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

Rules and Regulations

Federal Register

Vol. 75, No. 7

Tuesday, January 12, 2010

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS–FV–09–0050; FV09–984–5 FR]

Walnuts Grown in California; Changes to Regulations Governing Voting Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the administrative regulations governing voting procedures for the California Walnut Board (Board). The Board locally administers the marketing order that regulates the handling of walnuts grown in California (order). This rule specifies the voting procedures to be used for expanded types of non-assembled meetings and removes voting by telegraph. This will enable the Board to conduct business using current communication methods, which will result in time and cost savings to the Board and its members.

DATES: *Effective Date:* January 13, 2010.

FOR FURTHER INFORMATION CONTACT: Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or e-mail: *Debbie.Wray@ams.usda.gov* or *Kurt.Kimmel@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 Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, 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."

The 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 rule 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.

This final rule revises the administrative regulations governing the Board's voting procedures to implement authority from a recent amendment to the order. It expands the current procedures for voting by allowing voting by e-mail, facsimile, telephone, and videoconference, or by other means of communication. This rule was unanimously recommended by the Board at a meeting on May 18, 2009.

Section 984.45(b) of the California walnut marketing order specifies the percentage requirements for quorum and voting procedures of the Board. Section 984.45(c) of the order provides authority for the Board to vote by mail or telegram, or by any other means of communication, and to prescribe, with the approval of USDA, the minimum number of votes that must be cast, as well as any other procedures that are necessary when the voting is by any of these communication methods. Section 984.45(d) of the order provides authority for the Board to meet by telephone or other means of communication.

Currently, Section 984.445 of the order's administrative regulations prescribes procedures for voting by mail or telegram but does not include procedures for voting by other means of communication, such as e-mail, facsimile, telephone, or videoconference.

At its meeting on May 18, 2009, the Board discussed the need to change the order's administrative regulations to include the use of current communication technologies to conduct business at non-assembled meetings, as authorized by a recent amendment to the order (73 FR 11328, March 3, 2008). Prior to the amendment, the Board had the authority to vote by mail or telegram upon due notice to all members but not to hold non-assembled meetings. As amended, the order provides for non-assembled meetings, but voting requirements and procedures for all such communication methods needed to be recommended by the Board and established through informal rulemaking. The Board unanimously recommended these changes at its meeting on May 18, 2009.

Using current communication methods and technology to vote at non-assembled meetings on matters deemed to be non-controversial, administrative, or of an emergency nature will result in cost savings by reducing time and travel expenses of Board members, many of whom are walnut producers and handlers who must travel long distances within California to attend meetings. Other Board expenses associated with holding assembled meetings, such as reserving meeting spaces, may also be reduced.

This final rule expands the procedures currently prescribed for voting by mail or telegram to include voting by e-mail and facsimile. In addition, reference to voting by telegram will be removed from the regulations since this communication method generally has been replaced by newer technology. Finally, voting by roll call will be prescribed for meetings conducted by telephone,

videoconference, or any other method of communication that enables interaction of Board members to ensure each member's vote by such method is accurately recorded.

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.

There are currently 58 handlers of California walnuts subject to regulation under the marketing order, and there are approximately 4,500 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural growers are defined as those having annual receipts of less than $750,000.

USDA's National Agricultural Statistics Service (NASS) reports that California walnuts were harvested from a total of 223,000 bearing acres during 2008–09. The average yield for the 2008–09 crop was 1.96 tons per acre, which is higher than the 1.56 tons per acre average for the previous five years. NASS reported the value of the 2008–09 crop at $1,210 per ton, which is lower than the previous five-year average of $1,598 per ton.

At the time of the 2007 Census of Agriculture, which is the most recent information available, approximately 89 percent of California's walnut farms were smaller than 100 acres. Fifty-four percent were between 1 and 15 acres. A 100-acre farm with an average yield of 1.96 tons per acre would have been expected to produce about 196 tons of walnuts during 2008–09. At $1,210 per ton, that farm's production would have had an approximate value of $237,000. Assuming that the majority of California's walnut farms are still smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than $237,000 in 2008–09. This is well below the SBA threshold of $750,000; thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

According to information supplied by the industry, approximately one-half of California's walnut handlers shipped merchantable walnuts valued under $7,000,000 during the 2008–09 marketing year and would therefore be considered small handlers according to the SBA definition.

This final rule revises procedures currently prescribed under § 984.445 of the order for voting by mail and telegram to include other means of communication, including e-mail, facsimile, telephone, and videoconference. This revision to the regulations incorporates authority from a recent amendment to the order concerning voting procedures and allows the Board to conduct business at non-assembled meetings using current methods of communication. Authority for this action is provided in § 984.45 of the order.

The majority of the Board's members are walnut producers and handlers who are located at various locations throughout California, and it can be difficult to assemble these members in one location for a meeting, especially during harvest season. By prescribing procedures for voting by the communication methods authorized by the order, the Board will be able to vote on non-controversial, administrative, or emergency matters at non-assembled meetings, which will reduce travel time and expenses for producer and handler Board members. Board expenses associated with holding assembled meetings, such as the cost of reserving a meeting room, may also be reduced.

The Board unanimously recommended these changes, which are necessary to implement authority provided by a recent amendment to the order. Therefore, no alternatives to these changes were considered practicable.

This action will not impose any additional reporting or recordkeeping requirements on either small or large walnut 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 rule.

