to workers improving their ability to meet costs of living and spend money in local communities in which they are employed, and important concern to the current Administration and a key aspect of the Department's mandate to ensure the wages and working conditions of similarly employed U.S. workers are not adversely affected.

Labor market research indicates that as agricultural wages for U.S. workers increase, a larger number of U.S. workers decide it is economically feasible or desirable to participate in the agricultural labor force. Some of these workers would otherwise remain unemployed or out of the labor force entirely, earning no salary. This effect is captured by the so-called wage elasticity of the U.S. agricultural labor supply. A recent study finds that this elasticity is 0.43, that is, for each 1 percent increase in wages, there is a 0.43 percent increase in labor supply by U.S. agricultural workers.[5] Another study finds that the elasticity is 0.36.[6] Although the increase in wages for documented workers in agriculture will lead to complex, hard-to-quantify labor market dynamics involving both labor supply and demand, the Department believes that the net effect may be increased employment opportunities for U.S. workers, which represent a U.S. societal benefit by engaging U.S. human resources in productive activity that may not otherwise occur. This impact is also a transfer in the sense the U.S. workers may displace temporary foreign workers in providing agricultural services or labor to employers.

2. Transfers

Transfer payments are payments from one group to another that do not affect total resources available to society. The increase in the wage rates for some workers also represents an important transfer from agricultural employers to H–2A and corresponding U.S. workers. As noted previously, the higher wages for workers associated with the new methodology for estimating the AEWR represents an improved ability on the part of workers and their families to meet costs of living and spend money in local communities. On the other hand, higher wages represent an increase in costs of production from the perspective of employers which on the margin creates a disincentive to hire H–2A and corresponding U.S. workers. There may also be a transfer resulting from a reduction in unemployment expenditures. Some previously unemployed individuals who were not willing to accept a job at the lower wage may now be willing to accept the job and would not need to seek new or continued unemployment insurance benefits. The Department, however, is not able to quantify these transfer payments with a high degree of precision. The factors that make the calculation uncertain include the actual entries of H–2A workers, the unknown quantity of corresponding U.S. workers, the types of occupations to be included in future filings; the ranges of wages in the areas of actual employment; and the point at which any occupation in any given area is subject to the prevailing wage (hourly or piece rate) or Federal or State minimum wage rather than the application of the OES or FLS survey to the calculation of the AEWR. The Department cannot assume the number of workers will remain constant for any given entity for its wage transfer.

3. Costs

In standard models of supply and demand an increase in the wage rate will lead to a reduction in the demand for agricultural labor. This is a loss in profits for agricultural employers that is not gained by anyone and is known as a deadweight loss. The deadweight loss is essentially the profits that employers were getting from being able to hire more workers at a lower wage. When the wage is reduced they will hire fewer workers overall and the benefit that those workers had produced will be lost to society. In order to estimate that lost benefit we would have to calculate the estimated reduction in employment assuming an elasticity of labor demand—the extent to which employers respond to an increase in wages by lowering employment. Using standard estimates of this elasticity the deadweight loss is not projected to be large.[7]

b. Enhanced U.S. Worker Referral Period

Although the recruitment requirements of employers will not change substantively, this NPRM requires employers to accept referrals of qualified U.S. workers for temporary agricultural opportunities for a longer period of time after the job begins than the current regulation. Specifically, during the same time period as the employer places the advertisements, the NPRM requires SWAs to extend their job advertising efforts, on behalf of employers, to keep the job order on active status through 50 percent of the period of employment, as opposed to 30 calendar days after the date of need under the current regulation.

1. Benefits to U.S. Workers

The enhanced referral period for employers after certification represents a benefit to society by expanding the period in which agricultural jobs are available to U.S. workers and, therefore, improving their employment opportunities. Here again, this is a U.S. societal benefit because it represents engaging U.S. human resources in productive activity that may not otherwise occur.

2. Costs

The extension of the referral period imposed by the NPRM will result in increased SWA staff time to maintain job orders for the new U.S. worker referrals. SWAs will need to maintain additional job orders for the new applicants to the H–2A program in the

[5] *See* Julie L. Hotchkiss and Myriam Quispe-Agnoli, ''Employer Monopsony Power in the Labor Market for Undocumented Workers,'' Federal Reserve Bank of Atlanta, Working Paper 2009–14a, June 2009.

[6] *See* Source: Duffield, J.A. and R. Coltrane, 1992, ''Testing for Disequilibrium in the Hired Farm Labor Market,'' *American Journal of Agricultural Economics*, 74: 412–20.

[7] A recent study finds that the wage elasticity of labor demand in U.S. agriculture is −0.42. This indicates that for each 1 percent increase in wages for U.S. workers, the demand for their labor decreases by 0.42 percent. *See* Orachos Napasintuwong and Robert D. Emerson, ''Induced Innovations and Foreign Workers in U.S.,'' Institute of Food and Agricultural Sciences, University of Florida, Working Paper 05–03, March 2005. It is possible that this elasticity over-estimates the potential reduction in demand for U.S. workers as a result of the new methodology for estimating the AEWR because, in the context of the H–2A program, there are legal constraints (and associated potential penalties) for agricultural employers who would turn to undocumented workers as a result of the wage increase. The Department estimates that average wages will increase by 18.2 percent for U.S. workers.

States in which temporary workers are expected to perform work and for all applicants to the H–2A program in the States designated as States of traditional or expected labor supply. The Department estimates the average annual cost associated with this activity to be $0.4 million.[8]

The Department recognizes a cost to employers is the requirement that they accept more referrals through a longer time period of the contract. The Department does not, however, have sufficient data on the number of average additional referrals (and the ensuing additional cost in terms of contractual obligations to a greater number of workers) to accurately monetize such a cost to employers, and invites comment from employers who may have such data. The Department recognizes however that the cost to employers of additional work-related expenses may be offset to a certain extent by increased productivity.

The expansion of DOL oversight of the H–2A program will result in increased time for the Department to review Applications. We estimate this cost by multiplying the total number of new Applications by the time required for Department staff to review each Application, and then by the average hourly compensation of this staff. The Department estimates the average annual cost associated with this activity to be $0.6 million.[9]

The NPRM proposes to require that employers maintain a complete recruitment report and all supporting documentation for 5 years (rather than 3 years under the 2008 Final Rule. The Department assumes that this will require all H–2A employers to purchase additional file storage in the first year of the Proposed Rule.[10] After the first year, the Department assumes that only new applicants to the H–2A program will be required to purchase additional storage. The Department estimates average annual costs of increased storage to be approximately $0.06 million.

3. Transfers

In addition, U.S. workers hired who were previously unemployed will no longer need to seek new or continued unemployment insurance benefits.[11] Other things constant, we expect the States to experience a reduction in unemployment insurance expenditures as a consequence of U.S. workers being hired. The Department, however, is not able to quantify these transfer payments due to a lack of adequate data.

c. New Electronic Job Registry

Under the NPRM, the Department will create and maintain an electronic job registry. The Department will post and maintain employers' H–2A job orders, including modifications approved by the CO, in a national and publicly accessible electronic job registry. The job registry will serve as a public repository of H–2A job orders for the duration of the enhanced U.S. worker referral period: 50 percent of the certified period of employment. The job orders will be posted in the registry by a CO upon the acceptance of each submission. The posting of the job orders will not require any additional effort on the part of the SWAs or H–2A employers.

1. Benefits

The job registry will improve the visibility of agricultural jobs to U.S. workers. Thus, the job registry represents a benefit to U.S. society by expanding the period in which agricultural jobs are available to U.S. workers and, therefore, improving their employment opportunities. In addition, the establishment of a job registry will provide greater transparency with respect to the Department's administration of the H–2A program to the public, members of Congress, and other related stakeholders. Transferring these agricultural job orders (Form ETA 790 and attachments) into electronic records for the job registry will eliminate unnecessary paper records currently being maintained by the CO and result in a better and more complete record of jobs petitioned for H–2A labor certification. Finally, since the Form ETA 790 and attachments are some of the most commonly requested documents by members of the public, Congress, and other stakeholders, the Department anticipates some reduction in FOIA requests for these agricultural job orders thereby saving staff time and resources.

2. Costs

The establishment of an electronic job registry in the NPRM imposes several costs directly on the Department: The increased costs for developing business requirements and design documentation outlining the functional components of the job registry; increased costs for application programming, testing, and implementation of the Electronic Job Registry into a production environment; increased costs to maintain and continuously improve the Electronic Job Registry; and additional staff time to maintain job orders placed on the registry. The Department expects that the majority of costs to develop and implement the new Electronic Job Registry will occur within the first 12 months of implementing the regulation. Out-year costs will include maintenance and additional staff time to maintain job orders on the registry. The Department estimates average annual costs of maintaining an electronic job registry to be approximately $0.5 million.[12]

d. Reduced SWA Administrative Burden by Eliminating Employment Verification

Under this NPRM, SWA's will no longer be responsible for conducting employment eligibility verification activities. These activities include the completion of the Form I–9 and the vetting of Application documents by SWA personnel. There will, however, be additional costs to employers as they resume the function of their own employment eligibility verification for all employees, not only those for whom a certification is received from the SWA.

[8] The Department assumes that it takes SWA staff 30 additional minutes per application to maintain a job order. We assume that a State employee with a job title of ''Compensation, Benefits, and Job Analysis Specialists'' conducts this activity. Their median hourly wage is $21.69, which we increased by 1.53 to account for employee benefits (*source:* Bureau of Labor Statistics).

[9] The Department assumes that Department staff (GS–12, step 5) spend one additional hour to review each application. The hourly salary for a GS–12, step 5 staff was multiplied by an index of 1.69 to account for employee benefits and proportional operating costs, resulting in an hourly rate of $52.96. The 1.69 index is derived by using the Bureau of Labor Statistics' index for salary and benefits plus the Department's analysis of overhead costs averaged over all employees of the Department's Office of Foreign Labor Certification.

[10] The Department assumes that one additional file drawer will be required per employer.

[11] A benefit to U.S. workers could still exist even if these workers were employed elsewhere: Their departure from their old jobs will open up new employment opportunities for other U.S. workers.

[12] The Department assumes the following first-year development, testing, and implementation staff time for the following labor categories: Project Manager II—1,253 hours, Computer Systems Analyst II—1,253 hours, Computer Systems Analyst III—2,037 hours, Computer Programmer III—3,995 hours, Computer Programmer IV—3,995 hours. For out-year maintenance costs, the Department assumes that 376 hours will be required for the following labor categories: Program Manager, Computer Systems Analyst II & III, Computer Programmer III & IV, Computer Programmer Manager, Data Architect, Web Designer, Database Analyst, Technical Writer II, Help Desk Support Analyst, and Production Support Manager. Finally, the Department uses the following loaded rates based on an Independent Government Cost Estimate (ICGE) produced by OFLC and inclusive of direct labor and overhead costs for each labor category: Program Manager—$138.34, Project Manager II—$106.90, Computer Systems Analyst II—$92.14, Computer Systems Analyst III—$109.84, Computer Programmer III—$89.63, Computer Programmer IV—$107.72, Computer Programmer Manager—$123.88, Data Architect—$104.99, Web Designer—$124.76, Database Analyst—$77.80, Technical Writer II—$84.81, Help Desk Support Analyst—$55.28, Production Support Manager—$125.76.

1. Benefits

Under the 2008 Final Rule, SWAs are required to complete Form I–9 for agricultural job orders and inspect and verify the employment eligibility documents furnished by the applicants.[13] Under the NPRM, SWAs will no longer be required to complete this process, resulting in cost savings. To estimate the avoided costs of employment eligibility verification activities, the Department multiplies the estimated number of U.S. farm workers that are referred to H–2A jobs through One-Stop Career Centers by the cost per Application.[14] The Department estimates average annual avoided costs of employment eligibility verification activities to be $ 0.03 million.

After the adjudication of employment eligibility, SWAs issue certifications for eligible workers. Under the NPRM, SWAs will no longer be required to issue such certifications. The avoided costs include the staff time to prepare and print the certification form as well as the costs of paper, envelopes, and postage. The Department estimates average annual avoided costs of certification issuance to be $0.02 million.[15]

SWAs are also required to retain records for the employment eligibility decisions. Under the NPRM, SWAs will no longer be required to retain the records. The avoided costs include the staff time to copy, organize, and store all relevant documents as well as the material costs of paper and photocopy machine use. The Department estimates average annual avoided costs equal to approximately $0.02 million.[16]

The employment eligibility verification activities currently in place require the training of SWA to properly complete the process. Under the NPRM, SWAs will no longer incur the costs of this training. These costs include the staff time to attend training courses, the staff time to teach training courses, and the material costs of producing training manuals. The Department estimates average annual avoided costs of SWA staff training equal to approximately $0.4 million.[17]

2. Costs

The Department acknowledges the increase in cost faced by employers to perform employment eligibility verification on referred employees who will, under this NPRM, no longer be verified by SWAs. The cost to employers is, however, not a corresponding number to the number representing the benefit to SWAs, as employers are not required to also complete the certification required of SWAs.

e. Enhancing Worker Protections through Compliance Certification

The 2008 Final Rule uses an attestation-based model, unlike the 1987 Rule, which mandated a fully-supervised labor market test and required the submission of important documentation, such as workers' compensation, housing certification issued by the SWA, and proof of registration and surety bond for H–2ALCs. Employers conduct the required recruitment in advance of Application filing and, based upon the results of that effort, apply for certification from the Department for a number of needed foreign workers. That is, under the 2008 Final Rule, employers attest that they have undertaken the necessary activities and made the required assurances to workers rather than have such actual efforts or documentation reviewed by a Federal or State official to ensure compliance. The Department has determined that there are insufficient worker protections in the attestation-based model in which employers merely confirm, and do not actually demonstrate, that they have performed an adequate test of the U.S. labor market.

1. Costs

The certification of compliance will represent some costs to employers because they will need to submit copies of recruitment activities, details of job offers, workers' compensation documentation, and for H–2ALCs, registration, surety bond, and work contracts, rather than attesting that they have complied with the required elements of the H–2A program. Under the 2008 Final Rule, employers are already required to obtain and retain these documents and the NPRM simply requires the submission of those documents, particularly workers' compensation and housing inspections, to the Department in order to satisfy the underlying statutory assurances. The Department estimates the cost by multiplying the total number of Applications by the difference in time to prepare the new H–2A Application as compared to that under the 2008 Final Rule. We then multiply this product by the average compensation of a human resources manager at an agricultural business. Because the H–2A Application in the Proposed Rule requires more to be submitted than the application under the 2008 Final Rule, we add the incremental costs of photocopying the additional pages and the postage required to ship them to the DOL.[18] This calculation yields an average annual cost to employers of $0.7 million.[19]

[13] The cost estimate assumes the use of the Form I–9 rather than the E-Verify system. The most recent count indicates that only four SWAs are using E-Verify.

[14] To estimate the cost per application, the Department sums the time for the SWA staff to complete the Form I–9, the time required to review employment eligibility documents, and the time to file the completed form in a systematic manner. The Department then divides this result by 60 to approximate the fraction of an hour required to process each application and multiplies this fraction by the hourly compensation of an SWA Compensation, Benefits, and Job Analysis Specialist scaled by 1.52 to account for employee benefits.

[15] The Department estimates the cost of staff time by multiplying the number of U.S. farm workers who are referred to H–2A jobs through One-Stop Career Centers by the time required to print the form (5 minutes) and the hourly labor compensation of an SWA Compensation, Benefits, and Job Analysis Specialist scaled by 1.52 to account for employee benefits. The Department then adds the cost per application by the number of U.S. farm workers who are referred to H–2A jobs through One-Stop Career Centers by the cost per application, assuming that the cost of a sheet of paper, cost of an envelope, and cost of postage per envelope are $0.02, $0.04, and $0.42, respectively.

[16] The Department estimates the cost of staff time by multiplying the total number of H–2A workers requested by the time required to copy, organize, and store all relevant documents (5 minutes) and the hourly labor compensation of an SWA Compensation, Benefits, and Job Analysis Specialist scaled by 1.52 to account for employee benefits. The Department then adds the cost per record by multiplying the total number of H–2A workers by the cost per record, assuming the number of sheets photocopied is 5 and cost per photocopy is $0.12.

[17] The Department estimates the avoided costs of attending training courses by multiplying the number of One-Stop Career Centers (1,794) by the number of workers trained per center (2), the length of training (3 hours), and the hourly labor compensation of an SWA Compensation, Benefits, and Job Analysis Specialist scaled by 1.52 to account for employee benefits. The Department estimates the avoided costs of trainer workload by multiplying the number of trainers (1 per 5 One-Stop Career Centers, or 359 trainers) by the length of training (3 hours) and the hourly labor compensation of an SWA Compensation, Benefits, and Job Analysis Specialist scaled by 1.52 to account for employee benefits. The Department estimates the avoided cost of producing training manuals by multiplying the number of One-Stop Career Centers (1,794) by the number of workers trained per center (2), the pages per training manual (30) and the cost per photocopy ($0.12).

[18] The Department estimates that 150 additional pages will need to be photocopied at a cost of $0.12 per photocopy. The additional pages weigh approximately 17.6 ounces and require $0.80 in postage per application. This cost estimate is based on mailing the additional 150 pages via Priority Mail (2-day delivery) from Topeka, Kansas to the NPC in Chicago (source: *http://postcalc.usps.gov*).

[19] The Department projects the annual number of applications to be approximately 9,785 in 2009 and increase to 26,427 by 2018, of which approximately 3,262 and 2,787 of the applications submitted in 2009 and 2018, respectively, would not have been previously submitted. For applications that would not have been previously submitted, the Department assumes that preparing an application using the certification application process, as compared to the attestation process, will result in

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f. Changes in the Requirement for Housing Inspections

The NPRM retains most of the 2008 Final Rule provisions governing housing inspections. The employer's obligations with respect to housing standards, rental or public accommodations, open range housing, deposit charges, charges for public housing, and family housing under the proposed regulations have remained the same as under the 2008 Final Rule. One notable difference, however, is the timeframe in which an inspection of the employer's housing must occur.

In the NPRM, when an employer places an Agricultural and Food Processing Clearance Order (Form ETA 790) with the SWA serving the area of intended employment 60 to 75 days before the date of need, the employer is required to disclose the location and type of housing to be provided to domestic and H–2A workers. Upon receipt of the Form ETA 790, the SWA will schedule and conduct an inspection of the employer's housing. Unlike the 2008 Final Rule, this NPRM requires that the pre-occupancy inspection of the employer's housing be completed prior to the issuance of a temporary labor certification, which is 30 days before the date of need.[20]

The Department expects that this change in timing will have a minimal economic impact on employers. Because employers are required to place the job order with the SWA between 60 and 75 days prior to the date of need, the SWA will have between 30 and 55 days to schedule and conduct a timely inspection of the housing. The Department believes that this enhanced recruitment time frame will also provide a sufficient amount of time for SWAs to conduct the required pre-occupancy housing inspection. Prior to the 2008 Final Rule, the Department's experience is that most employers who routinely utilize the H–2A program prepare their housing in advance of inspection and/or communicate with SWA staff with respect to changes in the location(s) or type(s) of housing before Application filing occurred at 45 days prior to the date of need. This past practice was necessary, particularly among large grower associations, in allowing SWAs to schedule and conduct pre-occupancy housing inspections in a timely manner, thereby minimizing any negative impacts on employers' ability to obtain labor certification, petition for workers at USCIS, obtain visas through the U.S. consulate, and bring foreign workers to the worksite by the certified date of need.

The Department examined program activity data for FY 2007 and 2008 to determine if the NPRM's change requiring completion of a pre-occupancy housing inspection prior to the issuance of a temporary labor certification would have a significant negative impact on employers. For employer Applications certified in FY 2007 and 2008, the Department issued determinations, on average, approximately 27 calendar days before the employer's certified start date of need; the median in both years was 29 calendar days before the employer's certified start date of need. This processing timeframe provided employers with sufficient time to petition USCIS and obtain visas from the U.S. consulate in order to bring foreign workers from their place of residence to the worksite by the certified start date of need. Any downstream delays in processing at either the USCIS or U.S. consulate, such as scheduling and conducting interviews for foreign workers, cannot be attributed to the Department's processing of the temporary labor certification.

The Department also examined the percentage of H–2A labor certifications that were issued during FY 2007 and 2008 beyond the statutory 30 days timeframe such that the issuance of the determination would have negatively impacted the employer's ability to obtain foreign workers by the certified start date of need. To do this, the Department assumed that employers, following issuance of the temporary labor certification, would receive the labor certification within 2 days, file an I–129 petition for non-premium processing and receive approval from the USCIS within 5 days, file appropriate Applications with DOS and obtain visas within 5 days, and transport foreign workers from the place of residence to the worksite in the U.S over the course of 3 days. Using these assumptions, the Department determined that any labor certification issued later than 15 days before the employer's certified start date of need would have negatively impacted the employer's ability to obtain foreign workers.

For FY 2007, approximately 6 percent of the H–2A labor certification Applications approved between October 1, 2006 and September 30, 2007 (273 out of 4,526 certifications), for employers and associations of employer producers were issued by the Department later than 15 days before the certified start date of need. For FY 2008, approximately 5.4 percent of the H–2A labor certification Applications approved between October 1, 2007 and September 30, 2008 (271 out of 5,014 certifications), for employers and associations of employer producers were issued by the Department later than 15 days before the certified start date of need, thus having a potential adverse impact. Some percentage of this number was as a result of delays in the housing inspection; the Department cannot quantify how many were delayed for this reason alone, as other reasons exist independent of housing inspections (for example, a failure of the employer to provide the Department with evidence of the coverage of workers by workers' compensation). Even if the entire group of such Applications were delayed solely for the lack of a valid housing certificate, the Department's program experience has demonstrated that the change contemplated in the NPRM requiring a pre-occupancy housing prior to issuance of a temporary labor certification has not and will not have a significant impact on employers' ability to obtain foreign workers by the certified start date of need.

Because of data limitations, we were not able to monetize the costs and benefits associated with this provision. While the Department believes such costs will be minimal, it invited interested parties to comment on the costs associated with this change.

g. Enhanced Coverage of Transportation Expenses

Under the 2008 Final Rule, the employer provides for travel expenses and subsistence for foreign workers only to and from the place of recruitment, *i.e.* the appropriate U.S. consulate or port of entry. Under the NPRM, the employer is required to pay the costs of transportation from the worker's home to and from the place of employment. The Department examined the increase in the costs to employers from the current costs of travel from the appropriate U.S. consulate to the place of employment, adding to that cost the

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increased agricultural employer staff time of 30 minutes per application. For applications that would have been previously submitted under the H–2A program, the Department assumes there will be a 20-minute increased in staff time using the certification application process. The Department estimates that the median hourly wage for a human resources manager is $42.15 (as published by the Department's OES survey, O*Net Online), which we increased by 1.43 to account for employee benefits (source: Bureau of Labor Statistics).

[20] The Department also notes that such inspection is mandated by other regulations governing the H–2A program. Pursuant to 20 CFR 654.400, SWAs must deny intrastate and interstate recruitment services unless, among other things, a preoccupancy inspection has been conducted (with conditional access permitted for H–2A employers for a limited time period). These regulations govern all migrant seasonal worker housing inspections.

cost of travel from the home to the consulate city. The Department estimates average annual costs of these additional transportation expenditures to be approximately $10.8 million.[21]

h. Other

During the first year that this NPRM would be in effect, all employers would need to learn about the new application process and how compliance will be judged. We estimate this cost by multiplying the number of applications submitted by employers by the time required to read the new rule and any educational and outreach materials that explain the H–2A application process under this NPRM by the average compensation of a human resources manager at an agricultural business. The Department estimates this one-time cost to employers at $0.5 million.[22]

This NPRM requires that contracts be translated into the languages of employees who do not speak English. Employers are already required to provide contract translation for Spanish workers. The Department multiplies the percent of H–2A workers who do not speak English or Spanish by the total number of H–2A Applications to estimate the number of contract translations required.[23] The Department then multiplies the resulting value by the average number of pages per contract and the cost per page for translation.[24] The Department estimates average annual costs of contract translation at $0.1 million.

This NPRM also requires that H–2ALCs submit photocopies of contracts with fixed agricultural sites as well as documentation of surety bonds. To estimate the number of H–2ALCs that will be subject to this requirement, the Department multiplies the total number of H–2A Applications by the percent of H–2A employers who are foreign labor contractors.[25] To estimate the cost of submitting photocopies of contracts, the Department multiplies the resulting value by the average number of pages per employer contract and the cost per photocopy, resulting in average annual costs of contract submission of $0.02 million. To estimate the cost of documenting the surety bond, the Department multiplies the number of H–2ALCs that will be subject to this requirement by the average number of pages per surety bond and the cost per photocopy, resulting in average annual costs of surety bond documentation of $0.002 million.[26]

To inform the public about this NPRM, the Department will produce and deliver outreach and education materials to employers in order to explain the new application process and how compliance will be judged. We estimate this cost by multiplying the hours required to develop, maintain, and distribute such materials by the average compensation of Department staff and find average annual cost to the Department equal to $0.06 million.[27]

5. Summary of Cost-Benefit Analysis

Exhibit 1 presents a summary of the cost-benefit analysis of this NPRM. The monetized costs and benefits displayed are the yearly summations of the calculations described above. In some cases, the totals for 1 year are less than the totals of the annual averages described above. For example, the annual average cost of enhanced transportation expenses—the largest cost component of this NPRM—is $10.8 million across the 10-year time horizon, but the individual yearly values range from $7.6 million in 2009 to $14.6 million in 2018. This is due to increased program participation across the time horizon of the cost-benefit analysis. The monetized costs exceed the monetized benefits both at a 7 percent and a 3 percent discount rate. The size of the net benefits, the absolute difference between the projected benefits and costs, is negative.

EXHIBIT 1—SUMMARY OF MONETIZED BENEFITS AND COSTS

Year	Monetized benefits ($millions/year)	Monetized costs ($millions/year)
1. 2009	0.47	10.56
2. 2010	0.47	9.75
3. 2011	0.47	10.52
4. 2012	0.47	11.35
5. 2013	0.47	12.25
6. 2014	0.47	13.23
7. 2015	0.47	14.30
8. 2016	0.47	15.45
9. 2017	0.47	16.70
10. 2018	0.47	18.07
Undiscounted total	4.68	132.17
Total with 7% discounting	3.29	89.34
Total with 3% discounting	3.99	110.86

Totals may not add because of rounding.

[21] The Department estimates these costs by multiplying the total number of H–2A workers certified by the cost of bus fare from the worker's home to the consulate and back. The Department assumes one-way cost of bus fare of $31.50 based on the cost of a bus trip from Oaxaca to Mexico City. *Source: http://www.ticketbus.com.mx.*

[22] The Department estimates that employers will spend 1 hour to read the new rule and outreach and educational materials explaining the program. In addition, the Department estimates that the median hourly wage for a human resources manager is $42.15 (as published by the Department's OES survey, O*Net Online), which we increased by 1.43 to account for employee benefits (source: Bureau of Labor Statistics).