The Board's meeting was widely publicized throughout the walnut industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the May 18, 2009, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on October 9, 2009 (74 FR 52154). Copies of the proposed rule were also mailed or sent via facsimile to Board members and walnut handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending December 8, 2009, was provided to allow interested persons to respond to the proposal. No comments were 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.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the regulations governing voting procedures should reflect the authority that was implemented by a recent amendment to the order. Also, this action was recommended at a public meeting. Finally, a 60-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

■ For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.445 is revised to read as follows:

§ 984.445 Procedures for voting by mail, e-mail, telephone, videoconference, facsimile, or any other means of communication.

(a) Whenever the Board votes upon any proposition by mail, e-mail, or facsimile, at least six members or alternates acting as members must vote and one dissenting vote shall prevent its adoption. Each proposition to be voted upon by mail, e-mail, or facsimile shall specify a time limit for members to vote, after which the alternates shall be given the opportunity to vote.

(b) Whenever the Board conducts meetings by telephone, videoconference, or any technology that enables member interaction, the vote shall be conducted by roll call.

Dated: January 6, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–316 Filed 1–11–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM405, Special Conditions No. 25–394–SC]

Special Conditions: Bombardier, Inc., Model DHC–8–100, –200, –300, and –400 Series Airplanes; Passenger Seats With Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments; correction.

SUMMARY: This document makes a correction to a Final special conditions; request for comment document, published in the **Federal Register** on June 5, 2009 (74 FR 26946), which issued special conditions for the Bombardier, Inc., Model DHC–8–100, –200, –300, and –400 series airplanes, for passenger seats with non-traditional, large, non-metallic panels. The Final special conditions; request for comment document, included an incorrect Special Conditions number.

FOR FURTHER INFORMATION CONTACT: Michael Menkin, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–22793 facsimile (425) 227–1230; or e-mail: *Michael.Menkin@faa.gov.*

SUPPLEMENTARY INFORMATION: The document designated as "Docket No. NM405, Special Conditions No. 25–283–SC" was published in the **Federal Register** on June 5, 2009 (74 FR 26946). The document issued special conditions pertaining to passenger seats with non-traditional, large, non-metallic panels for the Bombardier, Inc., Model DHC–8–100, –200, –300, and –400 series airplanes.

As published, the document contained an incorrect Special Conditions number; one that was used for a different set of special conditions. To correct that problem, the special conditions number pertaining to these special conditions is being changed.

Since no part of the regulatory information has been changed, the special conditions are not being republished.

Correction

In Final special conditions; request for comment document FR Doc. E9–13187, published on June 5, 2009 (74 FR 26946), make the following correction:

1. On page 26946, in the first column, fifth line, change No. 25–283–SC to No. 25–394–SC.

Issued in Renton, Washington, on December 28, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–290 Filed 1–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0788; Directorate Identifier 2009–NM–193–AD; Amendment 39–16167; AD 2010–01–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 737–300, –400, and –500 series airplanes. This AD requires repetitive external non-destructive inspections to detect cracks in the fuselage skin along the chem-mill step at stringers S–1 and S–2 right, between station (STA) 827 and STA 847, and repair if necessary. This AD results from a report of a hole in the fuselage skin common to stringer S–1 and S–2 left, between STA 827 and STA 847 on an airplane that diverted to an alternate airport due to cabin depressurization and subsequent deployment of the oxygen masks. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin panels at the chem-milled steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane.

DATES: This AD is effective February 16, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 16, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 737–300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on September 15, 2009 (74 FR 47148). That NPRM proposed to require repetitive

external non-destructive inspections to detect cracks in the fuselage skin along the chem-mill step at stringers S–1 and S–2 right, between station (STA) 827 and STA 847, and repair if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the three commenters.

Support for the NPRM

Boeing and the National Transportation Safety Board concur with the NPRM.

Request To Revise Criteria for Optional Terminating Action

Southwest Airlines (SWA) requests that we revise paragraph (i) of the NPRM to remove the first criterion specified for the optional terminating action so that repairs installed prior to September 3, 2009, would be allowed. SWA did not provide justification for this request.

We do not agree to remove the criterion in paragraph (i) of this AD. As we stated in the NPRM, September 3, 2009, is the date Boeing Service Bulletin 737–53A1301 became available to operators to address the identified unsafe condition. However, affected operators may request approval to use a repair installed prior to September 3, 2009, as an alternative method of compliance, under the provisions of paragraph (j) of the final rule. We have made no change to this final rule in this regard.

Explanation of Changes Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

In addition, Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA), which replaces their previous designation as a Delegation Option Authorization (DOA) holder. We have revised paragraphs (i)(2) and (j) of this AD to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Boeing Commercial Airplanes ODA.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

We estimate that this AD affects 135 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection	2	$80	$160, per inspection cycle	135	$21,600, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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.

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

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

(3) 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.

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:

2010–01–09 The Boeing Company: Amendment 39–16167. Docket No. FAA–2009–0788; Directorate Identifier 2009–NM–193–AD.

Effective Date

(a) This airworthiness directive (AD) is effective February 16, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 737–300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–53A1301, dated September 3, 2009.