[23] Approximately 0.6 percent of H–2A workers do not speak English or Spanish. *Source: http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/table32d.xls.*

[24] The Department assumes that the average number of pages per contract is 50, and the cost per page for translation is $19.50. *Source: http://www.languagescape.com.*

[25] The Department estimates that approximately 20 percent of H–2A employers are foreign labor contractors.

[26] The Department estimates that the average number of pages per employer contract is 50, the average number of pages per surety bond is 5, and the cost per photocopy is $0.12.

[27] The Department estimates that Department staff (GS–12 step 5) will spend 160 hours during the first year of the program to develop educational and outreach materials. For every subsequent year, the Department estimates that staff will spend 40 hours to review and update educational materials, as appropriate. The hourly salary for Department staff was multiplied by an index of 1.69 to account for employee benefits and proportional operating costs, resulting in an hourly rate of $52.96 for a GS–12, step 5 and $74.43 for GS–14, step 5.

Due to lack of adequate data, however, the Department is not able to provide monetary estimates of several important benefits to society, including the increased employment opportunities for U.S. workers and the enhancement of worker protections for U.S. and H–2A workers. In addition, this NPRM has distributional effects that improve the ability of the part of workers and their families to meet the basic costs of living.

The Department has concluded that after consideration of both the quantitative and qualitative impacts of this NPRM, the societal benefits of the NPRM justify the societal costs.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603 requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Further, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C 801 (SBREFA), an agency is required to produce a compliance guidance for small entities if the rule has a significant economic impact. The Assistant Secretary of ETA has notified the Chief Counsel for Advocacy, Small Business Administration (SBA), under the RFA at 5 U.S.C. 605(b), and certified that this rule will not have a significant economic impact on a substantial number of small entities.

The Department is requesting comment on the costs of these proposed policies on small entities, with the goal of ensuring a thorough consideration and discussion at the Final Rule stage.

1. Definition of a Small Business

A small entity is one that is ''independently owned and operated and which is not dominant in its field of operation.'' The definition of small business varies from industry to industry to the extent necessary to properly reflect industry size differences. An agency must either use the SBA definition for a small entity, or, establish an alternative definition for the agricultural industry. The Department has adopted the SBA definition, which is an establishment with annual revenues of less than $0.75 million. The SBA also defines a reforestation small business as one that has annual revenues of less than $7.0 million. The Department has also adopted that definition for its reforestation and pine straw activity establishments.

2. Impact on Small Businesses

The Department has estimated the incremental costs for small businesses from the 2008 Final Rule (the baseline) to this NPRM. We have estimated the costs of reading and reviewing the new Application and compliance processes, the enhanced coverage of transportation expenses, the enhanced worker protections through compliance certification, the changes in the requirement for housing inspections, and the enhanced U.S. worker referral period.[28]

Approximately 98 percent of U.S. farms have revenues of less than $0.75 million and, therefore, fall within the SBA's definition of small entity. The Department estimates that by 2018 there will be approximately 26,427 Applications (not necessarily applicants) to the H–2A program. Even if all 26,427 Applications are filed by unique small farms, the percentage of small farms applying for temporary agricultural worker certification will be only 1.4 percent of the total number of small U.S. farms.[29]

To examine the impact of the proposed rule on small entities, the Department evaluates the impact of the incremental costs on the average small entity, which is assumed to apply for 12 temporary workers. The Department estimates that these farms have annual revenues of about $367,000.[30]

The Department recognizes that transfers constitute an increase in wage costs in order to comply with this rule for small businesses choosing to participate in the H–2A program. While we lack the data to know how many H–2A participants are small entities, the Department does not believe, based on program experience, that it constitutes a significant number of small entities. The Department seeks comments on these costs, and the number of small entities involved, so it can gauge this cost and thus the effect on these businesses.

a. Reading and Reviewing the New Application and Compliance Processes

During the first year that this proposed rule would be in effect, employers would need to learn about the new application process and how compliance will be determined. We estimate this cost by multiplying the time required to read the new rule and any educational and outreach materials that explain the H–2A application process under this NPRM by the average compensation of a human resources manager at an agricultural business. In the first year of the proposed rule, the Department estimates that the average small farm will spend approximately 1 hour of staff time to read and review the new application and compliance processes, which amounts to approximately $60.27 in labor costs.[31]

b. Enhanced Coverage of Transportation Expenses

Under the 2008 Final Rule, the employer provides for travel expenses and subsistence for foreign workers only to and from the place of recruitment, *i.e.* the appropriate U.S. consulate or port of entry. Under the proposed rule, the employer is required to pay the costs of transportation from the worker's home to and from the place of employment. The Department estimates that the average small farm would incur costs of $63.00 per worker related the enhanced coverage of transportation expenses.[32]

[28] The analysis in this section does not include the impact of the higher wages for U.S. workers because they represent a transfer rather than an economic cost from a societal perspective. Transfer payments are payments from one group to another that do not affect total resources available to society. The increase in the wage rates for U.S. workers represents an important transfer from agricultural employers to U.S. workers. The higher wages for U.S. workers associated with the new methodology for estimating the AEWR represent an improved ability on the part of workers and their families to meet the costs of living, an important concern to the current Administration and a key aspect of the Department's mandate to ensure the wages and working conditions of similarly employed U.S. workers are not adversely affected.

[29] Based on the number of farms in 2007 and assuming that the number of farms will decline at the same average annual rate as it has in the past 10 years, the Department estimates that in 2018 there will be approximately 1,917,300 farms.

[30] Based on the average duration of temporary agricultural workers' stay, the Department estimates that these workers work, on average, 198 days. As already discussed, temporary agricultural workers will be paid, on average, $9.36 per hour. Given this hourly rate and 1,584 working hours per year, a small entity hiring 12 temporary workers incurs hired farm labor costs of $130,395. Based on the 2002 Census of Agriculture, hired farm labor costs account, on average, for 41.2 percent of total farm costs while total costs represent, on average, 86.3 percent of total revenues. Applying these rates to the estimated hired labor costs, we estimate that a small farm employing 12 temporary agricultural workers would have total production expenses of $316,777, revenues of $366,936, and net farm income (*i.e.,* revenues minus production expenses) of $50,159 per year.

[31] The Department estimates that employers will spend 1 hour to read the new rule and outreach and educational materials explaining the program. In addition, the Department estimates that the median hourly wage for a human resources manager is $42.15 (as published by the Department's OES survey, O*Net Online), which we increased by 1.43 to account for private-sector employee benefits (source: Bureau of Labor Statistics).

[32] The Department estimates these costs by multiplying the total number of H–2A workers certified by the cost of bus fare from the worker's home to the consulate and back. The Department assumes one-way cost of bus fare of $31.50.

c. Enhancing Worker Protections Through Compliance Certification

The certification of compliance will represent minimal costs to employers because they will need to submit copies of recruitment activities, details of job offers, workers' compensation documentation, and for H–2ALCs, registration, surety bond, and work contracts, rather than attesting that they have complied with the required elements of the H–2A program. Under the 2008 Final Rule, employers are already required to obtain and retain these documents and the proposed rule simply requires the submission of those existing documents, particularly workers' compensation and housing inspections, to the Department in order to satisfy the program's underlying statutory assurances. The Department estimates this cost by multiplying the difference in time to prepare the new H–2A Application as compared to that under the 2008 Final Rule for both new H–2A applicants and previous applicants. We then multiply these products by the average compensation of a human resources manager at an agricultural business.

For small employers applying to the program for the first time, the Department estimates that the Application will take approximately one-half hour more to complete. This results in additional labor costs equal to $30.14. For applicants familiar with the process, the Department estimates that the Application will require approximately 20 additional minutes to complete. The result is additional labor costs of $20.09 for applicants familiar with the program. Because the Application will be longer, the Department adds the costs of photocopying additional pages and additional postage required to the labor costs above.[33] In total, the Department estimates that the average small farm that is a new H–2A applicant would incur costs of $48.94, and the average small farm that is a previous H–2A applicant would incur costs of $38.89.

This NPRM also requires that contracts be translated into the languages of employees who do not speak English. Employers are already required to provide contract translations for employees who speak Spanish. We multiply the percent of H–2A workers who do not speak English or Spanish by the average number of pages per contract and the cost per page for translation.[34] The Department estimates the average small farm would incur costs of contract translation of $5.96.

d. Changes in the Requirement for Housing Inspections

The proposed rule retains most of the 2008 Final Rule provisions governing housing inspections. The employer's obligations with respect to housing standards, rental or public accommodations, open range housing, deposit charges, charges for public housing, and family housing under the proposed regulations have remained the same as under the 2008 Final Rule.

One notable difference, however, is the timeframe in which an inspection of the employer's housing must occur. Unlike the 2008 Final Rule, this NPRM requires that the pre-occupancy inspection of the employer's housing be completed prior to the issuance of a temporary labor certification, which is 30 days before the date of need for the workers.

The Department expects that this change in timing will have a minimal economic impact on employers. Prior to the effective date of the 2008 Final Rule, the Department's experience was that the majority of employers who routinely utilized the H–2A program prepared their housing in advance of inspection and/or communicated with SWA staff with respect to changes in the location(s) or type(s) of housing before Application filing occurred at 45 days prior to the date of need. Because of data limitations, we were not able to monetize the costs and benefits associated with this provision.

e. Enhanced U.S. Worker Referral Period

The NPRM proposes to require that employers maintain a complete recruitment report and all supporting documentation for 5 years (rather than 3 years as required by the 2008 Final Rule). The Department estimates that the additional record retention requirements will add costs equal to $21.99 to the average small farm for the retention of the Application and supporting documents.[35]

f. Additional Costs for Small Employers Who are H–2ALCs

Employers who are H–2ALCs will incur additional costs related to the submission of contracts and the documentation of the surety bond. For both categories, we estimate the cost by multiplying the additional photocopies required by the cost per photocopy. The Department estimates that the average small H–2ALC will incur costs of $6.00 for the submission of contract photocopies and $0.60 for the documentation of the surety bond.[36]

g. Reforestation and Pine Straw Activity

The Department has proposed to include reforestation crews and pine straw gathering activities in the categories of agricultural activities for which H–2A visas would be appropriate.[37] The Department acknowledges that the transfer of reforestation and pine straw gathering industries from H–2B to H–2A will impose additional costs on such employers, such as housing, transportation, meals, and the three-fourths guarantee. The Department is, however, unable to quantify these costs as it is unknown how many of the employers who currently apply for H–2B visa status for their workers actually provide such benefits already as a condition of employment. As mentioned above, the Department believes that some percentage of employers in these industries already provide some, if not all, of these benefits, and thus is unable to estimate the cost to those employers who do not. The Department invites comment from reforestation and pine straw employers and others on the benefits currently provided in those industries, so it can gauge this cost and thus the effect on these businesses.

h. Other Issues

The Department does not anticipate that the increased SWA activity under this Proposed Rule will result in significant processing delays, as the Department continues to operate under the statutory mandate to make a determination of whether or not the Application meets the threshold requirements for certification within 7 days of filing. The Department's analysis pursuant to E.O. 12866, *supra.,* contains an analysis of potential delays for all employers, including small employers, incurred for all reasons, not just for the reason of delays that may happen as a result of increased SWA activity. The conclusion that the Department has drawn from this

[33] The Department estimates that an average of 150 additional pages will need to be photocopied at a cost of $0.12 per photocopy. The additional pages weigh approximately 17.6 ounces and require $0.80 in postage per application.

[34] Approximately 0.6 percent of H–2A workers do not speak English or Spanish. Source: *http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/table32d.xls.* The Department assumes that the average number of pages per contract is 50, and the cost per page for translation is $19.50. Source: *http://www.languagescape.com*

[35] We assume that the average small farm will purchase one additional file drawer for document storage.

[36] We assume that the average number of pages per contract is 50, the number of pages per surety bond is 5, and the cost per photocopy is $0.12.

[37] The Department received applications from 173 employers in reforestation activities, including pine straw gathering, in the Department's H–2B program in FY 2008.

analysis is that the increased SWA activity, which the department believes is required by statute, will not result in increased delays to employers. The Department invites comment on this issue.

3. Total Cost Burden for Small Entities

The Department's calculations indicate that the total average annual cost of this NPRM is $911 for the average small entity applying to the program for the first time and $901 for the average small entity that has previous program familiarity. Both of these costs represent less than 0.3 percent of annual revenues.

For small entities that apply for 1 worker instead of 12 (representing the smallest of the small farms that hire workers), the Department estimates that the total average annual cost of the rule ranges from $143 (for those that have previous program familiarity) to $153 (for small entities new to the program). These values represent approximately 0.5 percent of annual revenues for these very small farms.

Therefore, the Department believes that this NPRM is expected to have a limited net direct cost impact on small farm employers, above and beyond the baseline of the current costs required by the program as it is currently implemented under the 2008 Final Regulation.

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. This Proposed Rule has no Federal mandate, which is defined in 2 U.S.C. 658(6) to include either a ''Federal intergovernmental mandate'' or a ''Federal private sector mandate.'' A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or Tribal governments, or imposes a duty upon the private sector which is not voluntary. A decision by a private entity to obtain an H–2A worker is purely voluntary and is, therefore, excluded from any reporting requirement under the Act.

The SWAs are mandated to perform certain activities for the Federal Government under this program, and are compensated for the resources used in performing these activities. While the SWA role was altered under the 2008 Final Rule, before that time employers filed Applications for H–2A labor certifications concurrently with the Department and the SWA having jurisdiction over the area of intended employment. The SWA and the Department through the NPCs both receive the Application and review the terms of the job offer. The SWA then placed the job order to initiate local recruitment. The SWA directly supervised and assisted employer recruitment, and the making of referrals of U.S. workers. The NPC directed the SWA to place job orders into intrastate/interstate clearance ensuring employers meet advertising and recruitment requirements. The SWA was responsible for processing the employer's certification request for H–2A labor certification, overseeing the recruitment and directing referrals to the employer. SWAs coordinated all activities regarding the processing of H–2A Applications directly with the appropriate NPC for their jurisdiction, including transmittal to the NPC of housing inspection results, prevailing wage surveys, prevailing practice surveys or any other material bearing on the Application. Once the Application was reviewed by the SWA and after the employer demonstrated that it conducted its required recruitment, the SWA then sent the complete Application to the appropriate NPC for final certification or denial.

This NPRM proposes to return to a more active SWA role in the application process as had been in place from 1987–2008. SWA activities under the H–2A program are currently funded by the Department through grants provided under the Wagner-Peyser Act. 29 U.S.C. 49 *et seq.* The Department anticipates continuing funding under the Wagner-Peyser Act. As a result of this NPRM and the publication of a final regulation, the Department will analyze the amounts of such grants made available to each State to fund the activities of the SWAs.

D. Small Business Regulatory Enforcement Fairness Act of 1996

The Department has determined that this rulemaking did not impose a significant impact on a substantial number of small entities under the RFA; therefore, the Department is not required to produce any Compliance Guides for Small Entities as mandated by the SBREFA. The Department has similarly concluded that this Proposed Rule is not a major rule requiring review by the Congress under the SBREFA because it will not likely result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

E. Executive Order 13132—Federalism

The Department has reviewed this Proposed Rule in accordance with E.O. 13132 regarding federalism and has determined that it does not have federalism implications. The Proposed Rule does not have substantial direct effects on States, on the relationship between the States, or on the distribution of power and responsibilities among the various levels of Government as described by E.O. 13132. Therefore, the Department has determined that this Proposed Rule will not have a sufficient federalism implication to warrant the preparation of a summary impact statement.

F. Executive Order 13175—Indian Tribal Governments

This rule was reviewed under the terms of E.O. 13175 and determined not to have Tribal implications. The rule does not have substantial direct effects 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. As a result, no Tribal summary impact statement has been prepared.

G. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) requires the Department to assess the impact of this Proposed Rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale.

The Department has assessed this Proposed Rule and determines that it will not have a negative effect on families.

H. Executive Order 12630—Government Actions and Interference With Constitutionally Protected Property Rights

This Proposed Rule is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

I. Executive Order 12988—Civil Justice

This regulation has been drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

J. Plain Language

The Department drafted this NPRM in plain language.

K. Executive Order 13211—Energy Supply

This rule is not subject to E.O. 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

L. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, DOL conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions; respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The PRA requires all Federal agencies to analyze proposed regulations for potential time burdens on the regulated community created by provisions in the proposed regulations, which require the submission of information. The information collection requirements must be submitted to the OMB for approval. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number as required in 5 CFR 1320.11(l) or is exempt from the PRA.

The majority of the information collection (IC) requirements for the current H–2A program are approved under two OMB control numbers—OMB Control Number 1205–0466 (which includes ETA Form 9142) and OMB Control Number 1205–0134 (which includes Form ETA 790). The IC for 1205–0466 will need to be modified to account for sections of the proposed regulation that are similar to the current regulation, but were not accounted for previously. The IC for 1205–0134 was recently modified as part of the regular extension process, which is still pending with OMB at the time of this publication. Many other provisions under this Proposed Rule are either exempt from a burden analysis or have been accounted for by other OMB control numbers. Below is a section by section analysis of the PRA burden. Any necessary adjustments to the burden calculations have been submitted to OMB for review under section 3507(d) of the PRA. For an additional explanation of how the Department calculated the burden hours and related costs, the PRA package for information collection 1205–0466 may be obtained by contacting the PRA addressee shown below or at *http://www.RegInfo.gov.*

PRA Addressee: Sherril Hurd, Office of Policy Development and Research, U.S. Department of Labor, Employment & Training Administration, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210. Telephone: 202–693–3700 (this is not a toll-free number).

Comments should be sent to (1) the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration; and a copy to (2) Office of Foreign Labor Certification, Room C–4312, 200 Constitution Ave., NW., Washington, DC 20210 or fax: 202–693–2768. Comments to OMB may be submitted by using the Federal e-Rulemaking portal at *http://www.regulations.gov* (follow instructions for submission of comments) or by fax: 202–395–5806. OMB requests that comments be received within 60 days of publication of the Proposed Rule to ensure their consideration. Please note that comments submitted to OMB are a matter of public record.

When submitting comments on the information collections, your comments should address one or more of the following four points.

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Summary

The IC is required by secs. 214(c) and 218 of the INA (8 U.S.C. 1184(c), and 1188) and 8 CFR 214.2(h)(1), (2), and (5). The INA requires employers who wish to hire foreign labor to receive a certification from the Secretary that there are not sufficient U.S. workers for the job opportunity and that hiring the foreign worker will not adversely affect wages and working conditions of U.S. workers similarly employed. This Proposed Rule is designed to obtain the necessary information for the Secretary to make an informed decision in meeting her statutory obligation. The IC will be used, among other things, to inform U.S. workers of the job opportunity thereby testing the labor market, to determine whether or not the employer is offering the proper wage to all employees, to ensure that the employers, agents, or associations are qualified to receive foreign workers, to have written assurances from the employer of its intent to comply with program requirements, and to ensure program integrity.

Hourly Burden

NPRM Section	IC Action	Obligation to respond [38]	Covered under OMB No.	Total No. resp.	Hourly burden	Total hours
655.130, 131, & 132	Fill out 9142	M	1205–0466	8,356	1 hour	8,356
655.130, 131, & 132	Send in 790	M	1205–0134	8,356	1 hour	8,356
655.132(b)(1)	List of fixed site employers (FSE)	M	1205–0466	559	30 min	280
655.132(b)(2)	Submit FLC certificate	M	1205–0466	559	5 min	47
655.132(b)(3)	Submit proof of bond	M	1205–0466	559	5 min	47

NPRM Section	IC Action	Obligation to respond [38]	Covered under OMB No.	Total No. resp.	Hourly burden	Total hours
655.132(b)(4)	Submit contracts with FSE	M	1205–0466	559	30 min	280
655.132(b)(5)(i)	Submit housing approval	M	1205–0466	559	5 min	47
655.132(b)(5)(ii)	Drivers' licenses & Auto Insurance	M	1205–0466	559	5 min	47
655.133(a)	Letter of Representation	M	1205–0466	4,574	30 min	2,287
655.133(b)	Agent's FLC certificate	M	1205–0466	309	5 min	26
655.134(b)	Request waiver of 45-day filing	R	1205–0466	151	30 min	76
655.135(i)	Notify of duty to depart	M	1205–0466	8,356	2 min	278
655.135(j) & (k)	Inform of fee prohibition	M	1205–0466	8,356	5 min	696
655.135(l)	Workers' rights poster	M	[39] Exempt			
655.144	Modify application	R	1205–0466	1,151	30 min	576
655.145	Amend application	R	1205–0466	668	30 min	334
655.150	SWA posts & refers	M	1205–0134	8,356	25 min	3,482
655.151 & 152	Advertising	R	[40] Exempt			
655.153	Contact old employees	R	1205–0466	8,356	1 hour	8,356
655.154	Proof of recruitment	M	[41] Exempt			
655.156	Recruitment report	R	1205–0466	8,356	1 hour	8,356
655.157	Withholding workers complaints	V	1205–0466	0	30 min	0
655.167	Document retention	M	1205–0466	8,356	10 min	1,393
655.170	Extension application	R	1205–0466	418	30 min	209
655.171	Notice of Appeal	R	1205–0466	70	20 min	23
655.172	Request withdrawal	R	1205–0466	226	10 min	38
655.173	Petition to increase meal charges	R	1205–0466	84	1 hour	84
655.180,181, & 182	Audit, revocation, debarment	R	[42] Exempt			
655.185 & 501.2	Job service complaint system	V	1205–0039			
655.185	DOJ complaints	V	([43])			
501.4(b) & 501.6(c)	Filing complaints	V	1215–0001			

Annual Hourly Burden

In order to estimate the potential hourly burden of the information required to apply for a labor certification as described in this Proposed Rule, the Department used program experience and program data from fiscal year 2008. Based on information on program usage from FY 2008 the Department received 8,356 Applications requesting more than 100,000 foreign workers. This is an increase over the 7,725 Applications received in previous years used to calculate the burden in 1205–0466 originally. This is also more than the 4,600 responses accounted for in the 1205–0134 IC approved in 2006. The current extension request has adjusted the burden calculation.

For the number of appeals, modifications, requests for waivers of the filing time, extensions, and other program components requiring information collection under the PRA, the Department also used program experience to determine annual hourly burdens described in the chart above.

The total annual hourly burdens for the two ICs requiring adjustments due to this NPRM have been calculated as follows:

	Hours
1205–0466	31,833
1205–0134	10,688

Monetized Hourly Burden

Employers filing Applications for temporary alien employment certification may be from a wide variety of industries. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required by this regulation may range from several hundred dollars to several hundred thousand dollars where the corporate executive office of a large company performs some or all of these functions themselves. However, the Department believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, the Department used the hourly wage rate for a Human Resources Manager ($39.50), as published by the DOL's OES OnLine,[44] and increased by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of $56.50. The SWA employees required to help employers with reviewing and translating the Form ETA 790 and referring workers to the employer are based on a Labor Relations Specialists ($23.70) as published by the DOL's OES OnLine and increased by a factor of 1.52 to account for employee benefits and other compensation for a total hourly cost of $36.02. Total annual respondent hour costs for the two main information collections are estimated as follows:

1205–0466 ..... 33,256 hours × $56.09 = $1,865,329

1205–0134 ..... 8,356 hours × $56.09 = $468,688

3,482 hours × $36.02 = $125,422

[38] Obligation to respond to this information collection is mandatory (M), required for benefit (R), or voluntary (V).

[39] *See* 5 CFR 1320.3.

[40] *See* 5 CFR 1320.3(b).

[41] *See* 29 CFR 1602.14 (OMB 3046–0040); 29 CFR 1627.3(b)(3) (OMB 3046–0018); 29 CFR 1627.3(b)(3).

[42] *See* 5 CFR 1320.3(h)(6) & (9); 5 CFR 1320.4(a)(2).

[43] Complaints can be filed on DOJ's ''Charge Complaint'' form, which has no OMB control number or called in to the Office of Special Counsel.

[44] Source: Bureau of Labor Statistics 2009 OES wage data.

Cost Burden to Respondents

The Proposed Rule stipulates that the applicant who receives an approved labor certification must pay $150 plus $15 for each foreign worker requested with an overall cap of $2,000 per Application. Assuming a 95 percent approval rate and the same amount of approved foreign workers as in previous years at 94,445, the Department estimates the maximum cost to employers will be $2,607,405 [(8,356 applicants × .95 × $150) + (94,445 foreign workers × $15)].

Affected Public: Farms, business or other for-profit; not-for-profit institutions, and State governments.

Estimated Number of Respondents: 8,408 (8,356 employers and 52 SWAs).

Estimated Number of Responses: 77,853.

Frequency of Response: Annually; occasionally.

Estimated Annual Burden Hours: 43,674.

Estimated Annual Hourly Burden Cost: $2,459.

Estimated Annual Cost Burden: $2,607,405.

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Foreign workers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

List of Subjects in 29 CFR Part 501

Administrative practice and procedure, Agriculture, Aliens, Employment, Housing, Housing standards, Immigration, Labor, Migrant labor, Penalties, Transportation, Wages.

For the reasons stated in the preamble, the Department of Labor proposes that 20 CFR part 655 and 29 CFR part 501 be amended as follows:

TITLE 20—EMPLOYEES' BENEFITS

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

1. Revise the authority citation for part 655 to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184(c), and 1188; and 8 CFR 214.2(h).

Subparts A and C issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subparts D and E authority repealed.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); and sec. 323(c), Pub. L. 103–206, 107 Stat. 2428.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; and 8 CFR 214.2(h).

Subparts J and K authority repealed.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

2. Revise the heading of part 655 to read as set forth above.

3. Revise § 655.1 to read as follows:

§ 655.1 Purpose and scope of Subpart A.

This subpart sets forth the procedures governing the labor certification process for the temporary employment of nonimmigrant foreign workers in the United States (U.S.) in occupations other than agriculture or registered nursing.

4. Revise subpart B to read as follows:

Subpart B—Labor Certification Process for Temporary Agricultural Employment in the United States (H–2A Workers)

Sec.

655.100 Scope and purpose of Subpart B.
655.101 Authority of the Office of Foreign Labor Certification (OFLC) Administrator.
655.102 Special procedures.
655.103 Overview of this Subpart and definition of terms.

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Labor Certification Determinations

655.160 Determinations.
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Integrity Measures

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§ 655.100 Scope and purpose of Subpart B.