Subject

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

Unsafe Condition

(e) This AD results from a report of a hole in the fuselage skin common to stringer S–1 and S–2 left, between STA 827 and STA 847 on an airplane that diverted to an alternate airport due to cabin depressurization and subsequent deployment of the oxygen masks. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin panels at the chem-milled steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression 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.

Initial and Repetitive Inspections

(g) Before the accumulation of 35,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later: Except as provided by paragraph (i) of this AD, do an external non-destructive inspection (NDI) to detect cracks in the fuselage skin along the chem-mill steps at stringers S–1 and S–2 right, between STA 827 and STA 847, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1301, dated September 3, 2009. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 500 flight cycles, except as provided by paragraph (i) of this AD.

Repair

(h) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 737–53A1301, dated September 3, 2009, specifies to contact Boeing for repair instructions: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

Optional Terminating Action for Repetitive Inspections

(i) Installing an external repair doubler along the chem-milled steps at stringers S–1 and S–2 right, between STA 827 and STA 847, constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD for the repaired area only, provided all of the conditions specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD are met. The initial inspection required by paragraph (g) of this AD must be accomplished.

(1) The repair is installed after September 3, 2009;

(2) The repair was approved by the FAA or by a Boeing Company Authorized Representative or the Boeing Commercial Airplanes Organization Designation Authorization (ODA) authorized by the FAA to make such findings; and

(3) The repair extends a minimum of three rows of fasteners on each side of the chem-mill line in the circumferential direction.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle 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: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

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

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

Material Incorporated by Reference

(k) You must use Boeing Alert Service Bulletin 737–53A1301, dated September 3, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*.

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 21, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31288 Filed 1–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1226; Directorate Identifier 2009–NM–149–AD; Amendment 39–16164; AD 2008–10–10 R1]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, and –900 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), which applies to certain Model 737–600, –700, –700C, –800, and –900 series airplanes. That AD currently requires revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness by incorporating new limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires an initial inspection to phase in certain repetitive AWL inspections, and repair if necessary. This AD clarifies the intended effect of the AD on spare and on-airplane fuel tank system components. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective January 27, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 27, 2010.

On June 12, 2008 (73 FR 25986, May 8, 2008), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD.

We must receive any comments on this AD by February 26, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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 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: Thomas Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6508; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On April 29, 2008, we issued AD 2008–10–10, Amendment 39–15516 (73 FR 25986, May 8, 2008). That AD applied to certain Model 737–600, –700, –700C, –800, and –900 series airplanes. That AD required revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness (ICA) by incorporating new limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires an initial inspection to phase in certain repetitive AWL inspections, and repair if necessary. That AD resulted from a design review of the fuel tank systems. The actions specified in that AD are intended to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Critical design configuration control limitations (CDCCLs) are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Actions Since AD Was Issued

Since we issued that AD, we have determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory * * * procedures * * * have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the AWLs. But once the CDCCLs are incorporated into the AWLs, future maintenance actions on components must be done in accordance with those CDCCLs.

Relevant Service Information

AD 2008–10–10 cites Boeing Temporary Revision 09–020, dated March 2008, to the Boeing 737–600/700/800/900 Maintenance Planning Data (MPD) Document, D626A001–CMR. Since we issued that AD, Boeing has revised Section 9 of the referenced service information. We have reviewed the revised document. Section 9, Revision September 2009, dated September 2009, of Boeing 737–600/700/800/900 MPD, Document D626A001–CMR, adds no new procedures in regard to fuel tank safety. We have added paragraph (l) of this AD to give credit for actions required by paragraphs (g) and (h) of this AD that were done before the effective date of this AD in accordance with Section 9, Revision September 2009, dated September 2009, of Boeing 737–600/700/800/900 MPD Document, D626A001–CMR, and the following earlier revisions: Revision March 2008, Revision April 2008, Revision June 2008, Revision February 2009, Revision March 2009, and Revision August 2009.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to revise AD 2008–10–10. This new AD retains the requirements of the existing AD, and adds a new note to clarify the intended effect of the AD on spare and on-airplane fuel tank system components.

Explanation of Additional Changes to AD

AD 2008–10–10 allowed the use of alternative inspections, intervals, or CDCCLs if they are part of a later revision of the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR, Revision March 2008. AD 2008–10–10 also allowed the use of later revisions of the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR. Those provisions have been removed from this AD. Allowing the use of "a later revision" or "later FAA-approved revisions" of specific service documents violates Office of the Federal Register regulations for approving materials that are incorporated by reference. Affected operators, however, may request approval to use a later revision or an alternative CDCCL, inspection, or interval, that is part of a later revision of the referenced service documents as an alternative method of compliance, under the provisions of paragraph (m) of this AD.

We have revised paragraphs (g)(1), (g)(2), (g)(3), and (h) of this AD to remove the term "Revision March 2008 of the MPD," which is defined in paragraph (f) of this AD. We have provided the full document citation throughout this AD to avoid any confusion about which specific document is being referenced. However, we have not removed the "Service Information Reference" paragraph from this AD. Because this AD revises AD 2008–10–10, we cannot change paragraph references, which would adversely affect compliance. Therefore, we have determined that leaving paragraph (f) of this AD unchanged is a

less burdensome approach for operators, while still adhering to standard drafting guidance.