This subpart sets out the procedures established by the Secretary of the United States Department of Labor (the Secretary) under the authority given in 8 U.S.C. 1188 to acquire information sufficient to make factual determinations of:

(a) Whether there are sufficient able, willing, and qualified United States (U.S.) workers available to perform the temporary and seasonal agricultural employment for which an employer desires to import nonimmigrant foreign workers (H–2A workers); and

(b) Whether the employment of H–2A workers will adversely affect the wages and working conditions of workers in the U.S. similarly employed.

§ 655.101 Authority of the Office of Foreign Labor Certification (OFLC) Administrator.

The Secretary has delegated her authority to make determinations under 8 U.S.C. 1188 to the Assistant Secretary for the Employment and Training Administration (ETA), who in turn has delegated that authority to the Office of Foreign Labor Certification (OFLC). The determinations are made by the OFLC Administrator who, in turn, may delegate this responsibility to designated staff members; *e.g.*, a Certifying Officer (CO).

§ 655.102 Special procedures.

To provide for a limited degree of flexibility in carrying out the Secretary's responsibilities under the Immigration and Nationality Act (INA), while not deviating from statutory requirements, the OFLC Administrator has the authority to establish, continue, revise, or revoke special procedures for processing certain H–2A *Application for Temporary Employment Certification*. Employers must demonstrate upon written application to the OFLC Administrator that special procedures are necessary. These include special procedures currently in effect for the handling of applications for sheepherders in the Western States (and adaptation of such procedures to occupations in the range production of other livestock), and for custom combine harvesting crews. Similarly, for work in occupations characterized by other than a reasonably regular workday or workweek, such as the range production of sheep or other livestock, the OFLC Administrator has the authority to establish monthly, weekly, or semi-monthly adverse effect wage rates (AEWR) for those occupations for a statewide or other geographical area. Prior to making determinations under this section, the OFLC Administrator may consult with affected employer and worker representatives.

§ 655.103 Overview of this Subpart and definition of terms.

(a) *Overview*. In order to bring nonimmigrant workers to the U.S. to perform agricultural work, an employer must first demonstrate to the Secretary that there are not sufficient U.S. workers able, willing, and qualified to perform the work in the area of intended employment at the time needed and that the employment of foreign workers will not adversely affect the wages and working condition of U.S. workers similarly employed. This rule describes a process by which the Department of Labor (Department or DOL) makes such a determination and certifies her determination to the Department of Homeland Security (DHS).

(b) *Definitions*.

Administrative Law Judge (ALJ). A person within the Department's Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 3105.

Adverse effect wage rate (AEWR). The annual weighted average hourly wage for field and livestock workers (combined) in the States or regions as published annually by the U.S. Department of Agriculture (USDA) based on its quarterly wage survey.

Agent. A legal entity or person, such as an association of agricultural employers, or an attorney for an association, that:

(1) Is authorized to act on behalf of the employer for temporary agricultural labor certification purposes;

(2) Is not itself an employer, or a joint employer, as defined in this subpart with respect to a specific application; and

(3) Is not under suspension, debarment, expulsion, or disbarment from practice before any court, the Department, the Executive Office for Immigration Review, or DHS under 8 CFR 292.3 or 1003.101.

Agricultural association. Any nonprofit or cooperative association of farmers, growers, or ranchers (including but not limited to processing establishments, canneries, gins, packing sheds, nurseries, or other similar fixed-site agricultural employers), incorporated or qualified under applicable State law, that recruits, solicits, hires, employs, furnishes, houses, or transports any worker that is subject to 8 U.S.C. 1188. An agricultural association may act as the agent of an employer, or may act as the sole or joint employer of any worker subject to 8 U.S.C. 1188.

Area of intended employment. The geographic area within normal commuting distance of the place of the job opportunity for which the certification is sought. There is no rigid measure of distance that constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (*e.g.*, average commuting times, barriers to reaching the worksite, quality of the regional transportation network). If the place of intended employment is within a Metropolitan Statistical Area (MSA), including a multistate MSA, any place within the MSA is deemed to be within normal commuting distance of the place of intended employment. The borders of MSAs are not controlling in the identification of the normal commuting area; a location outside of an MSA may be within normal commuting distance of a location that is inside (*e.g.*, near the border of) the MSA.

Attorney. Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, or commonwealth of the U.S., or the District of Columbia. Such a person is also permitted to act as an agent under this subpart. No attorney who is under suspension, debarment, expulsion, or disbarment from practice before any court, the Department, the Executive Office for Immigration Review under 8 CFR 1003.101, or DHS under 8 CFR 292.3 may represent an employer under this subpart

Certifying Officer (CO). The person who makes determination on an *Application for Temporary Labor Certification* filed under the H–2A program. The OFLC Administrator is the national CO. Other COs may be designated by the OFLC Administrator to also make the determinations required under this subpart.

Corresponding employment. The employment of workers who are not H–2A workers by an employer who has an approved H–2A *Application for Temporary Labor Certification* in any work included in the job order, or in any agricultural work performed by the H–2A workers. To qualify as corresponding employment the work must be performed during the validity period of the job order, including any approved extension thereof.

Date of need. The first date the employer requires the services of H–2A workers as indicated in the *Application for Temporary Labor Certification*.

Employee. A person who is engaged to perform work for an employer, as defined under the general common law of agency. Some of the factors relevant to the determination of employee status include: The hiring party's right to control the manner and means by which the work is accomplished; the skill required to perform the work; the source of the instrumentalities and tools for accomplishing the work; the location of the work; the hiring party's discretion over when and how long to work; and whether the work is part of the regular business of the hiring party. Other applicable factors may be considered and no one factor is dispositive.

Employer. A person (including any individual, partnership, association, corporation, cooperative, firm, joint stock company, trust, or other organization with legal rights and duties) that:

(1) Has a place of business (physical location) in the U.S. and a means by

which it may be contacted for employment;

(2) Has an employer relationship (such as the ability to hire, pay, fire, supervise or otherwise control the work of employee) with respect to an H–2A worker or a worker in corresponding employment; and

(3) Possesses, for purposes of filing an *Application for Temporary Employment Certification*, a valid Federal Employer Identification Number (FEIN).

Federal holiday. Legal public holiday as defined at 5 U.S.C. 6103.

Fixed-site employer. Any person engaged in agriculture who meets the definition of an employer, as those terms are defined in this subpart, who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed, nursery, or other similar fixed-site location where agricultural activities are performed and who recruits, solicits, hires, employs, houses, or transports any worker subject to 8 U.S.C. 1188, 29 CFR part 501, or this subpart as incident to or in conjunction with the owner's or operator's own agricultural operation.

H–2A Labor Contractor (H–2ALC). Any person who meets the definition of employer under this subpart and is not a fixed-site employer, an agricultural association, or an employee of a fixed-site employer or agricultural association, as those terms are used in this part, who recruits, solicits, hires, employs, furnishes, houses, or transports any worker subject to 8 U.S.C. 1188, 29 CFR part 501, or this subpart.

H–2A worker. Any temporary foreign worker who is lawfully present in the U.S. and authorized by DHS to perform agricultural labor or services of a temporary or seasonal nature pursuant to 8 U.S.C. 1101(a)(15)(H)(ii)(a), as amended.

Job offer. The offer made by an employer or potential employer of H–2A workers to both U.S. and H–2A workers describing all the material terms and conditions of employment, including those relating to wages, working conditions, and other benefits.

Job opportunity. Full-time employment at a place in the U.S. to which U.S. workers can be referred.

Job Order. The document containing the terms and conditions of employment that is posted by the State Workforce Agency (SWA) on its inter- and intra-State job clearance systems based on the employer's Form ETA–790, as submitted to the SWA.

Joint employment. Where two or more employers each have sufficient definitional indicia of being an employer to be considered the employer of a worker, those employers will be considered to jointly employ that worker. Each employer in a joint employment relationship to a worker is considered a joint employer of that worker.

Master application. An *Application for Temporary Labor Certification* filed by an association of agricultural producers as a joint employer with its employer-members. A master application must cover the same occupations and comparable agricultural employment; the same start date of need for all employer-members listed on the *Application for Temporary Employment Certification*; and may cover multiple areas of intended employment within a single State.

National Processing Center (NPC). The office within OFLC in which the COs operate and which are charged with the adjudication of *Applications for Temporary Employment Certification.*

Office of Foreign Labor Certification (OFLC). OFLC means the organizational component of the ETA that provides national leadership and policy guidance and develops regulations and procedures to carry out the responsibilities of the Secretary under the INA concerning the admission of foreign workers to the U.S. to perform work described in 8 U.S.C. 1101(a)(15)(H)(ii)(a).

OFLC Administrator. The primary official of the Office of Foreign Labor Certification (OFLC), or the OFLC Administrator's designee.

Positive recruitment. The active participation of an employer or its authorized hiring agent, performed under the auspices and direction of the OFLC, in recruiting and interviewing individuals in the area where the employer's job opportunity is located and any other State designated by the Secretary as an area of traditional or expected labor supply with respect to the area where the employer's job opportunity is located, in an effort to fill specific job openings with U.S. workers.

Prevailing practice. A practice engaged in by employers, that:

(1) Fifty percent or more of employers in an area and for an occupation engage in the practice or offer the benefit; and

(2) This 50 percent or more of employers also employs 50 percent or more of U.S. workers in the occupation and area (including H–2A and non-H–2A employers) for purposes of determinations concerning the provision of family housing, and frequency of wage payments, but non-H–2A employers only for determinations concerning the provision of advance transportation and the utilization of labor contractors.

Prevailing wage. Wage established pursuant to 20 CFR 653.501(d)(4).

State Workforce Agency (SWA). State government agency that receives funds pursuant to the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) to administer the State's public labor exchange activities.

Strike. A concerted stoppage of work by employees as a result of a labor dispute, or any concerted slowdown or other concerted interruption of operation (including stoppage by reason of the expiration of a collective bargaining agreement).

Successor in interest. Where an employer has violated 8 U.S.C. 1188, 29 CFR part 501, or these regulations, and has ceased doing business or cannot be located for purposes of enforcement, a successor in interest to that employer may be held liable for the duties and obligations of the violating employer in certain circumstances. The following factors, as used under Title VII of the Civil Rights Act and the Vietnam Era Veterans' Readjustment Assistance Act, may be considered in determining whether an employer is a successor in interest; no one factor is dispositive, but all of the circumstances will be considered as a whole:

(1) Substantial continuity of the same business operations;

(2) Use of the same facilities;

(3) Continuity of the work force;

(4) Similarity of jobs and working conditions;

(5) Similarity of supervisory personnel;

(6) Whether the former management or owner retains a direct or indirect interest in the new enterprise;

(7) Similarity in machinery, equipment, and production methods;

(8) Similarity of products and services; and

(9) The ability of the predecessor to provide relief.

For purposes of debarment only, the primary consideration will be the personal involvement of the firm's ownership, management, supervisors, and others associated with the firm in the violation(s) at issue.

Temporary agricultural labor certification. Certification made by the OFLC Administrator with respect to an employer seeking to file with DHS a visa petition to employ one or more foreign nationals as an H–2A worker, pursuant to 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(a) and (c), and 1188.

United States (U.S.). The continental U.S., Alaska, Hawaii, the Commonwealth of Puerto Rico, and the territories of Guam, the Virgin Islands, and, as of the transition program effective date, as defined in the Consolidated Natural Resources Act of

2008, Pub. L. 110–229, Title VII, the Commonwealth of the Northern Mariana Islands.

United States worker (U.S. worker). A worker who is:

(1) A citizen or national of the U.S.; or

(2) An alien who is lawfully admitted for permanent residence in the U.S., is admitted as a refugee under 8 U.S.C. 1157, is granted asylum under 8 U.S.C. 1158, or is an immigrant otherwise authorized (by the INA or by DHS) to be employed in the U.S.; or

(3) An individual who is an authorized alien (as defined in 8 U.S.C. 1324a(h)(3)) with respect to the employment in which the worker is engaging.

Wages. All forms of cash remuneration to a worker by an employer in payment for personal services.

Work contract. All the material terms and conditions of employment relating to wages, hours, working conditions, and other benefits, including those required by 8 U.S.C. 1188, 29 CFR part 501, or this subpart. The contract between the employer and the worker may be in the form of a separate written document. In the absence of a separate written work contract incorporating the required terms and conditions of employment, agreed to by both the employer and the worker, the work contract at a minimum will be the terms of the job order and any obligations required under 8 U.S.C. 1188, 28 CFR part 501, or this subpart.

(c) *Definition of agricultural labor or services.* For the purposes of this subpart, agricultural labor or services, pursuant to 8 U.S.C. 1101(a)(15)(H)(ii)(a), is defined as: agricultural labor as defined and applied in sec. 3121(g) of the Internal Revenue Code of 1986 at 26 U.S.C. 3121(g); agriculture as defined and applied in sec. 3(f) of the Fair Labor Standards Act of 1938 (FLSA) at 29 U.S.C. 203(f); the pressing of apples for cider on a farm; logging employment; reforestation activities; or pine straw activities.

(1) *Agricultural labor* for the purpose of paragraph (c) of this section means all service performed:

(i) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(ii) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(v) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in paragraph (c)(1)(iv) but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this paragraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;

(vi) The provisions of paragraphs (c)(1)(iv) and (c)(1)(v) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(vii) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this section, the term farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(2) *Agriculture.* For purposes of paragraph (c) of this section, agriculture means farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in 1141j(g) of title 12, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. *See* sec. 29 U.S.C. 203(f), as amended (sec. 3(f) of the FLSA, as codified). Under 12 U.S.C. 1141j(g) agricultural commodities include, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: gum spirits of turpentine and gum rosin. In addition as defined in 7 U.S.C. 92, gum spirits of turpentine means spirits of turpentine made from gum (oleoresin) from a living tree and gum rosin means rosin remaining after the distillation of gum spirits of turpentine.

(3) *Apple pressing for cider.* The pressing of apples for cider on a farm, as the term farm is defined and applied in sec. 3121(g) of the Internal Revenue Code at 26 U.S.C. 3121(g) or as applied in sec. 3(f) of the FLSA at 29 U.S.C. 203(f), pursuant to 29 CFR Part 780.

(4) *Logging employment.* Operations associated with felling and moving trees and logs from the stump to the point of delivery, such as, but not limited to, marking danger trees and trees/logs to be cut to length, felling, limbing, bucking, debarking, chipping, yarding, loading, unloading, storing, and transporting machines, equipment and personnel to, from and between logging sites.

(5) *Reforestation activities.* Predominately manual forestry work that includes, but is not limited to, tree planting, brush clearing and pre-commercial tree thinning.

(6) *Pine straw activities.* Certain activities predominately performed using hand tools, including but not limited to the raking, gathering, baling, and loading of pine straw that is a product of pine trees that are managed using agricultural or horticultural/silvicultural techniques.

(d) *Definition of a temporary or seasonal nature.* For the purposes of

this subpart, employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year.

Prefiling Procedures

§ 655.120 Offered wage rate.

(a) To comply with its obligation under § 655.122 (l), an employer must offer, advertise in its recruitment, and pay a wage that is the highest of the AEWR, the prevailing hourly wage or piece rate, or the Federal or State minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment.

(b) If the prevailing hourly wage rate or piece rate is adjusted during a work contract, and is higher than the highest of the AEWR, the prevailing wage, or the Federal or State minimum wage, the employer must pay that higher prevailing wage or piece rate, upon notice to the employer by the Department.

(c) The OFLC Administrator will publish, at least once in each calendar year, on a date to be determined by the OFLC Administrator, the AEWRs for each State as a notice in the **Federal Register**.

§ 655.121 Job orders.

(a) *Area of intended employment.*

(1) Prior to filing an *Application for Temporary Employment Certification*, the employer must submit a job order to the SWA serving the area of intended employment for intrastate clearance, identifying it as a job order to be placed in connection with a future *Application for Temporary Labor Certification* for H–2A workers. The employer must submit this job order no more than 75 calendar days and no fewer than 60 calendar days before the date of need. If the job opportunity is located in more than one State within the same area of intended employment, the employer may submit a job order to any one of the SWAs having jurisdiction over the anticipated worksites.

(2) Where the job order is being placed in connection with a future master application to be filed by an association of agricultural employers as a joint employer, the association may submit a single job order to be placed in the name of the association on behalf of all employers that will be duly named on the *Application for Temporary Employment Certification*.

(3) The job order submitted to the SWA must satisfy the requirements for agricultural clearance orders in 20 CFR part 653, subpart F and the requirements set forth in § 655.122.

(b) *SWA review.* The SWA will review the contents of the job order for compliance with the requirements specified in 20 CFR part 653, subpart F and this subpart and work with the employer to address any noted deficiencies. Any issue with respect to whether a job order may properly be placed in the job order system that cannot be resolved with the applicable SWA must be first brought to the attention of the CO(s) in the NPC and, if necessary, the OFLC Administrator who may direct that the job order be placed following a written determination that the applicable program requirement(s) has been met. If the Department concludes that the job order is not acceptable, it will so inform the employer using the procedures applicable to a denial of certification set forth in § 655.164.

(c) *Intrastate clearance.* Upon its clearance of the job order, the SWA must promptly place the job order in intrastate clearance and commence recruitment of U.S. workers.

(d) *Duration of job order posting.* The SWA must keep the job order on its active file until the end of the recruitment period, as set forth in § 655.135(d), and must refer each U.S. worker who applies (or on whose behalf an *Application for Temporary Labor Certification* is made) for the job opportunity.

(e) *Modifications to the job order.*

(1) Prior to the issuance of the final determination, the CO may require modifications to the job order when the CO determines that the offer of employment does not contain all the minimum benefits, wages, and working condition provisions. If any such modifications are required after a Notice of Acceptance has been issued by the CO as described in § 655.141 of this subpart, the modifications must be made or certification will be denied pursuant to § 655.164 of this subpart; however, the certification determination will not be delayed beyond 30 calendar days prior to the date of need as a result of such modification.

(2) The employer may request a modification of the job order prior to the submission of an *Application for Temporary Employment Certification*. However, the employer may not reject referrals against the job order based upon a failure on the part of the applicant to meet the amended criteria, if such referral was made prior to the amendment of the job order. The employer may not amend the job order on or after the date of filing an *Application for Temporary Employment Certification*.

§ 655.122 Contents of job offers.

(a) *Prohibition against preferential treatment of aliens.* The employer's job offer must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2A workers. Job offers may not impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H–2A workers. This does not relieve the employer from providing to H–2A workers at least the same minimum level of benefits, wages, and working conditions which are being offered to U.S. workers consistent with this section.

(b) *Job qualifications and requirements.* Each job qualification and requirement listed in the job offer must be bona fide and consistent with the normal and accepted qualifications required by employers that do not use H–2A workers in the same or comparable occupations and crops. Either the CO or the SWA may require the employer to submit documentation to substantiate the appropriateness of any job qualification specified in the job offer.

(c) *Minimum benefits, wages, and working conditions.* Every job offer accompanying an *Application for Temporary Employment Certification* must include each of the minimum benefit, wage, and working condition provisions listed in paragraphs (d) through (p) of this section.

(d) *Housing.*

(1) *Obligation to provide housing.* The employer must provide housing at no cost to the H–2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day. Housing must be provided through one of the following means:

(i) *Employer-provided housing.* Employer-provided housing must meet the full set of DOL Occupational Safety and Health Administration (OSHA) standards set forth at 29 CFR 1910.142, or the full set of standards at §§ 654.404 through 654.417 of this chapter, whichever are applicable under § 654.401 of this chapter. Requests by employers whose housing does not meet the applicable standards for conditional access to the interstate clearance system, will be processed under the procedures set forth at § 654.403 of this chapter; or

(ii) *Rental and/or public accommodations.* Rental or public accommodations or other substantially similar class of habitation must meet local standards for such housing. In the absence of applicable local standards, State standards will apply. In the absence of applicable local or State standards, DOL OSHA standards at 29 CFR 1910.142 will apply. Any charges for rental housing must be paid directly by the employer to the owner or operator of the housing. The employer must document to the satisfaction of the CO that the housing complies with the local, State, or Federal housing standards.

(2) *Standards for range housing.* Housing for workers principally engaged in the range production of livestock must meet standards of DOL OSHA for such housing. In the absence of such standards, range housing for sheepherders and other workers engaged in the range production of livestock must meet guidelines issued by OFLC.

(3) *Deposit charges.* Charges in the form of deposits for bedding or other similar incidentals related to housing must not be levied upon workers. However, employers may require workers to reimburse them for damage caused to housing by the individual worker(s) found to have been responsible for damage which is not the result of normal wear and tear related to habitation.

(4) *Charges for public housing.* If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by the employer, the employer must pay any charges normally required for use of the public housing units directly to the housing's management.

(5) *Family housing.* When it is the prevailing practice in the area of intended employment and the occupation to provide family housing, it must be provided to workers with families who request it.

(6) *Certified housing that becomes unavailable.* If after a request to certify housing, such housing becomes unavailable for reasons outside the employer's control, the employer may substitute other rental or public accommodation housing that is in compliance with the local, State, or Federal housing standards applicable under this section. The employer must promptly notify the SWA in writing of the change in accommodations and the reason(s) for such change and provide the SWA evidence of compliance with the applicable local, State or Federal safety and health standards, in accordance with the requirements of this section. If, upon inspection, the SWA determines the substituted housing does not meet the applicable housing standards, the SWA must promptly provide written notification to the employer to cure the deficiencies with a copy to the CO. An employer's failure to comply with the applicable standards will result in either a denial of a pending *Application for Temporary Employment Certification* or revocation of the temporary labor certification under this subpart.

(e) *Workers' compensation.*

(1) The employer must provide workers' compensation insurance coverage in compliance with State law covering injury and disease arising out of and in the course of the worker's employment. If the type of employment for which the certification is sought is not covered by or is exempt from the State's workers' compensation law, the employer must provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment that will provide benefits at least equal to those provided under the State workers' compensation law for other comparable employment.

(2) Prior to issuance of the temporary labor certification, the employer must provide the CO with proof of workers' compensation insurance coverage meeting the requirements of this paragraph, including the name of the insurance carrier, the insurance policy number, and proof of insurance for the dates of need, or, if appropriate, proof of State law coverage.

(f) *Employer-provided items.* The employer must provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned.

(g) *Meals.* The employer either must provide each worker with three meals a day or must furnish free and convenient cooking and kitchen facilities to the workers that will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. The amount of meal charges is governed by § 655.173.

(h) *Transportation; daily subsistence.*

(1) *Transportation to place of employment.* If the employer has not previously advanced such transportation and subsistence costs to the worker or otherwise provided such transportation or subsistence directly to the worker by other means and if the worker completes 50 percent of the work contract period, the employer must pay the worker for reasonable costs incurred by the worker for transportation and daily subsistence from the place from which the worker has come to work for the employer, whether in the U.S. or abroad to the place of employment. When it is the prevailing practice of non-H–2A agricultural employers in the occupation in the area to do so, or when the employer extends such benefits to similarly situated H–2A workers, the employer must advance the required transportation and subsistence costs (or otherwise provide them) to workers in corresponding employment who are traveling to the employer's worksite. The amount of the transportation payment must be no less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved. The amount of the daily subsistence payment must be at least as much as the employer would charge the worker for providing the worker with three meals a day during employment (if applicable), but in no event less than the amount permitted under paragraph (f) of this section. Note that the FLSA applies independently of the H–2A requirements and imposes obligations on employers regarding payment of wages.

(2) *Transportation from place of employment.* If the worker completes the work contract period, or if the employee is terminated without cause, and the worker has no immediate subsequent H–2A employment, the employer must provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer. If the worker has contracted with a subsequent employer who has not agreed in such work contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the employer must provide or pay for such expenses. If the worker has contracted with a subsequent employer who has agreed in such work contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the subsequent employer must provide or pay for such expenses. The employer is not relieved of its obligation to provide or pay for return transportation and subsistence if an H–2A worker is displaced as a result of the employer's compliance with the 50 percent rule as described in § 655.135(d) of this subpart

with respect to the referrals made after the employer's date of need.

(3) *Transportation between living quarters and worksite.* The employer must provide transportation between housing provided or secured by the employer and the employer's worksite at no cost to the worker.

(4) *Employer-provided transportation.* All employer-provided transportation must comply with all applicable Federal, State or local laws and regulations, and must provide, at a minimum, the same transportation safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841 and 29 CFR 500.105 and 29 CFR 500.120 to 500.128. If workers' compensation is used to cover transportation, in lieu of vehicle insurance, the employer must either ensure that the workers' compensation covers all travel or that vehicle insurance exists to provide coverage for travel not covered by workers' compensation and they must have property damage insurance.

(i) *Three-fourths guarantee.*

(1) *Offer to worker.* The employer must guarantee to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total period beginning with the first workday after the arrival of the worker at the place of employment or the advertised contractual first date of need, whichever is later, and ending on the expiration date specified in the work contract or in its extensions, if any.

(i) For purposes of this paragraph a workday means the number of hours in a workday as stated in the job order and excludes the worker's Sabbath and Federal holidays. The employer must offer a total number of hours to ensure the provision of sufficient work to reach the three-fourths guarantee. The work hours must be offered during the work period specified in the work contract, or during any modified work contract period to which the worker and employer have mutually agreed and that has been approved by the CO.

(ii) The work contract period can be shortened by agreement of the parties only with the approval of the CO. In the event the worker begins working later than the specified beginning date of the contract, the guarantee period begins with the first workday after the arrival of the worker at the place of employment, and continues until the last day during which the work contract and all extensions thereof are in effect.

(iii) Therefore, if, for example, a work contract is for a 10-week period, during which a normal workweek is specified as 6 days a week, 8 hours per day, the worker would have to be guaranteed employment for at least 360 hours (10 weeks × 48 hours/week = 480 hours × 75 percent = 360). If a Federal holiday occurred during the 10-week span, the 8 hours would be deducted from the total hours for the work contract, before the guarantee is calculated. Continuing with the above example, the worker would have to be guaranteed employment for 354 hours (10 weeks × 48 hours/week = 480 hours − 8 hours (Federal holiday) × 75 percent = 354 hours).

(iv) A worker may be offered more than the specified hours of work on a single workday. For purposes of meeting the guarantee, however, the worker will not be required to work for more than the number of hours specified in the job order for a workday, or on the worker's Sabbath or Federal holidays. However, all hours of work actually performed may be counted by the employer in calculating whether the period of guaranteed employment has been met. If during the total work contract period the employer affords the U.S. or H–2A worker less employment than that required under this paragraph, the employer must pay such worker the amount the worker would have earned had the worker, in fact, worked for the guaranteed number of days. An employer will not be considered to have met the work guarantee if the employer has merely offered work on three-fourths of the workdays if each workday did not consist of a full number of hours of work time as specified in the job order.

(2) *Guarantee for piece rate paid worker.* If the worker is paid on a piece rate basis, the employer must use the worker's average hourly piece rate earnings or the AEWR, whichever is higher, to calculate the amount due under the guarantee.

(3) *Failure to work.* Any hours the worker fails to work, up to a maximum of the number of hours specified in the job order for a workday, when the worker has been offered an opportunity to work in accordance with paragraph (i)(1) of this section, and all hours of work actually performed (including voluntary work over 8 hours in a workday or on the worker's Sabbath or Federal holidays), may be counted by the employer in calculating whether the period of guaranteed employment has been met. An employer seeking to calculate whether the number of hours has been met must maintain the payroll records in accordance with this subpart.

(4) *Displaced H–2A worker.* The employer is not liable for payment of the three-fourths guarantee to an H–2A worker whom the CO certifies is displaced because of the employer's compliance with the 50 percent rule described in § 655.35(d) with respect to referrals made during that period.

(5) *Obligation to provide housing and meals.* Notwithstanding the three-fourths guarantee contained in this section, employers are obligated to provide housing and meals in accordance with paragraphs (d) and (g) of this section for each day of the contract period up until the day the workers depart for other H–2A employment, depart to the place outside of the U.S. from which the worker came, or, if the worker voluntarily abandons employment or is terminated for cause, the day of such abandonment or termination.

(j) *Earnings records.*

(1) The employer must keep accurate and adequate records with respect to the workers' earnings, including but not limited to field tally records, supporting summary payroll records, and records showing the nature and amount of the work performed; the number of hours of work offered each day by the employer (broken out by hours offered both in accordance with and over and above the three-fourths guarantee at paragraph (i)(3) of this section); the hours actually worked each day by the worker; the time the worker began and ended each workday; the rate of pay (both piece rate and hourly, if applicable); the worker's earnings per pay period; the worker's home address; and the amount of and reasons for any and all deductions taken from the worker's wages.

(2) Each employer must keep the records required by this part, including field tally records and supporting summary payroll records, safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. All records must be available for inspection and transcription by the Secretary or a duly authorized and designated representative, and by the worker and representatives designated by the worker as evidenced by appropriate documentation (an Entry of Appearance as Attorney or Representative, Form G–28, signed by the worker, or an affidavit signed by the worker confirming such representation). Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records must be made available for inspection and copying within 72 hours following notice from the Secretary, or a duly authorized and designated representative, and by the worker and

designated representatives as described in this paragraph.

(3) To assist in determining whether the three-fourths guarantee in paragraph (i) of this section has been met, if the number of hours worked by the worker on a day during the work contract period is less than the number of hours offered, as specified in the job offer, the records must state the reason or reasons therefor.

(4) The employer must retain the records for not less than 5 years after the date of the certification.

(k) *Hours and earnings statements.* The employer must furnish to the worker on or before each payday in one or more written statements the following information:

(1) The worker's total earnings for the pay period;

(2) The worker's hourly rate and/or piece rate of pay;

(3) The hours of employment offered to the worker (showing offers in accordance with the three-fourths guarantee as determined in paragraph (i) of this section, separate from any hours offered over and above the guarantee);

(4) The hours actually worked by the worker;

(5) An itemization of all deductions made from the worker's wages;

(6) If piece rates are used, the units produced daily;

(7) Beginning and ending dates of the pay period; and

(8) The employer's name, address and FEIN.

(l) *Rates of pay.* If the worker is paid by the hour, the employer must pay the worker at least the AEWR in effect at the time work is performed, the prevailing hourly wage rate, the prevailing piece rate, or the Federal or State minimum wage rate, whichever is highest, for every hour or portion thereof worked during a pay period.

(1) The offered wage may not be based on commission, bonuses, or other incentives, unless the employer guarantees a wage paid on a weekly, semi-monthly, or monthly basis that equals or exceeds the AEWR, prevailing hourly wage or piece rate, or the legal Federal or State minimum wage, whichever is highest; or

(2) If the worker is paid on a piece rate basis and at the end of the pay period the piece rate does not result in average hourly piece rate earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the appropriate hourly rate:

(i) The worker's pay must be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had instead been paid at the appropriate hourly wage rate for each hour worked;

(ii) The piece rate must be no less than the piece rate prevailing for the activity in the area of intended employment; and

(iii) If the employer who pays by the piece rate requires one or more minimum productivity standards of workers as a condition of job retention, such standards must be specified in the job offer and be no more than those required by the employer in 1977, unless the OFLC Administrator approves a higher minimum, or, if the employer first applied for H–2A temporary labor certification after 1977, such standards must be no more than those normally required (at the time of the first *Application for Temporary Labor Certification*) by other employers for the activity in the area of intended employment.

(m) *Frequency of pay.* The employer must state in the job offer the frequency with which the worker will be paid, which must be at least twice monthly or according to the prevailing practice in the area of intended employment, whichever is more frequent. Employers must pay wages when due.

(n) *Abandonment of employment or termination for cause.* If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, and the employer notifies the NPC, and DHS in the case of an H–2A worker, in writing or by any other method specified by the Department or DHS in a manner specified in a notice published in the **Federal Register** not later than 2 working days after such abandonment occurs, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of that H–2A worker under this section, and that worker is not entitled to the three-fourths guarantee described in paragraph (i) of this section. Abandonment will be deemed to begin after an H–2A worker fails to report for work at the regularly scheduled time for 5 consecutive working days without the consent of the employer.

(o) *Contract impossibility.* If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes the fulfillment of the contract impossible, the employer may terminate the work contract. Whether such an event constitutes a contract impossibility will be determined by the CO. In the event of such termination of a contract, the employer must fulfill a three-fourths guarantee for the time that has elapsed from the start of the work contract to the time of its termination, as described in paragraph (i)(1) of this section. The employer must make efforts to transfer the worker to other comparable employment acceptable to the worker, consistent with existing immigration law, as applicable. If such transfer is not affected, the employer must:

(1) Return the worker, at the employer's expense, to the place from which the worker (disregarding intervening employment) came to work for the employer, or transport the worker to the worker's next certified H–2A employer (but only if the worker can provide documentation that would be acceptable for Form I–9 purposes supporting such employment as being authorized pursuant to 8 CFR 274a.12(b)(21) upon transfer), whichever the worker prefers;

(2) Reimburse the worker the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment; and

(3) Pay the worker for any costs incurred by the worker for transportation and daily subsistence to that employer's place of employment. Daily subsistence must be computed as set forth in paragraph (h) of this section. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved.

(p) *Deductions.* The employer must make all deductions from the worker's paycheck required by law. The job offer must specify all deductions not required by law which the employer will make from the worker's paycheck. All deductions must be reasonable. The employer may deduct the cost of the worker's transportation and daily subsistence expenses to the place of employment which were borne directly by the employer. In such circumstances, the job offer must state that the worker will be reimbursed the full amount of such deduction upon the worker's completion of 50 percent of the work contract period. However, an employer subject to the FLSA may not make deductions that would violate the FLSA.

(q) *Disclosure of work contract.* The employer must provide to the worker, no later then on the day the work commences, a copy of the work contract between the employer and the worker in a language understood by the worker as necessary or reasonable. At a minimum, the work contract must contain all of the

provisions required by this section. In the absence of a separate, written work contract entered into between the employer and the worker, the required terms of the job order and the certified *Application for Temporary Employment Certification* will be the work contract.

Application for Temporary Employment Certification Filing Procedures

§ 655.130 Application filing requirements.

All agricultural employers who desire to hire H–2A foreign agricultural workers must apply for a certification from the Secretary by filing an *Application for Temporary Employment Certification* with the NPC designated by the OFLC Administrator. The following section provides the procedures employers must follow when filing.

(a) *What to file.* An employer, whether individual, association, or H–2ALC, that desires to apply for temporary employment certification of one or more nonimmigrant foreign workers must file a completed *Application for Temporary Employment Certification* form and, unless a specific exemption applies, a copy of the DOL Agricultural and Food Processing Clearance Order form submitted to the SWA serving the area of intended employment, as set forth in § 655.121(a).

(b) *Timeliness.* A completed *Application for Temporary Employment Certification* must be filed no less than 45 calendar days before the employer's date of need.

(c) *Location and method of filing.* The employer may send the *Application for Temporary Employment Certification* and all required supporting documentation by U.S. Mail or private mail courier to the NPC. The Department will publish a Notice in the **Federal Register** identifying the address(es), and any future address changes, to which *Applications for Temporary Labor Certification* must be mailed, and will also post these addresses on the OFLC Internet Web site at *http://www.foreignlaborcert.doleta.gov/*. The Department may also require *Applications for Temporary Labor Certification,* at a future date, to be filed electronically in addition to or instead of by mail, notice of which will be published in the **Federal Register**.

(d) *Original signature.* The *Application for Temporary Employment Certification* must bear the original signature of the employer (and that of the employer's authorized attorney or agent if the employer is represented by an attorney or agent). An association filing a master application as a joint employer may sign on behalf of its employer members. An association filing as an agent may not sign on behalf of its members but must obtain each member's signature on each *Application for Temporary Labor Certification* prior to filing.

(e) Information received in the course of processing *Applications for Temporary Labor Certification* and program integrity measures such as audits may be forwarded from OFLC to Wage and Hour Division (WHD) for enforcement purposes.

§ 655.131 Association filing requirements.

If an association files an *Application for Temporary Labor Certification,* in addition to complying with all the assurances, guarantees, and other requirements contained in this subpart and in part 653, subpart F, of this chapter, the following requirements also apply.

(a) *Individual applications.* Associations of agricultural employers may file an *Application for Temporary Employment Certification* for H–2A workers as a sole employer, a joint employer, or agent. The association must identify in the *Application for Temporary Employment Certification* in what capacity it is filing. The association must retain documentation substantiating the employer or agency status of the association and be prepared to submit such documentation in response to a Notice of Deficiency from the CO prior to issuing a Final Determination, or in the event of an audit.

(b) *Master applications.* An association may file a master application on behalf of its employer-members. The master application is available only when the association is filing as a joint employer. An association of agricultural producers may submit a master application covering the same occupation and comparable work available with a number of its employer-members in multiple areas of intended employment, just as though all of the covered employers were in fact a single employer, as long as a single date of need is provided for all workers requested by the *Application for Temporary Labor Certification* and all employer-members are located in the same State. The association must identify on the *Application for Temporary Employment Certification* by name, address, total number of workers needed, and the crops and agricultural work to be performed, each employer that will employ H–2A workers. The association, as appropriate, will receive a certified *Application for Temporary Employment Certification* that can be copied and sent to the United States Citizenship and Immigration Services (USCIS) with each employer-member's petition.

§ 655.132 H–2A Labor contractor (H–2ALC) filing requirements.

If an H–2ALC intends to file an *Application for Temporary Employment Certification,* the H–2ALC must meet all of the requirements of the definition of employer in § 655.100(b), and comply with all the assurances, guarantees, and other requirements contained in this part, including Assurances and Obligations of H–2A Employers, and in part 653, subpart F, of this chapter.

(a) *Scope of H–2ALC Applications.* An *Application for Temporary Employment Certification* filed by an H–2ALC must be limited to a single area of intended employment in which the fixed-site employer(s) to whom the H–2ALC is furnishing employees will be utilizing the employees.

(b) *Required information and submissions.* In filing the *Application for Temporary Employment Certification,* the H–2ALC must include the following:

(1) Identify on the *Application for Temporary Employment Certification* and job offer the name and location of each fixed-site agricultural business to which the H–2ALC expects to provide H–2A workers, the expected beginning and ending dates when the H–2ALC will be providing the workers to each fixed-site, and a description of the crops and activities the workers are expected to perform at such fixed-site.

(2) Provide a copy of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Farm Labor Contractor (FLC) Certificate of Registration, if required under MSPA at 29 U.S.C. 1801 *et seq.,* identifying the specific farm labor contracting activities the H–2ALC is authorized to perform as an FLC.

(3) Provide proof of its ability to discharge financial obligations under the H–2A program through a surety bond as required by 29 CFR 501.9, with documentation from the issuer identifying the name, address, phone number, and contact person for the surety, and providing the amount of the bond (as calculated pursuant to 29 CFR 501.9) and any identifying designation utilized by the surety for the bond.

(4) Provide copies of the fully-executed work contracts with each fixed-site agricultural business identified under paragraph (b)(1) of this section.

(5) Where the fixed-site agricultural business will provide housing or

transportation to the workers, provide proof that:

(i) All housing used by workers and owned, operated or secured by the fixed-site agricultural business complies with the applicable standards as set forth in § 655.122(d) and certified by the SWA; and

(ii) All transportation between the worksite and the workers' living quarters that is provided by the fixed-site agricultural business complies with all applicable Federal, State, or local laws and regulations and must provide, at a minimum, the same vehicle safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841 and 29 CFR 500.105 and 500.120 to 500.128, except where workers' compensation is used to cover such transportation as described in § 655.125(h).

§ 655.133 Requirements for agents.

(a) An agent filing an *Application for Temporary Employment Certification* on behalf of an employer must provide a copy of the agent agreement or other document demonstrating the agent's authority to represent the employer.

(b) In addition the agent must provide a copy of the MSPA FLC Certificate of Registration, if required under MSPA at 29 U.S.C. 1801 *et seq.,* identifying the specific farm labor contracting activities the agent is authorized to perform.

§ 655.134 Emergency situations.

(a) *Waiver of time period.* The CO may waive the time period for filing for employers who did not make use of temporary alien agricultural workers during the prior year's agricultural season or for any employer that has other good and substantial cause (which may include unforeseen changes in market conditions), provided that the CO has sufficient time to test the domestic labor market on an expedited basis to make the determinations required by § 655.100.

(b) *Employer requirements.* The employer requesting a waiver of the required time period must concurrently submit to NPC and to the SWA serving the area of intended employment a completed *Application for Temporary Employment Certification,* a completed job offer on the Agricultural and Food Processing Clearance Order form, and a statement justifying the request for a waiver of the time period requirement. The statement must indicate whether the waiver request is due to the fact that the employer did not use H–2A workers during the prior agricultural season or whether the request is for good and substantial cause. If the waiver is requested for good and substantial cause, the employer's statement must also include detailed information describing the good and substantial cause which has necessitated the waiver request. Good and substantial cause may include, but is not limited to, such things as the substantial loss of U.S. workers due to weather-related activities or other reasons, unforeseen events affecting the work activities to be performed, pandemic health issues, or similar conditions.

(c) *Processing of emergency applications.* The CO will process emergency *Applications for Temporary Labor Certification* in a manner consistent with the provisions set forth in §§ 655.140–145 and make a determination on the *Application for Temporary Employment Certification* in accordance with §§ 655.160–167. The CO may advise the employer in writing that the certification cannot be granted because, pursuant to paragraph (a) of this section, the request for emergency filing was not justified and there is not sufficient time to test the availability of U.S. workers such that the CO can make a determination on the *Application for Temporary Labor Certification* in accordance with § 655.161. Such notification will so inform the employer using the procedures applicable to a denial of certification set forth in § 655.164.

§ 655.135 Assurances and obligations of H–2A employers.

An employer seeking to employ H–2A workers must agree as part of the *Application for Temporary Employment Certification* and job offer that it will abide by the requirements of this subpart and make each of the following additional assurances:

(a) *Non-discriminatory hiring practices.* The job opportunity is, and through the recruitment period must continue to be, open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship. Rejections of any U.S. workers who applied or apply for the job must be only for lawful, job related reasons, and those not rejected on this basis have been or will be hired. In addition, the employer has and will continue to retain records of all hires and rejections as required by § 655.167.

(b) *No strike or lockout.* The worksite for which the employer is requesting H–2A certification does not currently have workers on strike or being locked out in the course of a labor dispute.

(c) *Recruitment requirements.* The employer has and will continue to cooperate with the SWA by accepting referrals of all eligible U.S. workers who apply (or on whose behalf an *Application for Temporary Employment Certification* is made) for the job opportunity until the end of the recruitment period as specified in paragraph (d) and must independently conduct the positive recruitment activities, as specified in § 655.154, until the actual date on which the H–2A workers depart for the place of work, or 3 calendar days prior to the first date the employer requires the services of the H–2A workers, whichever occurs first.

(d) *Fifty percent rule.* From the time the foreign workers depart for the employer's place of employment, the employer must provide employment to any qualified, eligible U.S. worker who applies to the employer until 50 percent of the period of the work contract has elapsed. Start of the work contract timeline is calculated from the first date of need stated on the *Application for Temporary Employment Certification,* under which the foreign worker who is in the job was hired. This provision will not apply to any employer who certifies to the CO in the *Application for Temporary Employment Certification* that the employer:

(1) Did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in sec. 203(u) of Title 29;

(2) Is not a member of an association which has petitioned for certification under this subpart for its members; and

(3) Has not otherwise associated with other employers who are petitioning for temporary foreign workers under this subpart.

(e) *Comply with applicable laws.* During the period of employment that is the subject of the *Application for Temporary Employment Certification,* the employer must comply with all applicable Federal, State and local laws and regulations, including health and safety laws. H–2A employers may also be subject to the FLSA. The FLSA operates independently of the H–2A program and has specific requirements that address payment of wages, including deductions from wages, the payment of Federal minimum wage and payment of overtime.

(f) *Job opportunity is full-time.* The job opportunity is a full-time temporary position, calculated to be at least 35 hours per work week.

(g) *No recent or future layoffs.* The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the *Application for Temporary Employment Certification* in the area of intended employment except for lawful, job related reasons within 60 days of the date of need, or if the

employer has laid off such workers, it has offered the job opportunity that is the subject of the *Application for Temporary Labor Certification* to those laid-off U.S. worker(s) and the U.S. worker(s) either refused the job opportunity or was rejected for the job opportunity for lawful, job-related reasons.

(h) *No unfair treatment.* The employer has not and will not intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person who has:

(1) Filed a complaint under or related to 8 U.S.C. 1188, or this subpart or any other Department regulation promulgated thereunder;

(2) Instituted or caused to be instituted any proceeding under or related to 8 U.S.C. 1188 or this subpart or any other Department regulation promulgated thereunder;

(3) Testified or is about to testify in any proceeding under or related to 8 U.S.C. 1188 or this subpart or any other Department regulation promulgated thereunder;

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to 8 U.S.C. 1188 or this subpart or any other Department regulation promulgated thereunder; or

(5) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by 8 U.S.C. 1188 or this subpart or any other Department regulation promulgated thereunder.

(i) *Notify workers of duty to leave United States.*

(1) The employer must inform H–2A workers of the requirement that they leave the U.S. at the end of the period certified by the Department or separation from the employer, whichever is earlier, as required under paragraph (2) below, unless the H–2A worker is being sponsored by another subsequent H–2A employer.

(2) As defined further in DHS regulations, a temporary labor certification limits the validity period of an H–2A petition, and therefore, the authorized period of stay for an H–2A worker. *See* 8 CFR 214.2(h)(5)(vii). A foreign worker may not remain beyond his or her authorized period of stay, as established by DHS, which is based upon the validity period of the labor certification under which the H–2A worker is employed, nor beyond separation from employment prior to completion of the H–2A contract, absent an extension or change of such worker's status under DHS regulations. *See* 8 CFR 214.2(h)(5)(viii)(B).

(j) *Comply with the prohibition against employees paying fees.* The employer and its agents have not sought or received payment of any kind from any employee subject to 8 U.S.C. 1188 for any activity related to obtaining H–2A labor certification, including payment of the employer's attorneys' fees, application fees, or recruitment costs. For purposes of this paragraph, payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in-kind payments, and free labor. Subject to the provisions of the FLSA, this provision does not prohibit employers or their agents from receiving reimbursement for costs that are the responsibility of the worker, such as government-required passport fees.

(k) *Contracts with third parties comply with prohibitions.* The employer has contractually forbidden any foreign labor contractor or recruiter (or any agent of such foreign labor contractor or recruiter) whom the employer engages, either directly or indirectly, in international recruitment of H–2A workers to seek or receive payments or other compensation from prospective employees, except as provided for in DHS regulations at 8 CFR 214.2(h)(5)(xi)(A). This documentation is available upon request by the CO or another Federal party.

(l) *Notice of worker rights.* The employer must post and maintain in a conspicuous location at the place of employment, a poster provided by the Secretary in English, and, to the extent necessary, language common to a significant portion of the workers if they are not fluent in English, which sets out the rights and protections for workers employed pursuant to 8 U.S.C. 1188.

Processing of Applications for Temporary Employment Certification

§ 655.140 Review of applications.

(a) *NPC review.* The CO will promptly review the *Application for Temporary Employment Certification* and job order for compliance with all applicable program requirements, including compliance with the requirements set forth in this subpart.

(b) *Mailing and postmark requirements.* Any notice or request sent by the CO(s) to an employer requiring a response will be sent using the provided address via traditional methods to assure next day delivery. The employer's response to such a notice or request must be filed using traditional methods to assure next day delivery and be sent by the date due or the next business day if the due date falls on a Sunday or Federal Holiday.

§ 655.141 Notice of acceptance.

(a) *Notification timeline.* When the CO determines the *Application for Temporary Labor Certification* and job order are complete and meet the requirements set forth in this subpart, the CO will notify the employer within 7 calendar days of the CO's receipt of the *Application for Temporary Labor Certification.* A copy will be sent to the SWA serving the area of intended employment.

(b) *Notice content.* The notice must:

(1) Authorize conditional access to the interstate clearance system and direct the SWA to circulate a copy of the job order to other such States the CO determines to be potential sources of U.S. workers;

(2) Direct the employer to engage in positive recruitment of U.S. workers in a manner consistent with § 655.154 and to submit a report of its positive recruitment efforts as specified in § 655.156 prior to making a Final Determination on the *Application for Temporary Employment Certification*;

(3) State that positive recruitment is in addition to and will occur during the period of time that the job order is being circulated by the SWA(s) for interstate clearance under § 655.150 of this subpart and will terminate on the actual date on which the H–2A workers depart for the place of work, or 3 calendar days prior to the first date the employer requires the services of the H–2A workers, whichever occurs first;

(4) State that the CO will make a determination either to grant or deny the *Application for Temporary Employment Certification* no later than 30 calendar days before the date of need, except as provided for under § 655.144 for modified *Applications for Temporary Labor Certification;* and

(5) Will specify the time frames when positive recruitment must occur, including newspaper advertisements.

§ 655.142 Electronic job registry.

(a) *Location of and placement in the electronic job registry.* Upon acceptance of the *Application for Temporary Labor Certification* under § 655.141, the CO will promptly place for public examination a copy of the job order on an electronic job registry maintained by the Department, including any required modifications approved by the CO, as specified in § 655.144.

(b) *Length of posting on electronic job registry.* Unless otherwise noted, the Department must keep the job order posted on the Electronic Job Registry

until the end of 50 percent of the contract period as set forth in § 655.135(d).

§ 655.143 Notice of deficiency.

(a) *Notification timeline.* When the CO determines the *Application for Temporary Labor Certification* and job order are incomplete, contain errors or inaccuracies, or do not meet the requirements set forth in this subpart, the CO will notify the employer within 7 calendar days of the CO's receipt of the *Application for Temporary Employment Certification.* A copy of this notification will be sent to the SWA serving the area of intended employment.

(b) *Notice content.* The notice will:

(1) State the reason(s) why the *Application for Temporary Employment Certification* or job order fails to meet the criteria for acceptance, citing the relevant regulatory standard(s);

(2) Offer the employer an opportunity to submit a modified *Application for Temporary Employment Certification* within 5 business days from date of receipt stating the modification that is needed for the CO to issue the Notice of Acceptance;

(3) Except as provided for under the expedited review or de novo administrative hearing provisions of this section, state that the CO's determination on whether to grant or deny the *Application for Temporary Employment Certification* will be made no later than 30 calendar days before the date of need, provided that the employer submits the requested modification to the *Application for Temporary Employment Certification* within 5 business days and in a manner specified by the CO;

(4) Offer the employer an opportunity to request an expedited administrative review or a de novo administrative hearing before an Administrative Law Judge (ALJ), of the Notice of Deficiency. The notice will state that in order to obtain such a review or hearing, the employer, within 5 business days of the receipt of the notice, must file by facsimile or other means normally assuring next day delivery a written request to the Chief ALJ of DOL and simultaneously serve a copy on the CO. The notice will also state that the employer may submit any legal arguments that the employer believes will rebut the basis of the CO's action; and

(5) State that if the employer does not comply with the requirements under this section or request an expedited administrative judicial review or a de novo hearing before an ALJ within the 5 business days the CO will deny the *Application for Temporary Employment Certification* in accordance with the labor certification determination provisions in § 655.164.

(c) *Appeal from notices of deficiency.* The employer may timely request an expedited administrative review or de novo hearing before an ALJ by following the procedures set forth in § 655.171.

§ 655.144 Submission of modified applications.

(a) *Submission requirements and certification delays.* If the employer chooses to submit a modified *Application for Temporary Employment Certification*, the CO's Final Determination will be postponed by 1 calendar day for each day that passes beyond the 5 business-day period allowed under § 655.143(b) to submit a modified *Application for Temporary Labor Certification*, up to maximum of 5 days. The *Application for Temporary Employment Certification* will be deemed abandoned if the employer does not submit a modified *Application for Temporary Labor Certification* within 12 calendar days after the notice of deficiency was issued.

(b) *Provisions for denial of modified Application for Temporary Employment Certification.* If the modified *Application for Temporary Employment Certification* is not approved, the CO will deny the *Application for Temporary Labor Certification* in accordance with the labor certification determination provisions in § 655.164.

(c) *Appeal from denial of modified Application for Temporary Employment Certification.* The procedures for appealing a denial of a modified *Application for Temporary Labor Certification* are the same as for a non-modified *Application for Temporary Labor Certification* as long as the employer timely requests an expedited administrative review or de novo hearing before an ALJ by following the procedures set forth in § 655.171.

§ 655.145 Amendments to applications for temporary employment certification.

(a) *Increases in number of workers. Application for Temporary Labor Certification* may be amended at any time before the CO's certification determination to increase the number of workers requested in the initial *Application for Temporary Labor Certification* by not more than 20 percent (50 percent for employers requesting less than 10 workers) without requiring an additional recruitment period for U.S. workers. Requests for increases above the percent prescribed, without additional recruitment, may be approved by the CO only when the request is submitted in writing, and the employer demonstrates that the need for additional workers could not have been foreseen, and the crops or commodities will be in jeopardy prior to the expiration of an additional recruitment period.

(b) *Minor changes to the period of employment. Applications for Temporary Labor Certification* may be amended to make minor changes in the total period of employment. Changes may not be effected until submitted in written form to the CO and the employer receives approval from the CO. In considering whether to approve the request, the CO will review the reason(s) for the request, determine whether the reason(s) are on the whole justified, and take into account the effect any change(s) would have on the adequacy of the underlying test of the domestic labor market for the job opportunity. An employer must demonstrate that the change to the period of employment could not have been foreseen, and the crops or commodities will be in jeopardy prior to the expiration of an additional recruitment period. If the request is for a delay in the start date and is made after workers have departed for the employer's place of work, the CO may only approve the change if the employer includes with the request a written assurance signed and dated by the employer that all workers who are already traveling to the job site will be provided housing and subsistence, without cost to the workers, until work commences. Upon acceptance of an amendment, the CO will submit to the SWA any necessary modification to the job order.