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Costs of Compliance

This revision imposes no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

There are about 1,960 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per work hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AWLs revision	8	None	$640	682	$436,480
Inspection	8	None	640	682	436,480

FAA's Justification and Determination of the Effective Date

This revision merely clarifies the intended effect on spare and on-airplane fuel tank system components, and makes no substantive change to the AD's requirements. For this reason, it is found that notice and opportunity for prior public comment for this action are unnecessary, and 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 provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1226; Directorate Identifier 2009–NM–149–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 products identified in this rulemaking action.

Regulatory Findings

We have 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.

For the reasons discussed above, I certify that the 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 AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (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 39–15516 (73 FR 25986, May 8, 2008) and adding the following new AD:

2008–10–10 R1 The Boeing Company: Amendment 39–16164. Docket No. FAA–2009–1226; Directorate Identifier 2009–NM–149–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 27, 2010.

Affected ADs

(b) This AD revises AD 2008–10–10, Amendment 39–15516.

Applicability

(c) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category, with an original standard airworthiness certificate or original export certificate of airworthiness issued before March 31, 2006.

Note 1: Airplanes with an original standard airworthiness certificate or original export certificate of airworthiness issued on or after March 31, 2006, must already be in compliance with the airworthiness limitations specified in this AD because those limitations were applicable as part of the airworthiness certification of those airplanes.

Note 2: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR

91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Restatement of Requirements of AD 2008–10–10, With Revised Service Information

Service Information Reference

(f) The term "Revision March 2008 of the MPD," as used in this AD, means Boeing Temporary Revision (TR) 09–020, dated March 2008, to the Boeing 737–600/700/800/900 Maintenance Planning Data (MPD) Document, D626A001–CMR, Revision March 2008.

Revision to Airworthiness Limitations (AWLs) Section

(g) Before December 16, 2008, revise the AWLs section of the Instructions for Continued Airworthiness (ICA) by incorporating into the MPD the information in the subsections specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD; except that the initial inspection required by paragraph (h) of this AD must be done at the applicable compliance time specified in that paragraph.

(1) Subsection E, "AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS," of Boeing TR 09–020, dated March 2008, to the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR, Revision March 2008; or of Section 9, Revision September 2009, dated September 2009, of the Boeing 737–600/700/800/900 Maintenance Planning Data (MPD) Document, D626A001–CMR.

(2) Subsection F, "PAGE FORMAT: FUEL SYSTEM AIRWORTHINESS LIMITATIONS," of Boeing TR 09–020, dated March 2008, to the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR, Revision March 2008; or Section 9, Revision September 2009, dated September 2009, of the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR.

(3) Subsection G, "AIRWORTHINESS LIMITATIONS—FUEL SYSTEM AWLs," AWLs No. 28–AWL–01 through No. 28–AWL–22 inclusive, of Boeing TR 09–020, dated March 2008, to the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR, Revision March 2008; or Section 9, Revision September 2009, dated September 2009, of the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR. As an optional action, AWLs No. 28–AWL–23 and No. 28–AWL–24, as identified in Subsection G of Boeing TR 09–020, dated March 2008, to the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR, Revision March 2008; or Section 9, Revision September 2009, dated September 2009, of the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR; also may be incorporated into the AWLs section of the ICA.

Initial Inspection and Repair if Necessary

(h) At the later of the compliance times specified in paragraphs (h)(1) and (h)(2) of this AD, do a special detailed inspection of the lightning shield to ground termination on the out-of-tank fuel quantity indication system (FQIS) wiring to verify functional integrity, in accordance with AWL No. 28–AWL–03 of Subsection G of Boeing TR 09–020, dated March 2008, to the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR, Revision March 2008; or Section 9, Revision September 2009, dated September 2009, of the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR. If any discrepancy is found during the inspection, repair the discrepancy before further flight in accordance with AWL No. 28–AWL–03 of Subsection G of Boeing TR 09–020, dated March 2008, to the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR, Revision March 2008; or Section 9, Revision September 2009, dated September 2009, of the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR. Accomplishing AWL No. 28–AWL–03 as part of an FAA-approved maintenance program before the applicable compliance time specified in paragraph (h)(1) or (h)(2) of this AD constitutes compliance with the requirements of this paragraph.

Note 3: For the purposes of this AD, a special detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required."

(1) Within 120 months since the date of issuance of the original standard airworthiness certification or the date of issuance of the original export certificate of airworthiness.

(2) Within 24 months after June 12, 2008 (the effective date of AD 2008–10–10).

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(i) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (m) of this AD.

Credit for Actions Done According to Previous Revisions of the MPD

(j) Actions done before June 12, 2008, in accordance with the following MPDs are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD: Section 9 of the Boeing 737–600/700/700C/700IGW/800/900 MPD Document, D626A001–CMR, Revision March 2006; Revision May 2006; Revision October 2006; Revision November 2006; or Revision November 2006 R1; or Section 9 of the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR, Revision March 2007; Revision March 2007 R1; Revision March 2007 R2; or Revision February 2008.

Terminating Action for AD 2008–06–03, Amendment 39–15415

(k) Incorporating AWLs No. 28–AWL–21, No. 28–AWL–22, and No. 28–AWL–24 into the AWLs section of the ICA in accordance with paragraph (g) of this AD terminates the action required by paragraph (h)(1) of AD 2008–06–03.

New Information

Explanation of CDCCL Requirements

Note 4: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the AWLs, as required by paragraph (g) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the AWLs have been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

Credit for Actions Done According to Previous Revisions of the MPD

(l) Actions done before the effective date of this AD, in accordance with the following MPDs are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD: Section 9 of the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR, Revision March 2008; Revision April 2008; Revision June 2008; Revision February 2009; Revision March 2009; or Revision August 2009.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle 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: Thomas Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6508; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

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

inspector, your local FSDO. The AMOC approval letter must specifically reference this AD.

(3) AMOCs approved previously in accordance with AD 2008–10–10 are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(n) You must use Boeing Temporary Revision 09–020, dated March 2008, to the Boeing 737–600/700/800/900 Maintenance Planning Data (MPD) Document D626A001–CMR; or Section 9, Revision September 2009, dated September 2009, of the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Section 9, Revision September 2009, dated September 2009, of the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Temporary Revision 09–020, dated March 2008, to the Boeing 737–600/700/800/900 Maintenance Planning Data (MPD) Document, D626A001–CMR, on June 12, 2008 (73 FR 25986, May 8, 2008).

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*.

(4) You may review copies of the 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.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 23, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31031 Filed 1–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0655; Directorate Identifier 2008–NM–192–AD; Amendment 39–16157; AD 2010–01–01]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Model 747–200F, 747–200C, 747–400, 747–400D, and 747–400F series airplanes. That AD currently requires repetitive inspections for cracking of certain fuselage internal structure (*i.e.*, Sections 42 and 46 fuselage frames, upper deck floor beams, electronic bay access door cutout, nose wheel well, and main entry doors and door cutouts), and repair if necessary. This new AD requires additional repetitive inspections for cracking of certain fuselage structure (*i.e.*, Section 41 fuselage frames where they connect to upper deck floor beams, and Section 41 fuselage frames between stringers (S–8 and S–12)), and related investigative/corrective actions if necessary. This AD also reduces the inspection threshold and repetitive inspection intervals for certain airplanes. This AD results from fatigue tests and analysis that identified additional areas of the fuselage where fatigue cracks can occur. We are issuing this AD to prevent the loss of structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

DATES: This AD becomes effective February 16, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 16, 2010.

The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004, as of April 6, 2006 (71 FR 10605, March 2, 2006).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–05–02, Amendment 39–14499 (71 FR 10605, March 2, 2006). The existing AD applies to all Model 747–200F, 747–200C, 747–400, 747–400D, and 747–400F series airplanes. That NPRM was published in the **Federal Register** on July 23, 2009 (74 FR 36417). That NPRM proposed to continue to require repetitive inspections for cracking of certain fuselage internal structure (*i.e.*, Sections 42 and 46 fuselage frames, upper deck floor beams, electronic bay access door cutout, nose wheel well, and main entry doors and door cutouts), and repair if necessary. That NPRM proposed to require additional repetitive inspections for cracking of certain fuselage structure (*i.e.*, Section 41 fuselage frames where they connect to upper deck floor beams, and Section 41 fuselage frames between stringer (S–8 and S–12)), and related investigative/corrective actions if necessary. That NPRM also proposed to reduce the inspection threshold and repetitive inspection intervals for certain airplanes. That NPRM resulted from fatigue tests and analysis that identified areas of the fuselage where fatigue cracks can occur.

Comments

We provided the public the opportunity to participate in the development of this AD. We have

considered the comments that have been received on the NPRM.

Request To Revise References in Paragraph (m)(4) of the NPRM

Boeing requests that paragraph (m)(4) of the NPRM be revised to reference paragraphs (h) and (i)—not paragraphs (c) and (d). Boeing states that in AD 2004–07–22 R1, Amendment 39–15326 (73 FR 1052, January 7, 2008), paragraph identifiers (c) and (d) were revised to (h) and (i).

We agree. We have revised paragraph (m)(4) of this final rule accordingly. In addition, we have revised paragraph (m)(4)(i) of this AD to change the reference from paragraph (d) to paragraph (i) of AD 2004–07–22 R1.

Boeing also requests that paragraph (m)(4)(ii) of the NPRM be revised to add a reference to Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008. Boeing states that both the original and Revision 1 of Boeing Alert Service Bulletin 747–53A2500 provide inspections that are an AMOC to AD 2004–07–22 R1.

We agree for the reasons provided by the commenter. We have revised paragraph (m)(4)(ii) of this AD accordingly.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Explanation of Changes Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Costs of Compliance

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

ESTIMATED COSTS

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

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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.

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

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

(3) 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 AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

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 Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–14499 (71 FR 10605, March 2, 2006) and by adding the following new airworthiness directive (AD):

2010–01–01 The Boeing Company: Amendment 39–16157. Docket No. FAA–2009–0655; Directorate Identifier 2008–NM–192–AD.

Effective Date

(a) This AD becomes effective February 16, 2010.

Affected ADs

(b) This AD supersedes AD 2006–05–02, Amendment 39–14499.

Applicability

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

Subject

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

Unsafe Condition

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

Compliance

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

Restatement of Requirements of AD 2006–05–02, With Updated Service Information and Reduced Compliance Times for Group 8 Airplanes

Inspections

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

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

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

Exceptions to Service Bulletin Procedures

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

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

New Requirements of This AD

Actions for Additional Areas

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

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

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

Alternative Methods of Compliance (AMOCs)

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

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

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

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

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

(ii) The AMOC specified in paragraph (m)(4) of this AD applies only to the areas of Boeing Supplemental Structural Inspection Document for Model 747 Airplanes, Document D6–35022, Revision G, dated December 2000, that are specified in Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004; or Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008.