Post-Acceptance Requirements

§ 655.150 Interstate clearance of job order.

(a) *SWA posts in interstate clearance system.* The SWA, on behalf of the employer, must promptly place the job order in interstate clearance to all States designated by the CO. At a minimum, the CO will instruct the SWA to transmit a copy of its active job order to all States listed in the job order as anticipated worksites covering the area of intended employment.

(b) *Duration of posting.* Each of the SWAs to which the job order was transmitted must keep the job order on its active file until 50 percent of the contract term has elapsed, and must refer each U.S. worker who applies (or on whose behalf an *Application for Temporary Labor Certification* is made) for the job opportunity.

§ 655.151 Newspaper advertisements.

(a) *How to place advertisements.*

(1) The employer must place an advertisement (in a language other than English, where the CO determines appropriate) on 2 separate days, which may be consecutive, one of which must be a Sunday (except as provided in paragraph (b) of this section), in a newspaper of general circulation serving the area of intended employment that has a reasonable distribution and is appropriate to the occupation and the workers likely to apply for the job opportunity. Newspaper advertisements must satisfy the requirements set forth in § 655.152.

(2) If the job opportunity is located in a rural area that does not have a newspaper with a Sunday edition, the CO may direct the employer, in place of a Sunday edition, to advertise in the regularly published daily edition with the widest circulation in the area of intended employment.

(b) *When to place advertisements.* The employer's obligation to place newspaper advertisements must occur during the period of time that the job order is being circulated by the SWA(s) for interstate clearance under § 655.150.

§ 655.152 Advertising requirements.

All advertising conducted to satisfy the required recruitment activities under § 655.151 must meet the requirements set forth in this section and must contain terms and conditions of employment which are not less favorable than those offered to the H–2A workers. All advertising must contain the following information:

(a) The employer's name, or in the event that a master application will be filed by an association, a statement indicating that the name and location of each member of the association can be obtained from the SWA of the State in which the advertisement is run;

(b) The geographic area of intended employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;

(c) A description of the job opportunity for which certification is sought with sufficient information to apprise U.S. workers of services or labor to be performed and the anticipated start and end dates of employment of the job opportunity;

(d) The wage offer, or in the event that there are multiple wage offers (such as where a master application will be filed by an association and/or where there are multiple crop activities for a single employer), the range of applicable wage offers and, where a master application will be filed by an association, a statement indicating that the rate(s) applicable to each employer can be obtained from the SWA of the State in which the advertisement is run;

(e) The three-fourths guarantee specified in § 655.122(i);

(f) If applicable, a statement that work tools, supplies, and equipment will be provided at no cost to the worker;

(g) A statement that housing will be made available at no cost to workers, including U.S. workers who cannot reasonably return to their permanent residence at the end of each working day;

(h) If applicable, a statement that transportation and subsistence expenses to the worksite will be provided by the employer or paid by the employer upon completion of 50 percent of the work contract, or earlier, if appropriate;

(i) A statement that the position is temporary and a specification of the total number of job openings the employer intends to fill;

(j) A statement directing applicants to report or apply for the job opportunity at the nearest office of the SWA of the State in which the advertisement; and if the worksite is remote relative to the population that is most likely to apply to the job opportunity, a alternative accessible to that population where an employer may conduct interviews; and

(k) Contact information for the applicable SWA and, if available, the job order number.

§ 655.153 Contact with former U.S. employees.

The employer must contact by mail or other effective means its former U.S. workers (except those who were dismissed for cause or abandoned the worksite) employed by the employer in the occupation at the place of employment during the previous year and solicit their return to the job. This contact must occur during the period of time that the job order is being circulated by the SWA(s) for interstate clearance and documentation maintained in the event of an audit.

§ 655.154 Additional positive recruitment.

(a) *Where to conduct additional recruitment.* The employer must conduct positive recruitment within a multistate region of traditional or expected labor supply where the CO finds that there are a significant number of qualified U.S. workers who, if recruited, would be willing to make themselves available for work at the time and place needed.

(b) *Additional requirements should be comparable to non-H–2A employers in the area.* The CO will ensure that the effort, including the location(s) and method(s) of the positive recruitment required of the potential H–2A employer must be no less than the normal recruitment efforts of non-H–2A agricultural employers of comparable or smaller size in the area of intended employment, and the kind and degree of recruitment efforts which the potential H–2A employer made to obtain foreign workers.

(c) *CO discretion to order additional positive recruitment.* The CO may require such additional recruitment as determined necessary.

(d) *Proof of recruitment.* The CO will specify the documentation or other supporting evidence that must be maintained by the employer as proof that the positive recruitment requirements were met.

§ 655.155 Referrals of U.S. workers.

SWAs may only refer for employment individuals who have been apprised of all the material terms and conditions of employment and have indicated, by accepting referral to the job opportunity, that he or she is qualified, able, willing, and available for employment.

§ 655.156 Recruitment report.

(a) *Requirements of a recruitment report.* The employer must prepare, sign, and date a written recruitment report. The recruitment report must be submitted on a date specified by the CO in the Notice of Acceptance set forth in § 655.141 and contain the following information:

(1) Identify the name of each recruitment source;

(2) State the name and contact information of each U.S. worker who applied or was referred to the job opportunity up to the date of the preparation of the recruitment report, and the disposition of each worker;

(3) Confirm that former U.S. employees were contacted and by what means; and

(4) If applicable, for each U.S. worker who applied for the position but was not hired, explain the lawful job-related reason(s) for not hiring the U.S. worker.

(b) *Duty to update recruitment report.* The employer must continue to maintain the recruitment report throughout the recruitment period including the 50 percent period. The updated report is not automatically submitted to the Department, but must be made available in the event of a post-certification audit or upon request by authorized representatives of the Secretary.

§ 655.157 Withholding of U.S. workers prohibited.

(a) *Filing a complaint.* Any employer who has reason to believe that a person

or entity has willfully and knowingly withheld U.S. workers prior to the arrival at the worksite of H–2A workers in order to force the hiring of U.S. workers during the recruitment period, as set forth in § 655.135(d), may submit a written complaint to the CO. The complaint must clearly identify the person or entity who the employer believes has withheld the U.S. workers, and must specify sufficient facts to support the allegation (*e.g.*, dates, places, numbers and names of U.S. workers) which will permit an investigation to be conducted by the CO.

(b) *Duty to investigate.* Upon receipt, the CO must immediately investigate the complaint. The investigation must include interviews with the employer who has submitted the complaint, the person or entity named as responsible for withholding the U.S. workers, and the individual U.S. workers whose availability has purportedly been withheld.

(c) *Duty to suspend the recruitment period.* Where the CO determines, after conducting the interviews required by paragraph (b), that the employer's complaint is valid and justified, the CO will immediately suspend the *Application for Temporary Labor Certification* of the recruitment period, as set forth in § 655.135(d), to the employer. The CO's determination is the final decision of the Secretary.

§ 655.158 Duration of positive recruitment.

Except as otherwise noted, the obligation to engage in positive recruitment described in §§ 655.150–655.154 shall terminate on the date H–2A workers depart for the employer's place of work.

Labor Certification Determinations

§ 655.160 Determination.

Except as otherwise noted in this paragraph, the CO will make a determination either to grant or deny the *Application for Temporary Employment Certification* no later than 30 calendar days before the date of need identified in the *Application for Temporary Labor Certification.* An *Application for Temporary Employment Certification* that are modified under § 655.144 or that otherwise does not meet the requirements for certification in this subpart are is not subject to the 30-day timeframe for certification.

§ 655.161 Criteria for certification.

(a) The criteria for certification include whether the employer has established the need for the agricultural services or labor to be performed on a temporary or seasonal basis; complied with the requirements of parts 653 and 654 of this chapter; complied with all of this subpart, including but not limited to the timeliness requirements in § 655.130(b); complied with the offered wage rate criteria in § 655.120; made all the assurances in § 655.135; and met all the recruitment obligations required by § 655.121 and § 655.152.

(b) In making a determination as to whether there are insufficient U.S. workers to fill the employer's job opportunity, the CO will count as available any U.S. worker referred by the SWA or any U.S. worker who applied (or on whose behalf an *Application for Temporary Employment Certification* is made) directly to the employer, but who was rejected by the employer for other than a lawful job-related reason or who has not been provided with a lawful job-related reason for rejection by the employer.

§ 655.162 Approved certification.

If temporary labor certification is granted, the CO will send the certified *Application for Temporary Employment Certification* and a Final Determination letter to the employer by means normally assuring next-day delivery and a copy, if appropriate, to the employer's agent or attorney.

§ 655.163 Certification fee.

A determination by the CO to grant an *Application for Temporary Employment Certification* in whole or in part will include a bill for the required certification fees. Each employer of H–2A workers under the *Application for Temporary Employment Certification* (except joint employer associations, which may not be assessed a fee in addition to the fees assessed to the members of the association) must pay in a timely manner a non-refundable fee upon issuance of the certification granting the *Application for Temporary Employment Certification* (in whole or in part), as follows:

(a) *Amount.* The *Application for Temporary Employment Certification* fee for each employer receiving a temporary agricultural labor certification is $100 plus $10 for each H–2A worker certified under the *Application for Temporary Labor Certification,* provided that the fee to an employer for each temporary agricultural labor certification received will be no greater than $1,000. There is no additional fee to the association filing the *Application for Temporary Employment Certification.* The fees must be paid by check or money order made payable to United States Department of Labor. In the case of an agricultural association acting as a joint employer applying on behalf of its H–2A employer members, the aggregate fees for all employers of H–2A workers under the *Application for Temporary Employment Certification* must be paid by one check or money order.

(b) *Timeliness.* Fees must be received by the CO no more than 30 days after the date of the certification. Non-payment or untimely payment may be considered a substantial violation subject to the procedures in § 655.182.

§ 655.164 Denied certification.

If temporary labor certification is denied, the Final Determination letter will be sent to the employer by means normally assuring next-day delivery and a copy, if appropriate, to the employer's agent or attorney. The Final Determination Letter will:

(a) State the reason(s) certification is denied, citing the relevant regulatory standards and/or special procedures;

(b) Offer the applicant an opportunity to request an expedited administrative review, or a de novo administrative hearing before an ALJ, of the denial. The notice must state that in order to obtain such a review or hearing, the employer, within 7 calendar days of the date of the notice, must file by facsimile (fax), or other means normally assuring next day delivery, a written request to the Chief ALJ of DOL (giving the address) and simultaneously serve a copy on the CO. The notice will also state that the employer may submit any legal arguments which the employer believes will rebut the basis of the CO's action; and

(c) State that if the employer does not request an expedited administrative judicial review or a de novo hearing before an ALJ within the 7 calendar days, the denial is final and the Department will not further consider that *Application for Temporary Employment Certification.*

§ 655.165 Partial certification.

The CO may issue a partial certification, reducing either the period of need or the number of H–2A workers being requested or both for certification, based upon information the CO receives during the course of processing the *Application for Temporary Employment Certification,* an audit, or otherwise. The number of workers certified will be reduced by one for each referred U.S. worker who is able, willing, and qualified, and who will be available at the time and place needed and has not been rejected for lawful job-related reasons, to perform the services or labor. If a partial labor certification is issued, the Final Determination letter will:

(a) State the reason(s) why either the period of need and/or the number of H–

2A workers requested has been reduced, citing the relevant regulatory standards and/or special procedures;

(b) Offer the applicant an opportunity to request an expedited administrative review, or a de novo administrative hearing before an ALJ, of the decision. The notice will state that in order to obtain such a review or hearing, the employer, within 7 calendar days of the date of the notice, will file by facsimile or other means normally assuring next day delivery a written request to the Chief ALJ of DOL (giving the address) and simultaneously serve a copy on the CO. The notice will also state that the employer may submit any legal arguments which the employer believes will rebut the basis of the CO's action; and

(c) State that if the employer does not request an expedited administrative judicial review or a de novo hearing before an ALJ within the 7 calendar days, the partial certification is final and the Department will not further consider that *Application for Temporary Employment Certification.*

§ 655.166 Appeal procedures.

If the employer timely requests an expedited administrative review or de novo hearing before an ALJ under § 655.165(c), the procedures at § 655.171 will be followed.

§ 655.167 Document retention requirements.

(a) *Entities required to retain documents.* All employers filing an *Application for Temporary Employment Certification* requesting H–2A agricultural workers under this subpart are required to retain the documents and records proving compliance with this subpart.

(b) *Period of required retention.* Records and documents must be retained for a period of 5 years from the date of certification of the *Application for Temporary Employment Certification* or from the date of determination if the *Application for Temporary Labor Certification* is denied or withdrawn.

(c) *Documents and records to be retained by all applicants.*

(1) Proof of recruitment efforts, including:

(i) Job order placement as specified in § 655.121;

(ii) Advertising as specified in § 655.152, or, if used, professional, trade, or ethnic publications;

(iii) Contact with former U.S. workers as specified in § 655.153; or

(iv) Additional positive recruitment efforts (as specified in § 655.154).

(2) Substantiation of information submitted in the recruitment report prepared in accordance with § 655.156, such as evidence of nonapplicability of contact of former employees as specified in § 655.153.

(3) The final recruitment report and any supporting resumes and contact information as specified in § 655.156(b).

(4) Proof of workers' compensation insurance or State law coverage as specified in § 655.122(e).

(5) Records of each worker's earnings as specified in § 655.122(j).

(6) The work contract or a copy of the *Application for Temporary Employment Certification* as defined in 29 CFR 501.10 and specified in § 655.122(q).

(d) *Additional retention requirement for associations filing Application for Temporary Employment Certification.* In addition to the documents specified in paragraph (c) above, Associations must retain documentation substantiating their status as an employer or agent, as specified in § 655.131.

Post Certification

§ 655.170 Extensions.

An employer may apply for extensions of the period of employment in the following circumstances.

(a) *Short-term extension.* Employers seeking extensions of 2 weeks or less of the certified *Application for Temporary Employment Certification* must apply directly to DHS for approval. If granted, the *Application for Temporary Employment Certification* will be deemed extended for such period as is approved by DHS.

(b) *Long-term extension.* Employers seeking extensions of more than 2 weeks may apply to the CO. Such requests must be related to weather conditions or other factors beyond the control of the employer (which may include unforeseen changes in market conditions). Such requests must be supported in writing, with documentation showing that the extension is needed and that the need could not have been reasonably foreseen by the employer. The CO will notify the employer of the decision in writing if time allows, or will otherwise notify the employer of the decision. The CO will not grant an extension where the total work contract period under that *Application for Temporary Employment Certification* and extensions would be 12 months or more, except in extraordinary circumstances. The employer may not appeal a denial of a request for an extension.

§ 655.171 Appeals.

Where authorized in this subpart, employers may request an administrative review or de novo hearing before an ALJ of a decision by the CO. In such cases, the CO will send a copy of the OFLC administrative file to the Chief ALJ by means normally assuring next-day delivery. The Chief ALJ will immediately assign an ALJ (which may be a panel of such persons designated by the Chief ALJ from the Board of Alien Labor Certification Appeals (BALCA).

(a) *Administrative review.* Where the employer has requested administrative review, within 5 business days after receipt of the ETA administrative file the ALJ will, on the basis of the written record and after due consideration of any written submissions (which may not include new evidence) from the parties involved or amici curiae, either affirm, reverse, or modify the CO's decision, or remand to the CO for further action. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, the CO, the OFLC Administrator and DHS by means normally assuring next-day delivery. The ALJ's decision is the final decision of the Secretary.

(b) *De novo hearing.*

(1) *Conduct of hearing.* Where the employer has requested a de novo hearing the procedures in 29 CFR part 18 apply to such hearings, except that:

(i) The appeal will not be considered to be a complaint to which an answer is required;

(ii) The ALJ will ensure that the hearing is scheduled to take place within 5 calendar days after the ALJ's receipt of the OFLC administrative file, if the employer so requests, and will allow for the introduction of new evidence; and

(iii) The ALJ's decision must be rendered within 10 calendar days after the hearing.

(2) *Decision.* After a de novo hearing, the ALJ must affirm, reverse, or modify the CO's determination, or remand to the CO for further action. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, CO, OFLC Administrator and DHS by means normally assuring next-day delivery. The ALJ's decision is the final decision of the Secretary.

§ 655.172 Withdrawal of job order and application for temporary employment certification.

(a) Employers may withdraw a job order from intrastate posting if the employer no longer plans to file an H–2A *Application for Temporary Labor Certification.* However, a withdrawal of a job order does not nullify existing obligations to those workers recruited in

connection with the placement of a job order pursuant to this subpart or the filing of an *Application for Temporary Employment Certification.*

(b) Employers may withdraw an *Application for Temporary Labor Certification* once it has been formally accepted by the NPC. However, the employer is still obligated to comply with the terms and conditions of employment contained in the *Application for Temporary Labor Certification* with respect to workers recruited in connection with that application.

§ 655.173 Setting meal charges; petition for higher meal charges.

(a) *Meal charges.* Until a new amount is set under this paragraph, an employer may charge workers up to $9.90 for providing them with three meals per day. The maximum charge allowed by this paragraph (a) will be changed annually by the same percentage as the 12 month percentage change for the Consumer Price Index for all Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments will be effective on the date of their publication by the OFLC Administrator as a Notice in the **Federal Register.** When a charge or deduction for the cost of meals would bring the employee's wage below the minimum wage set by the FLSA at 29 U.S.C. 206 the charge or deduction must meet the requirements of 29 U.S.C. 203(m) of the FLSA, including the recordkeeping requirements found at 29 CFR 516.27.

(b) *Filing petitions for higher meal charges.* The employer may file a petition with the CO to charge more than the applicable amount for meal charges if the employer justifies the charges and submits to the CO the documentation required by paragraph (b)(1) of this section.

(1) Documentation submitted must include the cost of goods and services directly related to the preparation and serving of meals, the number of workers fed, the number of meals served and the number of days meals were provided. The cost of the following items may be included: Food; kitchen supplies other than food, such as lunch bags and soap; labor costs that have a direct relation to food service operations, such as wages of cooks and dining hall supervisors; fuel, water, electricity, and other utilities used for the food service operation; and other costs directly related to the food service operation. Charges for transportation, depreciation, overhead and similar charges may not be included. Receipts and other cost records for a representative pay period must be retained and must be available for inspection by the CO for a period of 1 year.

(2) The employer may begin charging the higher rate upon receipt of a favorable decision from the CO unless the CO sets a later effective date in the decision.

(c) *Appeal rights.* In the event the employer's petition for a higher meal charge is denied in whole or in part, the employer may appeal the denial. Appeals will be filed with the Chief ALJ, pursuant to § 655.171.

§ 655.174 Public disclosure.

The Department will maintain an electronic file accessible to the public with information on all employers applying for temporary agricultural labor certifications. The database will include such information as the number of workers requested, the date filed, the date decided, and the final disposition.

Integrity Measures

§ 655.180 Audit.

The Department will conduct audits of *Application for Temporary Employment Certification* for which certifications have been granted.

(a) *Discretion.* The *Application for Temporary Employment Certification* selected for audit will be chosen within the sole discretion of the Department.

(b) *Audit letter.* Where an *Application for Temporary Employment Certification* is selected for audit, the CO will issue an audit letter to the employer and a copy, if appropriate, to the employer's agent or attorney. The audit letter will:

(1) State the documentation that must be submitted by the employer;

(2) Specify a date no more than 30 days from the date of the audit letter by which the required documentation must be received by the CO; and

(3) Advise that failure to comply with the audit process may result in the revocation of the certification or program debarment.

(c) *Supplemental information request.* During the course of the audit examination, the CO may request supplemental information and/or documentation from the employer in order to complete the audit.

(d) *Potential referrals.* In addition to steps in this subpart, the CO may determine to provide the audit findings and underlying documentation to DHS or another appropriate enforcement agency. The CO will refer any findings that an employer discouraged an eligible U.S. worker from applying, or failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, to the Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices.

§ 655.181 Revocation.

(a) *Basis for DOL revocation.* The CO, in consultation with the OFLC Administrator, may revoke a temporary agricultural labor certification approved under this subpart, if the CO finds:

(1) The issuance of the temporary agricultural labor certification was not justified based on criteria set forth under 8 U.S.C. 1188;

(2) The employer substantially violated a material term or condition of the approved temporary agricultural labor certification, as defined in § 655.182(d);

(3) The employer failed to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection, audit (as discussed in § 655.180), or law enforcement function under 8 U.S.C. 1188, 29 CFR part 501, or this subpart; or

(4) The employer failed to comply with one or more sanctions or remedies imposed by the WHD, or with one or more decisions or orders of the Secretary or a court order secured by the Secretary under 8 U.S.C. 1188, 29 CFR part 501, or this subpart.

(b) *DOL procedures for revocation.*

(1) *Notice of Revocation.* If the CO makes a determination to revoke an employer's temporary labor certification, the CO will send to the employer (and its attorney or agent) a Notice of Revocation. The Notice will contain a detailed statement of the grounds for the revocation, and it will inform the employer of its right to submit rebuttal evidence or to appeal. If the employer does not file rebuttal evidence or an appeal within 14 days of the date of the Notice of Revocation, the Notice is the final decision of the Secretary and will take effect immediately at the end of the 14-day period.

(2) *Rebuttal.* The employer may submit evidence to rebut the grounds stated in the Notice of Revocation within 14 calendar days of the date the Notice is issued. If rebuttal evidence is timely filed by the employer, the CO will inform the employer of the CO's final determination on the revocation within 14 calendar days of receiving the rebuttal evidence. If the CO determines that the certification should be revoked, the CO will inform the employer of its right to appeal according to the procedures of § 655.171. The employer must file the appeal within 10 calendar days after the CO's final determination, or the CO's determination is the final

decision of the Secretary and will take effect immediately at the end of the 10-day period.

(3) *Appeal.* An employer may appeal a Notice of Revocation, or a final determination of the CO after the review of rebuttal evidence, according to the appeal procedures of § 655.171. The ALJ's decision is the final decision of the Secretary.

(4) *Stay.* The timely filing of rebuttal evidence or an administrative appeal will stay the revocation pending the outcome of those proceedings.

(5) *Decision.* If the temporary agricultural labor certification is revoked, the CO will send a copy of the final decision of the Secretary to DHS and the Department of State (DOS).

(c) *Employer's obligations in the event of revocation.* If an employer's temporary agricultural labor certification is revoked pursuant to this section, the employer is responsible for:

(1) Reimbursement of actual inbound transportation and subsistence expenses, as if the worker meets the requirements for payment under § 655.122(h)(1);

(2) The worker's outbound transportation expenses, as if the worker meets the requirements for payment under § 655.122(h)(2);

(3) Payment to the worker of the amount due under the three-fourths guarantee as required by § 655.122(i); and

(4) Any other wages, benefits, and working conditions due or owing to the worker under this subpart.

§ 655.182 Debarment.

(a) *Debarment of an employer.* The OFLC Administrator may debar an employer or any successor in interest to that employer from receiving future labor certifications under this subpart, subject to the time limits set forth in paragraph (c) of this section, if the OFLC Administrator finds that the employer substantially violated a material term or condition of its temporary labor certification, with respect to H–2A workers, workers in corresponding employment, or U.S. workers improperly rejected for employment, or improperly laid off or displaced.

(b) *Debarment of an agent or attorney.* The OFLC Administrator may debar an agent or attorney from participating in any action under 8 U.S.C. 1188, this subpart, or 29 CFR part 501, if the OFLC Administrator finds that the agent or attorney participated in, had knowledge of, or had reason to know of, an employer's substantial violation. The OFLC Administrator may not issue future labor certifications under this subpart to any employer represented by a debarred agent or attorney, subject to the time limits set forth in paragraph (c) of this section.

(c) *Statute of Limitations and Period of Debarment.*

(1) The OFLC Administrator must issue any Notice of Debarment no later than 2 years after the occurrence of the violation.

(2) No employer, attorney, or agent may be debarred under this subpart for more than 3 years from the date of the final agency decision.

(d) *Definition of violation.* For the purposes of this section, a violation includes:

(1) One or more acts of commission or omission on the part of the employer or the employer's agent which involve:

(i) Failure to pay or provide the required wages, benefits or working conditions to the employer's H–2A workers and/or workers in corresponding employment;

(ii) Failure, except for lawful, job-related reasons, to offer employment to qualified U.S. workers who applied for the job opportunity for which certification was sought;

(iii) Failure to comply with the employer's obligations to recruit U.S. workers;

(iv) Improper layoff or displacement of U.S. workers or workers in corresponding employment;

(v) Failure to comply with one or more sanctions or remedies imposed by the WHD Administrator for violation(s) of contractual or other H–2A obligations, or with one or more decisions or orders of the Secretary or a court under 8 U.S.C. 1188, 29 CFR part 501, or this subpart;

(vi) Impeding an investigation of an employer under 8 U.S.C. 1188 or 29 CFR part 501, or an audit under § 655.180 of this subpart;

(vii) Employing an H–2A worker outside the area of intended employment, in an activity/activities not listed in the job order, or outside the validity period of employment of the job order, including any approved extension thereof;

(viii) A violation of the requirements of § 655.135(j) and (k);

(ix) A violation of any of the provisions listed in 29 CFR 501.4(a); or

(x) A single heinous act showing such flagrant disregard for the law that future compliance with program requirements cannot reasonably be expected;

(2) The employer's failure to pay a necessary fee in a timely manner;

(3) Fraud involving the *Application for Temporary Employment Certification;* or

(4) The employer making a material misrepresentation of fact during the application process.

(e) *Determining whether a violation is substantial.* In determining whether a violation is so substantial so as to merit debarment, the factors the CO may consider include, but are not limited to, the following:

(1) Previous history of violation(s) of 8 U.S.C. 1188, 29 CFR part 501, or this subpart;

(2) The number of H–2A workers, workers in corresponding employment, or U.S. workers who were and/or are affected by the violation(s);

(3) The gravity of the violation(s);

(4) Efforts made in good faith to comply with 8 U.S.C. 1188, 29 CFR part 501, and this subpart;

(5) Explanation from the person charged with the violation(s);

(6) Commitment to future compliance, taking into account the public health, interest, or safety, and whether the person has previously violated 8 U.S.C. 1188;

(7) The extent to which the violator achieved a financial gain due to the violation(s), or the potential financial loss or potential injury to the worker(s).