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

Material Incorporated by Reference

(n) You must use Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004, as of April 6, 2006: or Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2500, Revision 1, dated September 25, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2500, dated December 21, 2004, as of April 6, 2006 (71 FR 10605, March 2, 2006).

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*.

(4) You may review copies of the 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.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on December 17, 2009.

Stephen P. Boyd,

Acting Manger, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30968 Filed 1–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0669; Directorate Identifier 2007–NM–350–AD; Amendment 39–16166; AD 2010–01–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 737–600, –700, and –800 series airplanes. This AD requires an inspection of the free flange, vertical web, and radius between the free flange and vertical web of the lower stringers of the wing center section for drill starts, and applicable related investigative and corrective actions. This AD results from drill starts being found on the free flange of the lower stringers of the wing center section during a quality assurance inspection at the final assembly plant. We are issuing this AD to prevent cracks from propagating from drill starts in the free flange, vertical web, and radius between the free flange and vertical web of the lower stringers of the wing center section lower stringers, which could cause a loss of structural integrity of the wing center section and may result in a fuel leak.

DATES: This AD is effective February 16, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 16, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 737–600, –700, and –800 series airplanes. That supplemental NPRM was published in the **Federal Register** on March 6, 2009 (74 FR 9776). That supplemental NPRM proposed to require an inspection of the free flange, vertical web, and radius between the free flange and vertical web of the lower stringers of the wing center section for drill starts, and applicable related investigative and corrective actions.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the commenters.

Support for the Supplemental NPRM

Air Transport Association (ATA), on behalf of its member, Continental Airlines (CAL), expresses support for the compliance time.

Request To Align NPRMs Affecting Areas Under Enhanced Airworthiness Program for Airplane Systems (EAPAS) Regulations or Maintenance Planning Documents

ATA, on behalf of its member CAL, notes that Boeing Alert Service Bulletin 73–57A1294, dated April 23, 2007, was issued before airworthiness limitations (AWLs) 28–AWL–11 and 28–AWL–12 were published. CAL points out that the service bulletin states to contact Boeing for repair instructions for crack findings to comply with the requirements of the supplemental NPRM. However, CAL states the supplemental NPRM and the service bulletin do not address how to comply with AWLs 28–AWL–11 and 28–AWL–12 of Section 9 of the Boeing 737–600/700/800/900 MPD Document D626A001–CMR if the repair instructions require installing fasteners into the fuel tank. CAL notes that FAA approval of the MPD AWLs can only be granted by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

We infer that CAL is asking that we revise the supplemental NPRM to clarify whether the corrective actions are compliant with EAPAS regulations or MPD AWLs. We partially agree with CAL's request. We agree that operators benefit from notification that certain repairs covered by this AD are also potentially subject to compliance with the requirements of AD 2008–10–10, Amendment 39–15516 (73 FR 25986, May 8, 2008). AD 2008–10–10 mandates AWLs 28–AWL–11 and 28–AWL–12 and requires that any new penetration into the fuel tank be approved for lightning considerations by the FAA, Seattle ACO.

We disagree that a change to the supplemental NPRM is necessary. On April 15, 2009, Boeing issued MultiOperator Message (MOM) MOM–09–0178–01B, applicable to the following ADs:

- AD 2008–04–11, Amendment 39–15383 (73 FR 9666, February 22, 2008)
- AD 2008–04–10, Amendment 39–15382 (73 FR 9668, February 22, 2008)
- AD 2008–10–09, Amendment 39–15515 (73 FR 25970, May 8, 2008)
- AD 2008–10–10, Amendment 39–15516 (73 FR 25986, May 8, 2008)
- AD 2008–10–07, Amendment 39–15513 (73 FR 25977, May 8, 2008)
- AD 2008–10–06, Amendment 39–15512 (73 FR 25990, May 8, 2008)
- AD 2008–10–11, Amendment 39–15517 (73 FR 25974, May 8, 2008)
- AD 2008–11–01, Amendment 39–15523 (73 FR 29414, May 21, 2008)
- AD 2008–11–13, Amendment 39–15536 (73 FR 30737, May 29, 2008)

This MOM notifies operators that the FAA issued an alternative method of compliance (AMOC) to the same ADs. This AMOC states:

> Any alteration, design change, or repair involving new penetrations of the fuel tanks (such as a repair with fasteners, adding a bracket, bulkhead fitting or equipment) or change to the design features of the existing equipment penetrations (such as fuel measuring sticks, sump drain valves, fueling manifold, fuel temperature sensor, and motor operated fuel shutoff valve adapter plate) requires approval by the FAA Seattle ACO or an Authorized Representative (AR) of the Boeing Commercial Airplanes Delegated Compliance Organization (BDCO).
>
> However, any alteration, design change or repair involving new penetrations of the fuel tanks, accomplished in accordance with an FAA-approved Boeing Structural Repair Manual (SRM) or Boeing Service Bulletin is not subject to this requirement for additional approval.

We consider that this AMOC and the subsequent MOM supplied by Boeing is sufficient notification and clarification

because the MOM states that certain Boeing service bulletins do not require additional approval in accordance with AD 2008–10–10. We have not changed the AD in regard to this issue.

Request To Allow ARs To Approve Repairs

ATA, on behalf of its member CAL, requests that we revise the supplemental NPRM to grant delegated authority to Boeing to approve repairs mandated by this AD and AWLs 28–AWL–11 and 28–AWL–12 of Section 9 of the Boeing 737–600/700/800/900 MPD Document D626A001–CMR provided that only the fuel tank structure is affected, while the structural repair does not disrupt the fuel tank system. CAL states that it is concerned with complying with the MPD since Boeing Alert Service Bulletin 737–57A1294, dated April 23, 2007, was written before AWLs 28–AWL–11 and 28–AWL–12. CAL notes that the service bulletin states to contact Boeing for repair instruction for crack findings. However, CAL notes that this AD and the service bulletin do not reference the AWLs in the event that Boeing repair instructions require fastener installation into the fuel tank. CAL points out that FAA approval to reference the MPD AWLs can be granted only by the Manager, Seattle ACO.

We disagree with the request. We have approved an AMOC that allows designated ARs of the BDCO to approve fuel tank penetration for lightning considerations for several EAPAS rules. That AMOC is written against the specific AD requiring lightning approvals, which is not part of this AD. We have not changed the final rule in regard to this issue.

Explanation of Change Made to This AD

We have revised this AD to identify the correct legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 17 airplanes of U.S. registry. We also estimate that it would take 7 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $9,520, or $560 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

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.

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

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

(3) 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.

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:

2010–01–08 The Boeing Company: Amendment 39–16166. Docket No. FAA–2008–0669; Directorate Identifier 2007–NM–350–AD.

Effective Date

(a) This airworthiness directive (AD) is effective February 16, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 737–600, –700, and –800 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–57A1294, dated April 23, 2007.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD results from drill starts being found on the free flange of the lower stringers of the wing center section during a quality assurance inspection at the final assembly plant. We are issuing this AD to prevent cracks from propagating from drill starts in the free flange, vertical web, and radius between the free flange and vertical web of the lower stringers of the wing center section lower stringers, which could cause a loss of structural integrity of the wing center section and may result in a fuel leak.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Inspection and Related Investigative and Corrective Actions

(g) Before the accumulation of 18,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, do a detailed inspection of the free flange, vertical web, and radius between the free flange and vertical web of the lower stringers of the wing center section for any drill start, and do all applicable related investigative and corrective actions, by accomplishing all the applicable actions specified in paragraphs 3.B.2 and 3.B.4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1294, dated April 23, 2007; except as provided in paragraph (h) of this AD. The applicable related investigative and corrective actions must be done before further flight.

(h) If any crack is found during any inspection required by paragraph (g) of this AD, and Boeing Alert Service Bulletin 737–57A1294, dated April 23, 2007, specifies to

contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle 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: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 737–57A1294, dated April 23, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 23, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31286 Filed 1–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1230; Directorate Identifier 2009–NM–088–AD; Amendment 39–16165; AD 2010–01–07]

RIN 2120–AA64

Airworthiness Directives; Airbus (Type Certificate Previously Held by Airbus Industrie) Model A340–200, –300, –500, and –600 Series Airplanes

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 products listed above. This 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:

* * * * *

* * * Revision 00 of AIRBUS A340 ALS [Airworthiness Limitations Section] Part 3:

—adds new CMR (Certification Maintenance Requirements) tasks associated with modifications,

—revises the applicability of some CMR tasks,

—revises some CMR tasks with increased intervals,

—revises a CMR task with a more restrictive interval,

—deletes CMR task 282300–B0002–1–C * * *.

Some of those changes constitute more restrictive requirements for aeroplane configuration already in service. Failure to comply with this Revision 00 of AIRBUS A340 ALS Part 3 constitutes an unsafe condition.

* * * * *

The unsafe condition is a safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective January 27, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 27, 2010.

We must receive comments on this AD by February 26, 2010.

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.

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 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, 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:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0098, dated April 22, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The Certification Maintenance Requirements (CMR) were given in the AIRBUS A340 CMR Document reference 955.3019/92 up to revision 15, which was mandated by EASA AD 2007–0240, and referenced in the Airworthiness Limitations Section (ALS) Part 3. The content of the CMR Document has been recently transferred into the ALS Part 3 Revision 00, which is

approved by the European Aviation Safety Agency (EASA).

This Revision 00 of AIRBUS A340 ALS Part 3:

—adds new CMR tasks associated with modifications,
—revises the applicability of some CMR tasks,
—revises some CMR tasks with increased intervals,
—revises a CMR task with a more restrictive interval,
—deletes CMR task 282300–B0002–1–C which is the subject of EASA AD 2007–0279.

Some of those changes constitute more restrictive requirements for aeroplane configuration already in service. Failure to comply with this Revision 00 of AIRBUS A340 ALS Part 3 constitutes an unsafe condition. This new AD * * * requires the implementation of Revision 00 of AIRBUS A340 ALS Part 3.

The unsafe condition is a safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. This AD requires revising the ALS of the Instructions for Continued Airworthiness by incorporating new and revised CMRs. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 00, including Appendices 1 and 2, dated July 31, 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 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

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. Register in the future.

Differences Between the 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 required 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 AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

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. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1230; Directorate Identifier 2009–NM–088–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 products 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.

For the reasons discussed above, 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.

We prepared a regulatory evaluation of the estimated costs to comply with this 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.