(f) *Debarment procedure.*

(1) *Notice of Debarment.* If the CO makes a determination to debar an employer, attorney, or agent, the CO will send that person a Notice of Debarment. The Notice will state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment, and the Notice will state the person's opportunity to request a debarment hearing. The Notice will state that, to obtain such a hearing, the debarred party must, within 30 calendar days of the date of the Notice, file a written request to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street, NW., Suite 400–N, Washington, DC 20001–8002, and simultaneously serve a copy to the Administrator, OFLC. The debarment will take effect 30 days from the date the Notice of Debarment is issued, unless a request for review is properly filed within 30 days from the issuance of the Notice of Debarment. The timely filing of an administrative appeal stays the debarment pending the outcome of the appeal.

(2) *Hearing.* Within 10 days of receipt of the request for a hearing, the OFLC Administrator will send a certified copy of the ETA case file to the Chief ALJ by means normally assuring next-day delivery. The Chief ALJ will immediately assign an ALJ to conduct the hearing. The procedures in 29 CFR part 18 apply to such hearings, except that the request for a hearing will not be

considered to be a complaint to which an answer is required.

(3) *Decision.* After the hearing, the ALJ must affirm, reverse, or modify the OFLC Administrator's determination. The ALJ will prepare the decision within 60 days after completion of the hearing and closing of the record. The ALJ's decision will be provided immediately to the employer, OFLC Administrator, DHS, and DOS by means normally assuring next-day delivery. The ALJ's decision is the final decision of the Secretary, unless either party, within 30 calendar days of the ALJ's decision, seeks review of the decision with the Administrative Review Board (ARB).

(4) Review by the ARB.

(i) Any party wishing review of the decision of an ALJ must, within 30 days of the decision of the ALJ, petition the ARB to review the decision. Copies of the petition must be served on all parties and on the ALJ. The ARB will decide whether to accept the petition within 30 days of receipt. If the ARB declines to accept the petition, or if the ARB does not issue a notice accepting a petition within 30 days after the receipt of a timely filing of the petition, the decision of the ALJ will be deemed the final agency action. If a petition for review is accepted, the decision of the ALJ will be stayed unless and until the ARB issues an order affirming the decision. The ARB must serve notice of its decision to accept or not to accept the petition upon the ALJ and upon all parties to the proceeding in person or by certified mail.

(ii) Upon receipt of the ARB's notice to accept the petition, the Office of Administrative Law Judges will promptly forward a copy of the complete hearing record to the ARB.

(iii) Where the ARB has determined to review such decision and order, the ARB will notify each party of the issue(s) raised, the form in which submissions must be made (*e.g.,* briefs or oral argument), and the time within which such presentation must be submitted.

(5) *ARB Decision.* The ARB's final decision must be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ, in person or by certified mail. If the ARB fails to provide a decision within 90 days from the notice granting the petition, the ALJ's decision will be the final decision of the Secretary.

(g) *Concurrent debarment jurisdiction.* OFLC and the WHD have concurrent jurisdiction to impose a debarment remedy under this section or under 29 CFR 501.20. When considering debarment, OFLC and the WHD may inform one another and may coordinate their activities, so that a specific violation for which debarment is imposed is cited in a single debarment proceeding. Copies of final debarment decisions will be forwarded to DHS promptly.

(h) *Debarment involving members of associations.* If the OFLC Administrator determines that an individual employer-member of a joint employer association has committed a substantial violation, the debarment determination will apply only to that member unless the OFLC Administrator determines that the association or another association member participated in the violation, in which case the debarment will be invoked against the association or other complicit association member(s) as well.

(i) *Debarment involving associations acting as joint employers.* If the OFLC Administrator determines that an association acting as a joint employer with its members has committed a substantial violation, the debarment determination will apply only to the association, and will not be applied to any individual employer-member of the association. However, if the OFLC Administrator determines that the member participated in, had knowledge of, or had reason to know of the violation, the debarment may be invoked against the complicit association member as well. An association debarred from the H–2A temporary labor certification program will not be permitted to continue to file as a joint employer with its members during the period of the debarment.

(j) *Debarment involving associations acting as sole employers.* If the OFLC Administrator determines that an association acting as a sole employer has committed a substantial violation, the debarment determination will apply only to the association and any successor in interest to the debarred association.

§ 655.183 Less than substantial violations.

(a) *Requirement of special procedures.* If the OFLC Administrator determines that a less than substantial violation has occurred, but the OFLC Administrator has reason to believe that past actions on the part of the employer (or agent or attorney) may have had and may continue to have a chilling or otherwise negative effect on the recruitment, employment, and retention of U.S. workers, the OFLC Administrator may require the employer to conform to special procedures before and after the temporary labor certification determination. These special procedures may include special on-site positive recruitment and streamlined interviewing and referral techniques. The special procedures are designed to enhance U.S. worker recruitment and retention in the next year as a condition for receiving a temporary agricultural labor certification. Such requirements will be reasonable; will not require the employer to offer better wages, working conditions, and benefits than those specified in § 655.122; and will be no more than deemed necessary to assure employer compliance with the test of U.S. worker availability and adverse effect criteria of this subpart.

(b) *Notification of required special procedures.* The OFLC Administrator will notify the employer (or agent or attorney) in writing of the special procedures that will be required in the coming year. The notification will state the reasons for the imposition of the requirements, state that the employer's agreement to accept the conditions will constitute inclusion of them as bona fide conditions and terms of a temporary agricultural labor certification, and will offer the employer an opportunity to request an administrative review or a de novo hearing before an ALJ. If an administrative review or de novo hearing is requested, the procedures prescribed in § 655.171 will apply.

(c) *Failure to comply with special procedures.* If the OFLC Administrator determines that the employer has failed to comply with special procedures required pursuant to paragraph (a) of this section, the OFLC Administrator will send a written notice to the employer, stating that the employer's otherwise affirmative H–2A certification determination will be reduced by 25 percent of the total number of H–2A workers requested (which cannot be more than those requested in the previous year) for a period of 1 year. Notice of such a reduction in the number of workers requested will be conveyed to the employer by the OFLC Administrator in the OFLC Administrator's written certification determination. The notice will offer the employer an opportunity to request administrative review or a de novo hearing before an ALJ. If administrative review or a de novo hearing is requested, the procedures prescribed in § 655.171 will apply, provided that if the ALJ affirms the OFLC Administrator's determination that the employer has failed to comply with special procedures required by paragraph (a) of this section, the reduction in the number of workers requested will be 25 percent of the total number of H–2A workers requested (which cannot be more than those

requested in the previous year) for a period of 1 year.

§ 655.184 Applications involving fraud or willful misrepresentation.

(a) *Referral for investigation.* If the CO discovers possible fraud or willful misrepresentation involving an *Application for Temporary Labor Certification,* the CO may refer the matter to the DHS and the Department's Office of the Inspector General for investigation.

(b) *Sanctions.* If the WHD, a court or the DHS determines that there was fraud or willful misrepresentation involving an *Application for Temporary Labor Certification* and certification has been granted, a finding under this paragraph will be cause to revoke the certification. The finding of fraud or willful misrepresentation may also constitute a debarrable violation under § 655.182.

§ 655.185 Job service complaint system; enforcement of work contracts.

(a) *Filing with DOL.* Complaints arising under this subpart must be filed through the Job Service Complaint System, as described in 20 CFR part 658, subpart E. Complaints involving allegations of fraud or misrepresentation must be referred by the SWA to the CO for appropriate handling and resolution. Complaints that involve worker contracts must be referred by the SWA to the WHD for appropriate handling and resolution, as described in 29 CFR part 501. As part of this process, the WHD may report the results of its investigation to the OFLC Administrator for consideration of employer penalties or such other action as may be appropriate.

(b) *Filing with the Department of Justice.* Complaints alleging that an employer discouraged an eligible U.S. worker from applying, failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, or discovered violations involving the same, will be referred to the U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices (OSC), in addition to any activity, investigation, and/or enforcement action taken by ETA or a SWA. Likewise, if OSC becomes aware of a violation of these regulations, it may provide such information to the appropriate SWA and the CO.

TITLE 29—LABOR

Revise part 501 to read as follows:

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

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Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

Subpart A—General Provisions

§ 501.0 Introduction.

These regulations cover the enforcement of all contractual obligations, including requirements under 8 U.S.C. 1188 and 20 CFR part 655, subpart B applicable to the employment of H–2A workers and workers in corresponding employment, including obligations to offer employment to eligible United States (U.S.) workers and to not lay off or displace U.S. workers in a manner prohibited by these regulations or 20 CFR part 655, subpart B.

§ 501.1 Purpose and scope.

(a) *Statutory standards.* 8 U.S.C. 1188 provides that:

(1) A petition to import an alien as an H–2A worker (as defined at 8 U.S.C. 1188) may not be approved by the Secretary of the Department of Homeland Security (DHS) unless the petitioner has applied to the U.S. Secretary of Labor (Secretary) for a certification that:

(i) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(ii) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed.

(2) The Secretary is authorized to take actions that assure compliance with the terms and conditions of employment under 8 U.S.C. 1188, the regulations at 20 CFR part 655, subpart B, or these regulations, including imposing appropriate penalties, and seeking injunctive relief and specific performance of contractual obligations. *See* 8 U.S.C. 1188(g)(2).

(b) *Role of the Employment and Training Administration (ETA).* The issuance and denial of labor certification under 8 U.S.C. 1188 has been delegated by the Secretary to ETA, an agency within the U.S. Department of Labor (the Department or DOL), who in turn has delegated that authority to the Office of Foreign Labor Certification (OFLC). In general, matters concerning the obligations of an employer of H–2A workers related to the labor certification process are administered by OFLC, including obligations and assurances made by employers, overseeing employer recruitment and assuring program integrity. The regulations pertaining to the issuance, denial, and

revocation of labor certification for temporary foreign workers by the OFLC are found in 20 CFR part 655, subpart B.

(c) *Role of the Employment Standards Administration (ESA), Wage and Hour Division (WHD).* Certain investigatory, inspection, and law enforcement functions to carry out the provisions under 8 U.S.C. 1188 have been delegated by the Secretary to the WHD. In general, matters concerning the obligations under a work contract between an employer of H–2A workers and the H–2A workers and workers in corresponding employment are enforced by WHD, including whether employment was offered to U.S. workers as required under 8 U.S.C. 1188 or 20 CFR part 655, subpart B, or whether U.S. workers were laid off or displaced in violation of program requirements. Included within the enforcement responsibility of WHD are such matters as the payment of required wages, transportation, meals, and housing provided during the employment. The WHD has the responsibility to carry out investigations, inspections, and law enforcement functions and in appropriate instances to impose penalties, to debar from future certifications, to recommend revocation of existing certification(s), and to seek injunctive relief and specific performance of contractual obligations, including recovery of unpaid wages and reinstatement of laid off or displaced U.S. workers.

(d) *Effect of regulations.* The enforcement functions carried out by the WHD under 8 U.S.C. 1188, 20 CFR part 655, subpart B, and these regulations apply to the employment of any H–2A worker and any other worker in corresponding employment as the result of any *Application for Temporary Employment Certification* filed with the Department on and after the effective date of these regulations.

§ 501.2 Coordination between Federal agencies.

(a) Complaints received by ETA or any State Workforce Agency (SWA) regarding contractual H–2A labor standards between the employer and the employee will be immediately forwarded to the appropriate WHD office for appropriate action under these regulations.

(b) Information received in the course of processing applications, program integrity measures, or enforcement actions may be shared between OFLC and WHD, or other agencies as appropriate, including the Department of State (DOS) and DHS, for enforcement purposes.

(c) A specific violation for which debarment is imposed will be cited in a single debarment proceeding. OFLC and the WHD may coordinate their activities to achieve this result. Copies of final debarment decisions will be forwarded to the DHS promptly.

§ 501.3 Definitions.

(a) *Definitions of terms used in this part.*

Administrative Law Judge (ALJ). A person within the Department's Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 3105.

Adverse effect wage rate (AEWR). The annual weighted average hourly wage for field and livestock workers (combined) in the States or regions as published annually by the U.S. Department of Agriculture (USDA) based on its quarterly wage survey.

Agent. A legal entity or person, such as an association of agricultural employers, or an attorney for an association, that:

(1) Is authorized to act on behalf of the employer for temporary agricultural labor certification purposes;

(2) Is not itself an employer, or a joint employer, as defined in this section with respect to a specific *Application for Temporary Labor Certification;* and

(3) Is not under suspension, debarment, expulsion, or disbarment from practice before any court, the Department, the Executive Office for Immigration Review, or DHS under 8 CFR 292.3 or 1003.101.

Agricultural association. Any nonprofit or cooperative association of farmers, growers, or ranchers (including but not limited to processing establishments, canneries, gins, packing sheds, nurseries, or other similar fixed-site agricultural employers), incorporated or qualified under applicable State law, that recruits, solicits, hires, employs, furnishes, houses, or transports any worker that is subject to 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part. An agricultural association may act as the agent of an employer, or may act as the sole or joint employer of any worker subject to 8 U.S.C. 1188.

Area of intended employment. The geographic area within normal commuting distance of the place of the job opportunity for which the certification is sought. There is no rigid measure of distance that constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (*e.g.,* average commuting times, barriers to reaching the worksite, quality of the regional transportation network). If the place of intended employment is within a Metropolitan Statistical Area (MSA), including a multistate MSA, any place within the MSA is deemed to be within normal commuting distance of the place of intended employment. The borders of MSAs are not controlling in the identification of the normal commuting area; a location outside of an MSA may be within normal commuting distance of a location that is inside (*e.g.,* near the border of) the MSA.

Corresponding employment. The employment of workers who are not H–2A workers by an employer who has an approved H–2A *Application for Temporary Labor Certification* in any work included in the job order, or in any agricultural work performed by the H–2A workers. To qualify as corresponding employment the work must be performed during the validity period of the job order, including any approved extension thereof.

Date of need. The first date the employer requires the services of H–2A workers as indicated in the *Application for Temporary Employment Certification.*

Employee. A person who is engaged to perform work for an employer, as defined under the general common law of agency. Some of the factors relevant to the determination of employee status include: The hiring party's right to control the manner and means by which the work is accomplished; the skill required to perform the work; the source of the instrumentalities and tools for accomplishing the work; the location of the work; the hiring party's discretion over when and how long to work; and whether the work is part of the regular business of the hiring party. Other applicable factors may be considered and no one factor is dispositive.

Employer. A person (including any individual, partnership, association, corporation, cooperative, firm, joint stock company, trust, or other organization with legal rights and duties) that:

(1) Has a place of business (physical location) in the U.S. and a means by which it may be contacted for employment;

(2) Has an employer relationship (such as the ability to hire, pay, fire, supervise or otherwise control the work of employee) with respect to an H–2A worker or a worker in corresponding employment; and

(3) Possesses, for purposes of filing an *Application for Temporary Employment Certification,* a valid Federal Employer Identification Number (FEIN).

Federal holiday. Legal public holiday as defined at 5 U.S.C. 6103.

Fixed-site employer. Any person engaged in agriculture who meets the definition of an employer, as those terms are defined in this part, who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed, nursery, or other similar fixed-site location where agricultural activities are performed and who recruits, solicits, hires, employs, houses, or transports any worker subject to 8 U.S.C. 1188, 20 CFR part 655, subpart B or this part, as incident to or in conjunction with the owner's or operator's own agricultural operation.

H–2A Labor Contractor (H–2ALC). Any person who meets the definition of employer under this part and is not a fixed-site employer, an agricultural association, or an employee of a fixed-site employer or agricultural association, as those terms are used in this part, who recruits, solicits, hires, employs, furnishes, houses, or transports any worker subject to 8 U.S.C. 1188, 20 CFR part 655, subpart B or this part.

H–2A worker. Any temporary foreign worker who is lawfully present in the U.S. and authorized by DHS to perform agricultural labor or services of a temporary or seasonal nature pursuant to 8 U.S.C. 1101(a)(15)(H)(ii)(a).

Job offer. The offer made by an employer or potential employer of H–2A workers to both U.S. and H–2A workers describing all the material terms and conditions of employment, including those relating to wages, working conditions, and other benefits.

Job opportunity. Full-time employment at a place in the U.S. to which U.S. workers can be referred.

Job order. The document containing the terms and conditions of employment that is posted by the SWA on its inter- and intra-state job clearance systems based on the employer's Form ETA–790, as submitted to the SWA.

Joint employment. Where two or more employers each have sufficient definitional indicia of an employer to be considered the employer of a worker, those employers will be considered to jointly employ that worker. Each employer in a joint employment relationship to a worker is considered a joint employer of that worker.

Prevailing wage. Wage established pursuant to 20 CFR 653.501(d)(4).

State Workforce Agency (SWA). State government agency that receives funds pursuant to the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) to administer the State's public labor exchange activities.

Successor in interest. Where an employer has violated 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations, and has ceased doing business or cannot be located for purposes of enforcement, a successor in interest to that employer may be held liable for the duties and obligations of the violating employer in certain circumstances. The following factors, as used under Title VII of the Civil Rights Act and the Vietnam Era Veterans' Readjustment Assistance Act, may be considered in determining whether an employer is a successor in interest; no one factor is dispositive, but all of the circumstances will be considered as a whole:

(1) Substantial continuity of the same business operations;
(2) Use of the same facilities;
(3) Continuity of the work force;
(4) Similarity of jobs and working conditions;
(5) Similarity of supervisory personnel;
(6) Whether the former management or owner retains a direct or indirect interest in the new enterprise;
(7) Similarity in machinery, equipment, and production methods;
(8) Similarity of products and services; and
(9) The ability of the predecessor to provide relief.

For purposes of debarment only, the primary consideration will be the personal involvement of the firm's ownership, management, supervisors, and others associated with the firm in the violations at issue.

Temporary agricultural labor certification. Certification made by the OFLC Administrator with respect to an employer seeking to file with DHS a visa petition to employ one or more foreign nationals as an H–2A worker, pursuant to 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(a) and (c), and 1188.

United States (U.S.). The continental U.S., Alaska, Hawaii, the Commonwealth of Puerto Rico, and the territories of Guam, the Virgin Islands, and, as of the transition program effective date, as defined in the Consolidated Natural Resources Act of 2008, Public Law 110–229, Title VII, the Commonwealth of the Northern Mariana Islands.

United States worker (U.S. worker). A worker who is:

(1) A citizen or national of the U.S.; or

(2) An alien who is lawfully admitted for permanent residence in the U.S., is admitted as a refugee under 8 U.S.C. 1157, is granted asylum under 8 U.S.C. 1158, or is an immigrant otherwise authorized (by the INA or by DHS) to be employed in the U.S.; or

(3) An individual who is an authorized alien (as defined in 8 U.S.C. 1324a(h)(3)) with respect to the employment in which the worker is engaging.

WHD Administrator. The Administrator of the Wage and Hour Division (WHD), and such authorized representatives as may be designated to perform any of the functions of the WHD Administrator under this part.

Wages. All forms of cash remuneration to a worker by an employer in payment for personal services.

Work contract. All the material terms and conditions of employment relating to wages, hours, working conditions, and other benefits, including those required by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part. The contract between the employer and the worker may be in the form of a separate written document. In the absence of a separate written work contract incorporating the required terms and conditions of employment, agreed to by both the employer and the worker, the work contract at a minimum will be the terms of the job order and any obligations required under 8 U.S.C. 1188, 20 CFR part 655, subpart B or this part.

(b) *Definition of agricultural labor or services.* For the purposes of this part, agricultural labor or services, pursuant to 8 U.S.C. 1101(a)(15)(H)(ii)(a), is defined as: agricultural labor as defined and applied in sec. 3121(g) of the Internal Revenue Code of 1986 at 26 U.S.C. 3121(g); agriculture as defined and applied in sec. 3(f) of the Fair Labor Standards Act of 1938 (FLSA) at 29 U.S.C. 203(f); the pressing of apples for cider on a farm; logging employment; reforestation activities; or pine straw activities.

(1) *Agricultural labor* for the purpose of paragraph (b) of this section means all service performed:

(i) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(ii) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the

Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(v) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in paragraph (b)(1)(iv) but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this paragraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;

(vi) The provisions of paragraphs (b)(1)(iv) and (b)(1)(v) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(vii) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this section, the term farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(2) *Agriculture.* For purposes of paragraph (b) of this section, agriculture means farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in 1141j(g) of title 12, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. *See* sec. 29 U.S.C. 203(f), as amended (sec. 3(f) of the FLSA, as codified). Under 12 U.S.C. 1141j(g) agricultural commodities include, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: gum spirits of turpentine and gum rosin. In addition as defined in 7 U.S.C. 92, gum spirits of turpentine means spirits of turpentine made from gum (oleoresin) from a living tree and gum rosin means rosin remaining after the distillation of gum spirits of turpentine.

(3) *Apple pressing for cider.* The pressing of apples for cider on a farm, as the term farm is defined and applied in sec. 3121(g) of the Internal Revenue Code at 26 U.S.C. 3121(g) or as applied in sec. 3(f) of FLSA at 29 U.S.C. 203(f), pursuant to 29 CFR part 780.

(4) *Logging employment.* Operations associated with felling and moving trees and logs from the stump to the point of delivery, such as, but not limited to, marking danger trees and trees/logs to be cut to length, felling, limbing, bucking, debarking, chipping, yarding, loading, unloading, storing, and transporting machines, equipment and personnel to, from and between logging sites.

(5) *Reforestation activities.* Predominately manual forestry work that includes, but is not limited to, tree planting, brush clearing and pre-commercial tree thinning.

(6) *Pine straw activities.* Certain activities predominately performed using hand tools, including but not limited to the raking, gathering, baling, and loading of pine straw that is a product of pine trees that are managed using agricultural or horticultural/silvicultural techniques.

(c) *Definition of a temporary or seasonal nature.* For the purposes of this part, employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year.

§ 501.4 Discrimination prohibited.

(a) A person may not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person who has:

(1) Filed a complaint under or related to 8 U.S.C. 1188 or these regulations;

(2) Instituted or caused to be instituted any proceedings related to 8 U.S.C. 1188 or these regulations;

(3) Testified or is about to testify in any proceeding under or related to 8 U.S.C. 1188 or these regulations;

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to 8 U.S.C. 1188, or to this subpart or any other Department regulation promulgated pursuant to 8 U.S.C. 1188; or

(5) Exercised or asserted on behalf of himself or others any right or protection afforded by 8 U.S.C. 1188 or these regulations.

(b) Allegations of discrimination against any person under paragraph (a) of this section will be investigated by the WHD. Where the WHD has determined through investigation that such allegations have been substantiated, appropriate remedies may be sought. The WHD may assess civil money penalties, seek injunctive relief, and/or seek additional remedies necessary to make the employee whole as a result of the discrimination, as appropriate, initiate debarment proceedings, and recommend to OFLC revocation of any such violator's current labor certification. Complaints alleging discrimination against workers or immigrants based on citizenship or immigration status may also be forwarded by the WHD to the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices.

§ 501.5 Waiver of rights prohibited.

A person may not seek to have an H–2A worker, a worker in corresponding employment, or a U.S. worker improperly rejected for employment or improperly laid off or displaced waive any rights conferred under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations. Any agreement by an employee purporting to waive or modify any rights given to said person under these provisions shall be void as contrary to public policy except as follows:

(1) Waivers or modifications of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement; and

(2) Agreements in settlement of private litigation are permitted.

§ 501.6 Investigation authority of Secretary.

(a) *General.* The Secretary, through the WHD, may investigate to determine compliance with obligations under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations, either pursuant to a complaint or otherwise, as may be appropriate. In connection with such an investigation, WHD may enter and inspect any premises, land, property, housing, vehicles, and records (and make transcriptions thereof), question any person and gather any information as may be appropriate.

(b) *Confidential investigation.* The WHD shall conduct investigations in a manner that protects the confidentiality of any complainant or other person who provides information to the Secretary in good faith.

(c) *Report of violations.* Any person may report a violation of the obligations imposed by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations to the Secretary by advising any local office of the SWA, ETA, WHD or any other authorized representative of the Secretary. The office or person receiving such a report shall refer it to the appropriate office of WHD for the geographic area in which the reported violation is alleged to have occurred.

§ 501.7 Cooperation with Federal officials.

All persons must cooperate with any Federal officials assigned to perform an investigation, inspection, or law enforcement function pursuant to 8 U.S.C. 1188 and these regulations during the performance of such duties. The WHD will take such action as it deems appropriate, including initiating debarment proceedings, seeking an injunction to bar any failure to cooperate with an investigation and/or assessing a civil money penalty therefor. In addition, the WHD will report the matter to OFLC, and may recommend to OFLC that the person's existing labor certification be revoked. In addition, Federal statutes prohibiting persons from interfering with a Federal officer in the course of official duties are found at 18 U.S.C. 111 and 18 U.S.C. 114.

§ 501.8 Accuracy of information, statements, data.

Information, statements and data submitted in compliance with 8 U.S.C. 1188 or these regulations are subject to 18 U.S.C. 1001, which provides, with regard to statements or entries generally, that whoever, in any matter within the jurisdiction of any department or agency of the U.S., knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

§ 501.9 Surety bond.

(a) Every H–2ALC must obtain a surety bond demonstrating its ability to discharge financial obligations under the H–2A program. Documentation from the issuer must be provided with the *Application for Temporary Employment Certification* identifying the name, address, phone number, and contact person for the surety, and providing the amount of the bond (as calculated in this section), date of its issuance and expiration and any identifying designation utilized by the surety for the bond.

(b) The bond must be payable to the Administrator, Wage and Hour Division, United States Department of Labor, 200 Constitution Avenue, NW., Room S–3502, Washington, DC 20210. It will obligate the surety to pay any sums to the WHD Administrator for wages and benefits owed to an H–2A worker or to a worker in corresponding employment, or to a U.S. worker improperly rejected or improperly laid off or displaced, based on a final decision finding a violation or violations of this part or 20 CFR part 655, subpart B relating to the labor certification the bond is intended to cover. The aggregate liability of the surety shall not exceed the face amount of the bond. The bond must be written to cover liability incurred during the term of the period listed in the *Application for Temporary Employment Certification* for labor certification made by the H–2ALC, and shall be amended to cover any extensions of the labor certification requested by the H–2ALC.

(c) The bond must be in the amount of $5,000 for a labor certification for which a H–2ALC will employ fewer than 25 workers; $10,000 for a labor certification for which a H–2ALC will employ 25 to 49 workers; $20,000 for a labor certification for which a H–2ALC will employ 50 to 74 workers; $50,000 for a labor certification for which a H–2ALC will employ 75 to 99 workers; and $75,000 for a labor certification for which a H–2ALC will employ 100 or more workers. The amount of the bond may be increased by the WHD Administrator after notice and an opportunity for hearing when it is shown based on objective criteria that the amount of the bond is insufficient to meet potential liabilities.

(d) The bond must remain in force for a period of no less than 2 years from the date on which the labor certification expires. If the WHD has commenced any enforcement action under these regulations against the employer or any successor in interest by that date, the bond shall remain in force until the conclusion of such action and any appeal or related litigation. Surety bonds may not be canceled or terminated unless 45 days' notice is provided by the surety in writing to the WHD Administrator, at the address set forth in paragraph (b).

Subpart B—Enforcement

§ 501.15 Enforcement.

The investigation, inspection, and law enforcement functions to carry out the provisions of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations, as provided in these regulations for enforcement by the WHD, pertain to the employment of any H–2A worker, any worker in corresponding employment, or any U.S. worker improperly rejected for employment or improperly laid off or displaced. Such enforcement includes the work contract provisions as defined in § 501.3(a).

§ 501.16 Sanctions and remedies—general.

Whenever the WHD Administrator believes that 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations have been violated, such action shall be taken and such proceedings instituted as deemed appropriate, including (but not limited to) the following:

(a)(1) Institute appropriate administrative proceedings, including: The recovery of unpaid wages (including recovery of recruitment fees paid in the absence of required contract clauses (*see* 20 CFR 655.135(k)); the enforcement of provisions of the work contract, 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations; the assessment of a civil money penalty; make whole relief for any person who has been discriminated against; reinstatement and make-whole relief for any U.S. worker who has been improperly rejected for employment, laid off or displaced; or debarment for up to 3 years.

(2) The remedies referenced in paragraph (1) will be sought either directly from the employer, or from its successor in interest, as appropriate. In the case of an H–2ALC, the remedies will be sought from the H–2ALC directly and/or monetary relief (other than civil money penalties) from the insurer who issued the surety bond to the H–2ALC, as required by 20 CFR part

655, subpart B and section 501.9 of this part.

(b) Petition any appropriate District Court of the U.S. for temporary or permanent injunctive relief, including to prohibit the withholding of unpaid wages and/or for reinstatement, or to restrain violation of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations, by any person.

(c) Petition any appropriate District Court of the U.S. for an order directing specific performance of covered contractual obligations.

§ 501.17 Concurrent actions.

OFLC has primary responsibility to make all determinations regarding the issuance, denial, or revocation of a labor certification as described in § 501.1(b) of this part and in 20 CFR part 655, subpart B. The WHD has primary responsibility to make all determinations regarding the enforcement functions as described in § 501.1(c) of this part. The taking of any one of the actions referred to above shall not be a bar to the concurrent taking of any other action authorized by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations. OFLC and the WHD have concurrent jurisdiction to impose a debarment remedy under 20 CFR 655.182 or under § 501.20 of these regulations.

§ 501.18 Representation of the Secretary.

The Solicitor of Labor, through authorized representatives, shall represent the WHD Administrator and the Secretary in all administrative hearings under 8 U.S.C. 1188 and these regulations.

§ 501.19 Civil money penalty assessment.

(a) A civil money penalty may be assessed by the WHD Administrator for each violation of the work contract, or the obligations imposed by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations. Each failure to pay an individual worker properly or to honor the terms or conditions of a worker's employment required by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations constitutes a separate violation.

(b) In determining the amount of penalty to be assessed for each violation, the WHD Administrator shall consider the type of violation committed and other relevant factors. The factors that may be considered include, but are not limited to, the following:

(1) Previous history of violation(s) of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations;

(2) The number of H–2A workers, workers in corresponding employment, or U.S. workers who were and/or are affected by the violation(s);

(3) The gravity of the violation(s);

(4) Efforts made in good faith to comply with 8 U.S.C. 1188, 20 CFR part 655, subpart B, and these regulations;

(5) Explanation from the person charged with the violation(s);

(6) Commitment to future compliance, taking into account the public health, interest or safety, and whether the person has previously violated 8 U.S.C. 1188;

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

(c) A civil money penalty for each violation of the work contract or a requirement of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations will not exceed $1,500 per violation, with the following exceptions:

(1) A civil money penalty for each willful violation of the work contract, or of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations, or for each act of discrimination prohibited by § 501.4 shall not exceed $5,000;

(2) A civil money penalty for a violation of a housing or transportation safety and health provision of the work contract, or any obligation under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations, that proximately causes the death or serious injury of any worker shall not exceed $50,000 per worker;

(3) For purposes of this section, the term serious injury includes, but is not limited to:

(i) Permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(ii) Permanent loss or substantial impairment of the function of a bodily member, organ or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

(iii) Permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(4) A civil money penalty for a repeat or willful violation of a housing or transportation safety and health provision of the work contract, or any obligation under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations, that proximately causes the death or serious injury of any worker, shall not exceed $100,000 per worker.

(d) A civil money penalty for failure to cooperate with a WHD investigation shall not exceed $5,000 per investigation.

(e) A civil money penalty for laying off or displacing any U.S. worker employed in work or activities that are encompassed by the approved *Application for Temporary Labor Certification* for H–2A workers in the area of intended employment either within 60 days preceding the date of need or during the validity period of the job order, including any approved extension thereof, other than for a lawful, job-related reason, shall not exceed $15,000 per violation per worker. Such layoff shall be permitted where all H–2A workers were laid off first.

(f) A civil money penalty for improperly rejecting a U.S. worker who is an applicant for employment, in violation of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations, shall not exceed $15,000 per violation per worker.

§ 501.20 Debarment and revocation.

(a) *Debarment of an employer.* The WHD Administrator may debar an employer or any successor in interest to that employer from receiving future labor certifications under 20 CFR part 655, subpart B, subject to the time limits set forth in paragraph (c) of this section, if: The WHD Administrator finds that the employer substantially violated a material term or condition of its temporary labor certification, with respect to H–2A workers, workers in corresponding employment, or U.S. workers improperly rejected for employment, or improperly laid off or displaced, by issuing a Notice of Debarment.

(b) *Debarment of an agent or an attorney.* The WHD Administrator may debar an agent or attorney from participating in any action under 8 U.S.C. 1188, 20 CFR part 655, subpart B or 29 CFR part 501, if the WHD Administrator finds that the agent or attorney participated in, had knowledge of, or had reason to know of, an employer's substantial violation, by issuing a Notice of Debarment. The OFLC Administrator may not issue future labor certifications to any employer represented by a debarred agent or attorney, subject to the time limits set forth in paragraph (c) of this section.

(c) *Statute of Limitations and Period of Debarment.*

(1) The WHD Administrator must issue any Notice of Debarment no later than 2 years after the occurrence of the violation.

(2) No employer, attorney, or agent may be debarred under this subpart for more than 3 years from the date of the final agency decision.

(d) *Definition of violation.* For the purposes of this section, a violation includes:

(1) One or more acts of commission or omission on the part of the employer or the employer's agent which involve:

(i) Failure to pay or provide the required wages, benefits or working conditions to the employer's H–2A workers and/or workers in corresponding employment;

(ii) Failure, except for lawful, job-related reasons, to offer employment to qualified U.S. workers who applied for the job opportunity for which certification was sought;

(iii) Failure to comply with the employer's obligations to recruit U.S. workers;

(iv) Improper layoff or displacement of U.S. workers or workers in corresponding employment;

(v) Failure to comply with one or more sanctions or remedies imposed by the WHD Administrator for violation(s) of contractual or other H–2A obligations, or with one or more decisions or orders of the Secretary or a court under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations;

(vi) Impeding an investigation of an employer under 8 U.S.C. 1188, 20 CFR part 655, Subpart B, or these regulations;

(vii) Employing an H–2A worker outside the area of intended employment, or in an activity/activities not listed in the job order, or outside the validity period of employment of the job order, including any approved extension thereof;

(viii) A violation of the requirements of § 655.135(j) and (k);

(ix) A violation of any of the provisions listed in § 501.4(a) of this subpart; or

(x) A single heinous act showing such flagrant disregard for the law that future compliance with program requirements cannot reasonably be expected.

(2) In determining whether a violation is so substantial as to merit debarment, the factors set forth in § 501.19(b) shall be considered.

(e) *Procedural Requirements.* The Notice of Debarment must be in writing, must state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment, must identify appeal opportunities under § 501.33 and a time frame under which such rights must be exercised and must comply with § 501.32. The debarment will take effect 30 days from the date the Notice of Debarment is issued, unless a request for review is properly filed within 30 days from the issuance of the Notice of Debarment. The timely filing of an administrative appeal stays the debarment pending the outcome of the appeal as provided in § 501.33(d).

(f) *Debarment involving members of associations.* If, after investigation, the WHD Administrator determines that an individual employer-member of a joint employer association has committed a substantial violation, the debarment determination will apply only to that member unless the WHD Administrator determines that the association or another association member participated in the violation, in which case the debarment will be invoked against the association or other complicit association member(s) as well.

(g) *Debarment involving associations acting as sole employers.* If, after investigation, the WHD Administrator determines that an association acting as a sole employer has committed a substantial violation, the debarment determination will apply only to the association and any successor in interest to the debarred association.

(h) *Debarment involving associations acting as joint employers.* If, after investigation, the WHD Administrator determines that an association acting as a joint employer with its members has committed a substantial violation, the debarment determination will apply only to the association, and will not be applied to any individual employer-member of the association. However, if the WHD Administrator determines that the member participated in, had knowledge of, or had reason to know of the violation, the debarment may be invoked against the complicit association member as well. An association debarred from the H–2A temporary labor certification program will not be permitted to continue to file as a joint employer with its members during the period of the debarment.

(i) *Revocation.* The WHD may recommend to the OFLC Administrator the revocation of a temporary agricultural labor certification if the WHD finds that the employer:

(1) Substantially violated a material term or condition of the approved temporary labor certification;

(2) Failed to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection, or law enforcement function under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part; or

(3) Failed to comply with one or more sanctions or remedies imposed by the WHD, or with one or more decisions or orders of the Secretary or a court order secured by the Secretary under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part.

(j) *Res Judicata.* In considering a recommendation made by the WHD to revoke a temporary agricultural labor certification, the OFLC Administrator shall treat a final agency determination that the employer has committed a violation as res judicata and shall not reconsider such a determination.

§ 501.21 Failure to cooperate with investigations.

(a) No person shall refuse to cooperate with any employee of the Secretary who is exercising or attempting to exercise this investigative or enforcement authority.

(b) Where an employer (or employer's agent or attorney) does not cooperate with an investigation concerning the employment of an H–2A worker, a worker in corresponding employment, or a U.S. worker who has been improperly rejected for employment or improperly laid off or displaced, WHD may make such information available to OFLC and may recommend that OFLC revoke the existing certification that is the basis for the employment of the H–2A workers giving rise to the investigation. In addition, WHD may take such action as appropriate, including initiating proceedings for the debarment of the employer from future certification for up to 3 years, seeking an injunction, and/or assessing civil money penalties against any person who has failed to cooperate with a WHD investigation. The taking of any one action shall not bar the taking of any additional action.

§ 501.22 Civil money penalties—payment and collection.

Where a civil money penalty assessment is directed in a final order by the WHD Administrator, by an ALJ, or by the Administrative Review Board (ARB), the amount of the penalty is due within 30 days and payable to the United States Department of Labor. The person assessed such penalty shall remit promptly the amount thereof as finally determined, to the WHD Administrator by certified check or by money order, made payable to the order of Wage and Hour Division, United States Department of Labor. The remittance shall be delivered or mailed to the WHD Regional Office for the area in which the violations occurred.

Subpart C—Administrative Proceedings

§ 501.30 Applicability of procedures and rules.

The procedures and rules contained herein prescribe the administrative process that will be applied with respect to a determination to assess civil money

penalties, to debar, or to increase the amount of a surety bond and which may be applied to the enforcement of provisions of the work contract, or obligations under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations, or to the collection of monetary relief due as a result of any violation. Except with respect to the imposition of civil money penalties, debarment, or an increase in the amount of a surety bond, the Secretary may, in the Secretary's discretion, seek enforcement action in Federal court without resort to any administrative proceedings.

Procedures Relating to Hearing

§ 501.31 Written notice of determination required.

Whenever the WHD Administrator decides to assess a civil money penalty, to debar, to increase a surety bond, or to proceed administratively to enforce contractual obligations, or obligations under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations, including for the recovery of the monetary relief, the person against whom such action is taken shall be notified in writing of such determination.

§ 501.32 Contents of notice.

The notice required by § 501.31 shall:

(a) Set forth the determination of the WHD Administrator including the amount of any monetary relief due or actions necessary to fulfill a contractual obligation or obligations under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or these regulations, the amount of any civil money penalty assessment, whether debarment is sought and the term, and any change in the amount of the surety bond, and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the WHD Administrator shall become final and unappealable.

(d) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 501.33.

§ 501.33 Request for hearing.

(a) Any person desiring review of a determination referred to in § 501.32, including judicial review, shall make a written request for an administrative hearing to the official who issued the determination at the WHD address appearing on the determination notice, no later than 30 days after issuance of the notice referred to in § 501.32.

(b) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(1) Be typewritten or legibly written;

(2) Specify the issue or issues stated in the notice of determination giving rise to such request;

(3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(4) Be signed by the person making the request or by an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) The request for such hearing must be received by the official who issued the determination, at the WHD address appearing on the determination notice, within the time set forth in paragraph (a) of this section. Requests may be made by certified mail or by means normally assuring overnight delivery.

(d) The determination shall take effect on the start date identified in the written notice of determination, unless an administrative appeal is properly filed. The timely filing of an administrative appeal stays the determination pending the outcome of the appeal proceedings, provided that any surety bond remains in effect until the conclusion of any such proceedings.

Rules of Practice

§ 501.34 General.

(a) Except as specifically provided in these regulations, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings described in this part.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) will not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The ALJ may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ 501.35 Commencement of proceeding.

Each administrative proceeding permitted under 8 U.S.C. 1188 and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 501.33.

§ 501.36 Caption of proceeding.

(a) Each administrative proceeding instituted under 8 U.S.C. 1188 and these regulations shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In the Matter of _____, Respondent.

(b) For the purposes of such administrative proceedings the WHD Administrator shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

Referral for Hearing

§ 501.37 Referral to Administrative Law Judge.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 501.33, the WHD Administrator, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, will, by Order of Reference, promptly refer a copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief ALJ, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under these regulations or 29 CFR part 18.

(b) A copy of the Order of Reference, together with a copy of these regulations, shall be served by counsel for the WHD Administrator upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

§ 501.38 Notice of docketing.

Upon receipt of an Order of Reference, the Chief ALJ shall appoint an ALJ to hear the case. The ALJ shall promptly notify all interested parties of the docketing of the matter and shall set the time and place of the hearing. The date of the hearing shall be not more than 60 days from the date on which the Order of Reference was filed.

§ 501.39 Service upon attorneys for the Department of Labor—number of copies.

Two copies of all pleadings and other documents required for any administrative proceeding provided herein shall be served on the attorneys for the DOL. One copy shall be served on the Associate Solicitor, Division of

Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding.

Procedures Before Administrative Law Judge

§ 501.40 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to deter the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the ALJ, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the ALJ; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the ALJ; or

(2) Inform the ALJ that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefore, the ALJ, within 30 days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

Post-Hearing Procedures

§ 501.41 Decision and order of Administrative Law Judge.

(a) The ALJ shall prepare, within 60 days after completion of the hearing and closing of the record, a decision on the issues referred by the WHD Administrator.

(b) The decision of the ALJ shall include a statement of the findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the WHD Administrator. The reason or reasons for such order shall be stated in the decision.

(c) The decision shall be served on all parties and the ARB in person or by certified mail.

(d) The decision concerning civil money penalties, debarment, monetary relief, and/or enforcement of other contractual obligations under 8 U.S.C. 1188, 20 CFR part 655, subpart B, and/or this part, when served by the ALJ shall constitute the final agency order unless the ARB, as provided for in § 501.42, determines to review the decision.

Review of Administrative Law Judge's Decision

§ 501.42 Procedures for initiating and undertaking review.

(a) A respondent, the WHD, or any other party wishing review, including judicial review, of the decision of an ALJ shall, within 30 days of the decision of the ALJ, petition the ARB to review the decision. Copies of the petition shall be served on all parties and on the ALJ. If the ARB does not issue a notice accepting a petition for review of the decision within 30 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition has been received, the decision of the ALJ shall be deemed the final agency action.

(b) Whenever the ARB, either on the ARB's own motion or by acceptance of a party's petition, determines to review the decision of an ALJ, a notice of the same shall be served upon the ALJ and upon all parties to the proceeding in person or by certified mail.

§ 501.43 Responsibility of the Office of Administrative Law Judges (OALJ).

Upon receipt of the ARB's Notice pursuant to § 501.42 of these regulations, the OALJ shall promptly forward a copy of the complete hearing record to the ARB.

§ 501.44 Additional information, if required.

Where the ARB has determined to review such decision and order, the ARB shall notify the parties of:

(a) The issue or issues raised;

(b) The form in which submissions shall be made (*i.e.,* briefs, oral argument, *etc.*); and

(c) The time within which such presentation shall be submitted.

§ 501.45 Final decision of the Administrative Review Board.

The ARB's final decision shall be issued within 90 days from the notice granting the petition and served upon all parties and the ALJ, in person or by certified mail.

Record

§ 501.46 Retention of official record.

The official record of every completed administrative hearing provided by these regulations shall be maintained and filed under the custody and control of the Chief ALJ, or, where the case has been the subject of administrative review, the ARB.

§ 501.47 Certification.

Upon receipt of a complaint seeking review of a decision issued pursuant to this part filed in a U.S. District Court, after the administrative remedies have been exhausted, the Chief ALJ or, where the case has been the subject of administrative review, the ARB shall promptly index, certify and file with the appropriate U.S. District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

Signed in Washington this 27th day of August 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

Shelby Hallmark,

Acting Assistant Secretary, Employment Standards Administration.

[FR Doc. E9–21017 Filed 9–3–09; 8:45 am]

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Federal Register

Friday,
September 4, 2009

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3430

Competitive and Noncompetitive Non-Formula Federal Assistance Programs—Specific Administrative Provisions for the Beginning Farmer and Rancher Development and the New Era Rural Technology Competitive Grants Programs; Interim Rules

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3430

RIN 0524–AA59

Competitive and Noncompetitive Non-Formula Federal Assistance Programs—Specific Administrative Provisions for the Beginning Farmer and Rancher Development Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is publishing a set of specific administrative requirements for the Beginning Farmer and Rancher Development Program (BFRDP) to supplement the Competitive and Noncompetitive Non-Formula Federal Assistance Programs—General Award Administrative Provisions for this program. The BFRDP is authorized undersection 7405 of the Farm Security and Rural Investment Act of 2002, as amended by section 7410 of the Food, Conservation, and Energy Act of 2008.

DATES: This interim rule is effective on September 4, 2009. The Agency must receive comments on or before November 3, 2009.

ADDRESSES: You may submit comments, identified by RIN 0524–AA59, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: RFP–OEP@csrees.usda.gov. Include Regulatory Information Number (RIN) 0524–AA59 in the subject line of the message.

Fax: 202–401–7752.

Mail: Paper, disk or CD–ROM submissions should be submitted to Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299.

Hand Delivery/Courier: Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 2258, Waterfront Centre; 800 9th Street, SW.; Washington, DC 20024.

Instructions: All submissions received must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Dr. Siva Sureshwaran, National Program Leader, Competitive Programs Unit; Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2240, 1400 Independence Avenue, SW., Washington, DC 20250–2240; Voice: 202–2720–7536; Fax: 202–401–6070; E-mail: *ssureshwaran@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Summary

Authority

Section 7405 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171 (7 U.S.C. 3319f), as amended by section 7410 of the Food, Conservation, and Energy Act of 2008 (FCEA), Public Law 110–246, provided the authority to the Secretary of Agriculture (Secretary) to provide training, education, outreach, and technical assistance to beginning farmers or ranchers. The authority to carry out this program has been delegated to CSREES through the Under Secretary for Research, Education, and Economics.

In carrying out the program, the Secretary is authorized to make competitive grants under section 7405(c) of FSRIA to support new and established local and regional training, education, outreach, and technical assistance initiatives that address the needs of beginning farmers and ranchers. The Secretary may award a BFRDP grant to a collaborative State, tribal, local, or regionally-based network or partnership of public or private entities, which may include: A State cooperative extension service; a Federal, State, or tribal agency; a community-based and nongovernmental organization; a college or university (including an institution awarding an associate's degree) or foundation maintained by a college or university; or any other appropriate partner, as determined by the Secretary. BFRDP grants shall be awarded to address needs of beginning farmers and ranchers in the following areas: Mentoring, apprenticeships, and internships; resources and referrals; assisting beginning farmers or ranchers in acquiring land from retiring farmers and ranchers; innovative farm and ranch transfer strategies; entrepreneurship and business training; model land leasing contracts; financial management training; whole farm planning; conservation assistance; risk management education; diversification and marketing strategies; curriculum development; understanding the impact of concentration and globalization; basic livestock and crop farming practices; the acquisition and management of agricultural credit; environmental compliance; information processing; and other similar subject areas of use to beginning farmers or ranchers. Pursuant to FSRIA section 7405(c)(3), these grants shall not have a term of more than 3 years and shall not be in an amount greater than $250,000 per year; however, eligible recipients may receive consecutive grants. These awards also are prohibited by statute from supporting planning, repair, rehabilitation, acquisition, or construction of a building or facility. In addition, not less than 25 percent of these BFRDP grant funds for a fiscal year must be used to support programs and services that address the needs of limited resource beginning farmers or ranchers; socially disadvantaged beginning farmers or ranchers; and farmworkers desiring to become farmers or ranchers. All BFRDP grant applicants are required to provide funds or in-kind support in an amount that is at least equal to 25 percent of the Federal funds requested. In making BFRDP grants, priority will be given to partnerships and collaborations that are led by or include nongovernmental and community-based organizations with expertise in new agricultural producer training and outreach. Geographical diversity will be ensured to the maximum extent practicable.

FSRIA section 7405(d) also requires the Secretary to establish beginning farmer and rancher education teams to develop curricula and conduct educational programs and workshops for beginning farmers or ranchers in diverse geographical areas of the United States. The Secretary is required, in promoting the development of curricula and to the maximum extent practicable, to include modules tailored to specific audiences of beginning farmers or ranchers, based on crop or regional diversity. The Secretary is required to cooperate, to the maximum extent practicable, with (1) State cooperative extension services; (2) Federal and State agencies; (3) community-based and nongovernmental organizations; (4) colleges and universities (including an institution awarding an associate's degree) or foundations maintained by a college or university; and other appropriate partners, as determined by the Secretary.

FSRIA section 7405(e) requires the Secretary to establish an online clearinghouse that makes available to beginning farmers or ranchers education curricula and training materials and programs, which may include online

courses for direct use by beginning farmers or ranchers.

For fiscal year (FY) 2009, $18 million has been made available for the BFRDP, including administrative costs.

Organization of 7 CFR Part 3430

A primary function of CSREES is the fair, effective, and efficient administration of Federal assistance programs implementing agricultural research, education, and extension programs. As noted above, CSREES has been delegated the authority to administer this program and will be issuing Federal assistance awards for funding made available for this program; and thus, awards made under this authority will be subject to the Agency's assistance regulations at 7 CFR part 3430, Competitive and Noncompetitive Non-formula Federal Assistance Programs—General Award Administrative Provisions. The Agency's development and publication of these regulations for its non-formula Federal assistance programs serve to enhance its accountability and to standardize procedures across the Federal assistance programs it administers while providing transparency to the public. CSREES published 7 CFR part 3430 with subparts A through F as an interim rule on August 1, 2008 [73 FR 44897–44909], and as a final rule September 4, 2009. These regulations apply to all Federal assistance programs administered by CSREES except for the formula grant programs identified in 7 CFR 3430.1(f), the Small Business Innovation Research programs with implementing regulations at 7 CFR part 3403 and the Veterinary Medicine Loan Repayment Program (VMLRP) authorized under section 1415A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA).

CSREES organized the regulation as follows: Subparts A through E provide administrative provisions for all competitive and noncompetitive non-formula Federal assistance awards. Subparts F and thereafter apply to specific CSREES programs.

CSREES is, to the extent practical, using the following subpart template for each program authority: (1) Applicability of regulations, (2) purpose, (3) definitions (those in addition to or different from § 3430.2), (4) eligibility, (5) project types and priorities, (6) funding restrictions, and (7) matching requirements. Subparts F and thereafter contain the above seven components in this order. Additional sections may be added for a specific program if there are additional requirements or a need for additional rules for the program (*e.g.,* additional reporting requirements). Through this rulemaking, CSREES is adding subpart J for the administrative provisions that are specific to the BFRDP.

Solicitation of Stakeholder Input and Development of Subpart J

CSREES published a **Federal Register** Notice on September 24, 2008 [73 FR 54987–54988], soliciting written stakeholder input comments through November 14, 2008, on the implementation of the BFRDP, and announcing a public meeting to solicit additional input. This public meeting was held on October 27, 2008, at the Waterfront Centre in Washington, DC. In addition, CSREES conducted listening sessions in Cherry Hill, New Jersey, on October 6, 2008; Houston, Texas, on October 6, 2008; and Little Rock, Arkansas, on October 22, 2008; and Webinars on October 28, 2008, and October 30, 2008. Information on the solicitation of stakeholder input is available at *http://www.csrees.usda.gov/nea/ag_systems/in_focus/smallfarm_if_bfrdp.html.* All stakeholder input received has been made available at *http://www.regulations.gov* under CSREES_FRDOC_0001.

Approximately 50 people attended the public meeting on October 27, 2008, from several community-based and nongovernmental organizations (*e.g.,* Land Stewardship Project, Sustainable Agriculture Coalition, California Farm Link, New American Sustainable Agriculture Project, Rural Coalition, American Farm Bureau, and Center for Rural Affairs); professional organizations (*e.g.,* Future Farmers of America (FFA), National Association of State Universities and Land-Grant Colleges (NASULGC), and American Forest Foundation), colleges and universities (*e.g.,* Iowa State University), State and Federal Agencies (USDA Office of Small Farm Coordination and Pennsylvania Department of Agriculture), farms and small businesses (*e.g.,* Simple Gifts Farm and Custom Ag Solutions), and others.

To provide more opportunities for interested stakeholders to participate, internet based Webinars were held on October 28, 2008, and October 30, 2008. CSREES also received several stakeholder comments through the advertised call-in number, fax, and e-mail. CSREES considered all the stakeholder input received from the public meeting, Webinars, as well as other written comments in developing the RFA for this program.

Based on stakeholder input, farm safety, forestry and range management, and organic and peri-urban farming are added to the list of priorities in FY 2009. As recommended by stakeholders, evaluation criteria include emphasis on past experience in providing education, training, and mentoring to beginning farmers and ranchers; direct interaction with farmers; and definition of target audience. As requested by the stakeholders, interaction with FFA and other young farmer groups and the Secretary's Advisory Group on Beginning Farmers and Ranchers is encouraged. Following the legislation and stakeholder recommendations, priority will be given to projects that are led by or include community-based organizations and/or nongovernmental organizations. In addition, there will be an ongoing process in evaluating and implementing suggestions made by stakeholders into the BFRDP program and ongoing stakeholder input will be encouraged and opportunities provided as the program moves forward.

In subpart J of 7 CFR part 3430, CSREES is adding sections on applicability of the regulations, purpose, definitions, eligibility, project types and priorities, funding restrictions, matching requirements, stakeholder input, review criteria, and other considerations. Under § 3430.602, CSREES is adding the definitions of ''beginning farmer or rancher,'' ''clearinghouse,'' and ''limited resource beginning farmers or ranchers.'' Under § 3430.604, CSREES clarifies the type of projects that may be funded under this authority: standard BFRDP projects and other BFRDP projects. The legislative requirements of standard BFRDP projects are found under FSRIA section 7405(c), and the legislative requirements for other BFRDP projects are found under sections 7405(d) and (e). Standard BFRDP projects are limited to 3 years and may not exceed $250,000 per year; whereas, other BFRDP projects are limited to 5 years pursuant to section 1472 of NARETPA (7 U.S.C. 3318). Also, other BFRDP projects are not subject to the $250,000 per year limitation. Section 3430.605 on funding restrictions clarifies that indirect cost costs are allowed, subject to § 3430.54. Section 3430.606 on matching requirements states that the matching requirements apply to both standard BFRDP projects and other BFRDP projects authorized in subsections (c), (d), and (e) of FSRIA section 7405, and that the matching requirements cannot be waived. Section 3430.606 also provides that the use of indirect costs as in-kind matching contributions is subject to § 3430.52.

Timeline for Implementing Regulations

CSREES is publishing this rule as interim with a 60-day comment period and anticipates a final rule by December 31, 2009. However, in the interim, these regulations apply to the BFRDP.

II. Administrative Requirements for the Proposed Rulemaking

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866, and therefore, has not been formally reviewed by the Office of Management and Budget. This interim rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; nor will it materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of $100 million or more; nor will it adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way. Furthermore, it does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities or principles set forth in the Executive Order.

Regulatory Flexibility Act of 1980

This interim rule has been reviewed in accordance with The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department concluded that the rule will not have a significant economic impact on a substantial number of small entities. The rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

The Department certifies that this interim rule has been assessed in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA). The Department concludes that this interim rule does not impose any new information requirements; however, the burden estimates will increase for existing approved information collections associated with this rule due to additional applicants. These estimates will be provided to OMB. In addition to the SF–424 form families (*i.e.,* Research and Related and Mandatory), SF–272, Federal Cash Transactions Report, SF–269, Financial Status Reports, and SF–425, Federal Financial Reports; CSREES has three currently approved OMB information collections associated with this rulemaking: OMB Information Collection No. 0524–0042, CSREES Current Research Information System (CRIS); No. 0524–0041, CSREES Application Review Process; and No. 0524–0026, Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance and Organizational Information.

Catalog of Federal Domestic Assistance

This interim regulation applies to the Federal assistance program administered by CSREES under the Catalog for Federal Domestic Assistance (CFDA) No. 10.311, Beginning Farmer and Rancher Development Program.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this interim rule in accordance with the requirements of Executive Order No. 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or 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 there is no Federal mandate contained herein that could result in increased expenditures by State, local, or tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this interim rule in accordance with Executive Order 13175, and has determined that it does not have ''tribal implications.'' The interim rule does not ''have substantial direct effects 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.''

Clarity of This Regulation

Executive Order 12866 and the President's Memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this interim rule easier to understand.

List of Subjects in 7 CFR Part 3430

Administrative practice and procedure, Agricultural research, Education, Extension, Federal assistance.

■ Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below:

PART 3430—COMPETITIVE AND NONCOMPETITIVE NON-FORMULA FEDERAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROVSIONS

■ 1. The authority for part 3430 continues to read as follows:

Authority: 7 U.S.C. 3316; Pub. L. 106–107 (31 U.S.C. 6101 note).

■ 2. Add a new subpart J, to read as follows:

Subpart J—Beginning Farmer and Rancher Development Program

Sec.

3430.600 Applicability of regulations.
3430.601 Purpose.
3430.602 Definitions.
3430.603 Eligibility.
3430.604 Project types and priorities.
3430.605 Funding restrictions.
3430.606 Matching requirements.
3430.607 Stakeholder input.
3430.608 Review criteria.
3430.609 Other considerations.

Subpart J—Beginning Farmer and Rancher Development Program

§ 3430.600 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 7405 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3319f).

§ 3430.601 Purpose.

The purpose of the Beginning Farmer and Rancher Development Program (BFRDP) is to establish a beginning farmer and rancher development program that provides local and regional training, education, outreach, and technical assistance initiatives for beginning farmers and ranchers.

§ 3430.602 Definitions.

The definitions applicable to the program under this subpart include:

Beginning farmer or rancher means a person that has not operated a farm or ranch or has operated a farm or ranch for not more than 10 years, and meets such other criteria as the Secretary may establish.

Clearinghouse means an online repository that will make available to beginning farmers or ranchers education curricula and training materials and programs, and which may include

online courses for direct use by beginning farmers or ranchers.

Limited resource beginning farmers or ranchers means beginning farmers or ranchers who have: (1) direct or indirect gross farm sales not more than the sales amount established by the USDA Natural Resources Conservation Service (NRCS) in each of the previous two years (in current dollars, adjusted for inflation each year, based on the October 2002 Prices Paid by Farmer Index compiled and updated annually by the USDA National Agricultural Statistics Service (NASS), and (2) a total household income at or below the National Poverty Level for a family of four or less than 50 percent of county median household income in each of the previous 2 years as determined by the U.S. Department of Health and Human Services (DHHS), using the Census Poverty Data.

§ 3430.603 Eligibility.

To be eligible to receive an award under this subpart, the recipient shall be a collaborative State, tribal, local, or regionally-based network or partnership of public or private entities, including:

(a) A State cooperative extension service;

(b) A Federal, State, or tribal agency;

(c) A community-based and nongovernmental organization;

(d) A college or university (including a junior college offering an associate's degree) or foundation maintained by a college or university;

(e) A private for-profit organization; or

(f) Any other appropriate partner, as determined by the Secretary.

§ 3430.604 Project types and priorities.

(a) *Standard BFRDP projects.* For standard BFRDP projects, competitive grants will be awarded to support programs and services, as appropriate, relating to the following focus areas and activities:

(1) Mentoring, apprenticeships, and internships.

(2) Resources and referral.

(3) Assisting beginning farmers or ranchers in acquiring land from retiring farmers and ranchers.

(4) Innovative farm and ranch transfer strategies.

(5) Entrepreneurship and business training.

(6) Model land leasing contracts.

(7) Financial management training.

(8) Whole farm planning.

(9) New and emerging issues, facing farmers and ranchers, including climate change and changing world markets.

(10) Conservation assistance.

(11) Risk management education.

(12) Diversification and marketing strategies.

(l3) Curriculum development.

(14) Understanding the impact of concentration and globalization.

(15) Basic livestock and crop farming practices, forestry and range management.

(16) Acquisition and management of agricultural credit.

(17) Environmental compliance.

(18) Information processing.

(19) Other similar subject areas of use to beginning farmers or ranchers.

CSREES may include additional activities or focus areas that further address the critical needs of beginning farmers and ranchers as defined in this subpart. Some of these activities or focus areas may be identified by stakeholder groups or by CSREES in response to emerging critical needs of the Nation's farmers and ranchers.

(b) *Other BFRDP Projects.* In addition to the competitive grants made under paragraph (a) of this section, competitive awards (grants or cooperative agreements) will be made:

(1) to establish beginner farmer and rancher educational enhancement projects that develop curricula and conduct educational programs and workshops for beginning farmers or ranchers in diverse geographical areas of the Unites States; and

(2) to establish and maintain an online clearinghouse.

§ 3430.605 Funding restrictions.

(a) *Facility costs.* Funds made available under this subpart shall not be used for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(b) *Indirect costs.* Subject to § 3430.5460, indirect costs are allowable.

(c) *Participation by other farmers and ranchers.* Projects may allow farmers and ranchers who are not beginning farmers and ranchers to participate in the programs funded under this subpart if their participation is appropriate and will not detract from the primary purpose of educating beginning farmers and ranchers as defined under this subpart.

§ 3430.606 Matching requirements.

(a) *Requirement.* Awardees are required to provide a match in the form of cash or in-kind contributions in an amount at least equal to 25 percent of the Federal funds provided by the award. The matching funds must be from non-Federal sources except when authorized by statute. The matching requirements under this subpart cannot be waived.

(b) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52.

§ 3430.607 Stakeholder input.

CSREES shall seek and obtain stakeholder input through a variety of forums (*e.g.,* public meetings, request for input and/or via Web site), as well as through a notice in the **Federal Register**, from the following entities:

(a) Beginning farmers and ranchers.

(b) National, State, tribal, and local organizations, community-based organizations, and other persons with expertise in operating beginning farmer and rancher programs.

(c) The Advisory Committee on Beginning Farmers and Ranchers established under section 5 of the Agricultural Credit Improvement Act of 1992 (7 U.S.C. 1929 note; Pub. L. 102–554).

§ 3430.608 Review criteria.

(a) *Evaluation criteria.* CSREES shall evaluate project proposals according to the following factors:

(1) Relevancy.

(2) Technical merit.

(3) Achievability.

(4) The expertise and track record of one or more applicants.

(5) The adequacy of plans for the participatory evaluation process, outcome-based reporting, and the communication of findings and results beyond the immediate target audience.

(6) Other appropriate factors, as determined by the Secretary.

(b) *Partnership and collaboration.* In making awards under this subpart, CSREES shall give priority to partnerships and collaborations that are led by or include nongovernmental and community-based organizations with expertise in new agricultural producer training and outreach.

(c) *Regional balance.* In making awards under this subpart, CSREES shall, to the maximum extent practicable, ensure geographical diversity.

§ 3430.609 Other considerations.

(a) *Set aside.* Each fiscal year, CSREES shall set aside at least 25 percent of the funds used to support the standard BFRDP projects under this subpart to support programs and services that address the needs of the following groups:

(1) Limited resource beginning farmers or ranchers (as defined in § 3430.602).

(2) Socially disadvantaged beginning farmers or ranchers (as defined in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)).

(3) Farmworkers desiring to become farmers or ranchers.

(b) *Consecutive awards.* An eligible recipient may receive a consecutive

grant for a standard BFRDP project under this subpart.

(c) *Duration of awards.* The term of a grant for a standard BFRDP project under this subpart shall not exceed 3 years. Awards for all other projects under this subpart shall not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

(d) *Amount of grants.* A grant for a standard BFRDP project under this subpart shall not be in an amount that is more than $250,000 for each year.

Signed at Washington, DC, on August 28, 2009.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. E9–21256 Filed 9–3–09; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3430

RIN 0524–AA60

Competitive and Noncompetitive Non-Formula Federal Assistance Programs—Specific Administrative Provisions for the New Era Rural Technology Competitive Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is publishing a set of specific administrative requirements for the New Era Rural Technology Competitive Grants Program (RTP) to supplement the Competitive and Noncompetitive Non-formula Federal Assistance Programs—General Award Administrative Provisions for this program.

DATES: This interim rule is effective on September 4, 2009. The Agency must receive comments on or before January 4, 2010.

ADDRESSES: You may submit comments, identified by RIN 0524–AA60, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: RFP-OEP@csrees.usda.gov. Include Regulatory Information Number (RIN) 0524–AA60 in the subject line of the message.

Fax: 202–401–7752.

Mail: Paper, disk or CD–ROM submissions should be submitted to Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299.

Hand Delivery/Courier: Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 2258, Waterfront Centre; 800 9th Street, SW.; Washington, DC 20024.

Instructions: All submissions received must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Greg Smith, National Program Leader, Higher Education Programs, Science and Education Resources Development; Voice: 202–720–2067; E-mail: *gsmith@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Summary

Authority

Section 1405 of the National Agricultural Research, Extension, and Teaching Policy Act (NARETPA) of 1997, as amended (7 U.S.C. 3121) designates the U.S. Department of Agriculture (USDA) as the lead Federal agency for agriculture research, extension and teaching in the food and agricultural sciences. Section 1473E of NARETPA (7 U.S.C. 3319e), as amended, requires the establishment of a program to be known as the New Era Rural Technology Competitive Grants Program (RTP), which CSREES administers.

In carrying out the program, the Secretary is authorized to make competitive grants to support the fields of (i) bioenergy, (ii) pulp and paper manufacturing, and (iii) agriculture-based renewable energy resources, in order to help ensure workforce opportunities critical to rural communities. RTP will make grants available to community college(s) and/or advanced technology center(s), located in rural areas, for technology development, applied research, and/or training.

For fiscal year (FY) 2009, $750,000 has been made available for the RTP, including administrative costs.

Organization of 7 CFR Part 3430

A primary function of CSREES is the fair, effective, and efficient administration of Federal assistance programs implementing agricultural research, education, and extension programs. As noted above, CSREES has been delegated the authority to administer this program and will be issuing Federal assistance awards for funding made available for this program; and thus, awards made under this authority will be subject to the Agency's assistance regulations at 7 CFR part 3430, Competitive and Noncompetitive Non-formula Federal Assistance Programs—General Award Administrative Provisions. The Agency's development and publication of these regulations for its non-formula Federal assistance programs serve to enhance its accountability and to standardize procedures across the Federal assistance programs it administers while providing transparency to the public. CSREES published 7 CFR part 3430 with subparts A through F as an interim rule on August 1, 2008 [73 FR 44897–44909], and adopted as a final rule September 4, 2009. These regulations apply to all Federal assistance programs administered by CSREES except for the formula grant programs identified in 7 CFR 3430.1(f), the Small Business Innovation Research programs with implementing regulations at 7 CFR part 3403, and the Veterinary Medicine Loan Repayment Program (VMLRP) authorized under section 1415A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA).

CSREES organized the regulation as follows: Subparts A through E provide administrative provisions for all competitive and noncompetitive non-formula Federal assistance awards. Subparts F and thereafter apply to specific CSREES programs.

CSREES is, to the extent practical, using the following subpart template for each program authority: (1) Applicability of regulations, (2) purpose, (3) definitions (those in addition to or different from § 3430.2), (4) eligibility, (5) project types and priorities, (6) funding restrictions (including indirect costs), and (7) matching requirements. Subparts F and thereafter contain the above seven components in this order. Additional sections may be added for a specific program if there are additional requirements or a need for additional rules for the program (*e.g.,* additional reporting requirements). Through this rulemaking, CSREES is adding subpart M for the administrative provisions that are specific to the RTP.

Timeline for Implementing Regulations

CSREES is publishing this rule as an interim rule with a 120-day comment

period and anticipates publishing a final rule by March 31, 2010. However, in the interim, these regulations apply to the RTP.

II. Administrative Requirements for the Proposed Rulemaking

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB). This interim rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; nor will it materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of $100 million or more; nor will it adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way. Furthermore, it does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities or principles set forth in the Executive Order.

Regulatory Flexibility Act of 1980

This interim rule has been reviewed in accordance with The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department concluded that the rule will not have a significant economic impact on a substantial number of small entities. The rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

The Department certifies that this interim rule has been assessed in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA). The Department concludes that this interim rule does not impose any new information requirements; however, the burden estimates will increase for existing approved information collections associated with this rule due to additional applicants. These estimates will be provided to OMB. In addition to the SF–424 form families (*i.e.,* Research and Related and Mandatory), SF–272, Federal Cash Transactions Report, SF–269, Financial Status Report, and SF–425, Federal Financial Report; CSREES has three currently approved OMB information collections associated with this rulemaking: OMB Information Collection No. 0524–0042, CSREES Current Research Information System (CRIS); No. 0524–0041, CSREES Application Review Process; and No. 0524–0026, Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance and Organizational Information.

Catalog of Federal Domestic Assistance

This interim regulation applies to the Federal assistance program administered by CSREES under the Catalog of Federal Domestic Assistance (CFDA) No.10.314, New Era Rural Technology Competitive Grants Program.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this interim rule in accordance with the requirements of Executive Order No. 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or 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 there is no Federal mandate contained herein that could result in increased expenditures by State, local, or Tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this interim rule in accordance with Executive Order 13175, and has determined that it does not have ''Tribal implications.'' The interim rule does not ''have substantial direct effects 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.''

Clarity of This Regulation

Executive Order 12866 and the President's Memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this interim rule easier to understand.

List of Subjects in 7 CFR Part 3430

Administrative practice and procedure, Agricultural research, Education, Extension, Federal assistance.

■ Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below:

PART 3430—COMPETITIVE AND NONCOMPETITIVE NON-FORMULA FEDERAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROVSIONS.

■ 1. The authority for part 3430 continues to read as follows:

Authority: 7 U.S.C. 3316; Pub. L. 106–107 (31 U.S.C. 6101 note).

■ 2. Add a new subpart M, to read as follows:

Subpart M—New Era Rural Technology Competitive Grants Program

Sec.

3430.900 Applicability of regulations.
3430.901 Purpose.
3430.902 Definitions.
3430.903 Eligibility.
3430.904 Project types and priorities.
3430.905 Funding restrictions.
3430.906 Matching requirements.
3430.907 Stakeholder input.
3430.908 Review criteria.
3430.909 Other considerations.

Subpart M—New Era Rural Technology Competitive Grants Program

§ 3430.900 Applicability of regulations.

The regulations in this subpart apply to the program authorized under section 1473E of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3319e), as amended.

§ 3430.901 Purpose.

The purpose of this program is to make grants available for technology development, applied research, and training, with a focus on rural communities, to aid in the development of workforces for bioenergy, pulp and paper manufacturing, and agriculture-based renewable energy workforce.

§ 3430.902 Definitions.

The definitions applicable to the program under this subpart include:

Advanced Technological Center refers to an institution that provides students with technology-based education and training, preparing them to work as technicians or at the semi-professional level, and aiding in the development of an agriculture-based renewable energy workforce. For this program, such Centers must be located within a *rural area.*

Bioenergy means biomass used in the production of energy (electricity; liquid, solid, and gaseous fuels; and heat).

Biomass means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees, wood and wood wastes and residues, plants (including aquatic plants), grasses, residues, fibers, and animal wastes, municipal wastes, and other waste materials.

Community College means

(1) An institution of higher education that:

(i) Admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(ii) Does not provide an educational program for which the institution awards a bachelor's degree (or an equivalent degree); and

(iii) (A) Provides an educational program of not less than 2 years in duration that is acceptable for full credit toward such a degree; or

(B) Offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semi-professional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge (20 U.S.C. 1101a(a)(6)).

(2) For this grants program, such Community Colleges must be located within a *rural area.*

Conference/Planning Grants means the limited number of RTP grants that will fund strategic planning meetings necessary to establish and organize proposed technology development, applied research and/or training projects.

Eligible institution/organization means a *community college,* or an *advanced technological center,* that meets eligibility criteria of this program, and is located in a *rural area.*

Eligible participant means an individual who is a *citizen or non-citizen national of the United States,* as defined in 7 CFR 3430.2, or lawful permanent resident of the United States.

Fiscal agent means a third party designated by an authorized representative of an eligible institution/organization which would receive and assume financial stewardship of Federal grant funds and perform other activities as specified in the agreement between it and the eligible institution/organization.

Joint project proposal means

(1) An application for a project:

(i) Which will involve the applicant institution/organization working in cooperation with one or more other entities not legally affiliated with the applicant institution/organization, including other schools, colleges, universities, community colleges, units of State government, private sector organizations, or a consortium of institutions; and

(ii) Where the applicant institution/organization and each cooperating entity will assume a significant role in the conduct of the proposed project.

(2) To demonstrate a substantial involvement with the project, the applicant institution/organization submitting a joint project proposal must retain at least 30 percent but not more than 70 percent of the awarded funds, and no cooperating entity may receive less than 10 percent of awarded funds. Only the applicant institution/organization must meet the definition of an eligible institution/organization as specified in this RFA; other entities participating in a joint project proposal are not required to meet the definition of an eligible institution/organization.

Outcomes means specific, measurable project results and benefits that, when assessed and reported, indicate the project's *plan of operation* has been achieved.

Plan of Operation means a detailed, step-by-step description of how the applicant intends to accomplish the project's *outcomes.* At a minimum, the plan should include a timetable indicating how outcomes are achieved, a description of resources to be used or acquired, and the responsibilities expected of all project personnel.

Regular project proposal means an application for a project:

(1) Where the applicant institution/organization will be the sole entity involved in the execution of the project; or

(2) Which will involve the applicant institution/organization and one or more other entities, but where the involvement of the other entity(ies) does not meet the requirements for a joint proposal as defined in this section.

Rural Area means any area other than a city or town that has a population of 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town.

Technology Development means the practical application of knowledge to address specific State, regional, or community opportunities in the bioenergy, pulp and paper manufacturing, or agriculture-based renewable energy occupations. **Note:** In general, technology is more than the development of a single product, but is instead a system of related products, procedures and services to ensure a systems approach to address a specific issue.

Training means the planned and systematic acquisition of practical knowledge, skills or competencies required for a trade, occupation or profession delivered by formal classroom instruction, laboratory instruction, or practicum experience.

§ 3430.903 Eligibility.

Applications may be submitted by either:

(a) Public or private nonprofit community colleges, or

(b) Advanced technological centers, *either of which must:*

(1) Be located in a *rural area* (*see* definition in § 3430.902);

(2) Have been in existence as of June 18, 2008;

(3) Participate in agricultural or bioenergy research and applied research;

(4) Have a proven record of development and implementation of programs to meet the needs of students, educators, and business and industry to supply the agriculture-based, renewable energy or pulp and paper manufacturing fields with certified technicians, as determined by the Secretary; and

(5) Have the ability to leverage existing partnerships and occupational outreach and training programs for secondary schools, 4-year institutions, and relevant nonprofit organizations.

§ 3430.904 Project types and priorities.

For each RFA, CSREES may develop and include the appropriate project types and focus areas based on the critical needs identified through stakeholder input and deemed appropriate by CSREES.

(a) In addition, priority in funding shall be given to eligible entities working in partnerships to:

(1) Improve information-sharing capacity;

(2) Maximize the ability to meet the requirements of the RFA; and

(3) To address the following two RTP goals:

(i) To increase the number of students encouraged to pursue and complete a 2-year postsecondary degree, or a certificate of completion, within an occupational focus of this grant program; and

(ii) To assist rural communities by helping students achieve their career goals to develop a viable workforce for bioenergy, pulp and paper manufacturing, or agriculture-based renewable energy.

(b) Applicants may submit applications for one of the three project types:

(1) Regular project proposal (the applicant executes the project without the requirement of sharing grant funds with other project partners);

(2) Joint project proposal (the applicant executes the project with assistance from at least one additional partner and must share grant funds with the additional partner(s)); and

(3) Conference/planning grant to facilitate strategic planning session(s).

§ 3430.905 Funding restrictions.

(a) *Prohibition against construction.* Grant funds awarded under this authority may not be used for the renovation or refurbishment of research, education, or extension space; the purchase or installation of fixed equipment in such space; or the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

(b) *Prohibition on tuition remission.* Tuition remission (*e.g.*, scholarships, fellowships) is not allowed.

(c) *Indirect costs.* Subject to § 3430.54, indirect costs are allowable with the exception of indirect costs for Conference/Planning grants, which are not allowed.

§ 3430.906 Matching requirements.

There are no matching requirements for grants under this subpart.

§ 3430.907 Stakeholder input.

CSREES shall seek and obtain stakeholder input through a variety of forums (*e.g.*, public meetings, requests for input and/or Web site), as well as through a notice in the **Federal Register**, from the following entities:

(a) Community college(s).

(b) Advanced technological center(s), located in rural area, for technology development, applied research, and/or training.

§ 3430.908 Review criteria.

Evaluation criteria. CSREES shall evaluate project proposals according to the following factors:

(a) Potential for Advancing Quality of Technology Development, Applied Research, and/or Training/Significance of the Program.

(b) Proposed Approach and Cooperative Linkages.

(c) Institution Organization Capability and Capacity Building.

(d) Key Personnel.

(e) Budget and Cost-Effectiveness.

§ 3430.909 Other considerations.

(a) *Amount of grants.* An applicant for a regular project proposal (single institution/organization) under this subpart may request up to $125,000 (total project, not per year). An applicant for a joint project proposal (applicant plus one or more partners) under this subpart may request up to $300,000 (total project, not per year). A conference/planning grant applicant may request up to $10,000 (total project/not per year).

(b) *Duration of grants.* The term of a grant for a standard RTP project under this subpart shall not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

Done in Washington, DC, this 28th day of August 2009.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. E9–21258 Filed 9–3–09; 8:45 am]

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H.R. 774/P.L. 111–50

To designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the ''Geraldine Ferraro Post Office Building''. (Aug. 19, 2009; 123 Stat. 1979)

H.R. 987/P.L. 111–51

To designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the ''John Scott Challis, Jr. Post Office''. (Aug. 19, 2009; 123 Stat. 1980)

H.R. 1271/P.L. 111–52

To designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the ''Elijah Pat Larkins Post Office Building''. (Aug. 19, 2009; 123 Stat. 1981)

H.R. 1275/P.L. 111–53

Utah Recreational Land Exchange Act of 2009 (Aug. 19, 2009; 123 Stat. 1982)

H.R. 1397/P.L. 111–54

To designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the ''Caroline O'Day Post Office Building''. (Aug. 19, 2009; 123 Stat. 1989)

H.R. 2090/P.L. 111–55

To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the ''Frederic Remington Post Office Building''. (Aug. 19, 2009; 123 Stat. 1990)

H.R. 2162/P.L. 111–56

To designate the facility of the United States Postal Service located at 123 11th Avenue South in Nampa, Idaho, as the ''Herbert A Littleton Postal Station''. (Aug. 19, 2009; 123 Stat. 1991)

H.R. 2325/P.L. 111–57

To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the ''Laredo Veterans Post Office''. (Aug. 19, 2009; 123 Stat. 1992)

H.R. 2422/P.L. 111–58

To designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the ''Kile G. West Post Office Building''. (Aug. 19, 2009; 123 Stat. 1993)

H.R. 2470/P.L. 111–59

To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the ''Lieutenant Commander Roy H. Boehm Post Office Building''. (Aug. 19, 2009; 123 Stat. 1994)

H.R. 2938/P.L. 111–60

To extend the deadline for commencement of construction of a hydroelectric project. (Aug. 19, 2009; 123 Stat. 1995)

H.J. Res. 44/P.L. 111–61

Recognizing the service, sacrifice, honor, and professionalism of the Noncommissioned Officers of the United States Army. (Aug. 19, 2009; 123 Stat. 1996)

S.J. Res. 19/P.L. 111–62

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Aug. 19, 2009; 123 Stat. 1998)

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