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:

2010–01–07 Airbus (Type Certificate Previously Held by Airbus Industrie): Amendment 39–16165. Docket No. FAA–2009–1230; Directorate Identifier 2009–NM–088–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 27, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus (Type Certificate previously held by Airbus Industrie) Model A340–211, –212, –213, –311, –312, –313, –541, and –642 series airplanes; certificated in any category; all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

Subject

(d) Air Transport Association (ATA) of America Code 05.

Reason

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

The Certification Maintenance Requirements (CMR) were given in the AIRBUS A340 CMR Document reference 955.3019/92 up to revision 15, which was mandated by EASA AD 2007–0240, and referenced in the Airworthiness Limitations Section (ALS) Part 3. The content of the CMR Document has been recently transferred into the ALS Part 3 Revision 00, which is approved by the European Aviation Safety Agency (EASA).

This Revision 00 of AIRBUS A340 ALS Part 3:

—adds new CMR tasks associated with modifications,
—revises the applicability of some CMR tasks,
—revises some CMR tasks with increased intervals,
—revises a CMR task with a more restrictive interval,
—deletes CMR task 282300–B0002–1–C which is the subject of EASA AD 2007–0279.

Some of those changes constitute more restrictive requirements for aeroplane configuration already in service. Failure to comply with this Revision 00 of AIRBUS A340 ALS Part 3 constitutes an unsafe condition. This new AD * * * requires the implementation of Revision 00 of AIRBUS A340 ALS Part 3.

The unsafe condition is a safety-significant latent failure that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. This AD requires revising the ALS of the Instructions for Continued Airworthiness by incorporating new and revised CMRs.

Actions and Compliance

(f) Unless already done, within 3 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness by incorporating Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 00, dated July 31, 2008 (“ALS, Part 3”). Accomplish the actions specified in the ALS, Part 3, at the times specified in the ALS, Part 3, and in accordance with the ALS, Part 3, except as provided by paragraphs (f)(1) and (f)(2) of this AD.

(1) Count the associated interval for any new task from the effective date of this AD, except that Airbus A340 CMR Task 212100–00001–1–C must be performed at the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Before the accumulation of 2,600 total flight hours since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness.

(ii) Within 800 flight hours or 3 months, whichever comes first, after the approval date of Revision 00 of the ALS, Part 3.

(2) Count the associated interval for any revised task from the previous performance of the task.

(3) Doing the revision required by paragraph (f) of this AD terminates the requirements of paragraph (f) of AD 2007–05–08, Amendment 39–14969, for that airplane only.

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, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, 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 (44 U.S.C. 3501 *et seq.*), 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 Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2009–0098, dated April 22, 2009; and Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 00, dated July 31, 2008; for related information.

Material Incorporated by Reference

(i) You must use Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 00, including Appendices 1 and 2, dated July 31, 2008, to do the actions required by this AD, unless the AD specifies otherwise. (The title page of this document does not specify a revision date; the revision date is specified on all other pages of the document. Only the title page and the Record of Revisions specify the revision level of this document.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 23, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31287 Filed 1–11–10; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Treatment of Undeliverable Books and Sound Recordings

AGENCY: Postal Service ™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States*

Postal Service, Domestic Mail Manual, for the disposal or treatment of books and sound recordings that are undeliverable-as-addressed (UAA) in their original packaging. The disposal of these items as waste will simplify handling procedures and reduce costs.

DATES: *Effective Date:* February 1, 2010.

FOR FURTHER INFORMATION CONTACT: Bert Olsen, 202–268–7276, Mary Collins, 202–268–5440.

SUPPLEMENTARY INFORMATION: The Postal Service published a **Federal Register** proposed rule (73 FR 39272–39273) on July 9, 2008 to remove DMM section 507.1.9.2. The intent of this section was to facilitate a process for identifying and returning books and recordings that had become undeliverable as a result of being "loose in the mail" (contents separated from packaging and other address information), to the original publisher or distributor. This standard was misinterpreted to allow some publishers and distributors to reclaim ownership of all UAA mail and not just mail that was truly identified as "loose" in the mail.

Comments

We received comments from three respondents on the proposed rule. One respondent represented several trade associations and two other respondents were from separate publishing companies. All comments received were in opposition to the proposal and are summarized and presented below followed by our responses:

1. *Comment:* The Postal Service did not work closely and discuss the proposal with affected mailers.

The Postal Service previously offered an opportunity for mailers to provide input well before the proposal was published. Additionally, publication of the proposed rule and requests for comments (July 9, 2008) afforded mailers an additional opportunity to contribute to the rule-making process prior to issuing a final rule.

2. *Comment:* Due to copyright concerns and privacy issues, mailers are opposed to the Postal Service selling at auction undeliverable-as-addressed books and sound recordings.

Obligations concerning privacy issues and copyright concerns are the publisher's obligations. USPS® ancillary services allow mailers to fulfill their obligations by having undeliverable books returned to them, but only in accordance with postal services and endorsements currently available to mailers. One option when using Standard Mail® is that UAA mail can be forwarded or returned at the appropriate Media Mail or Library Mail price if the content of the mail qualifies as Media Mail under DMM 507.1.5.3, 173, 373, or 473 or Library Mail under DMM 183, 383, or 483 and the mail is marked "Media Mail" or "Library Mail" directly below the ancillary service endorsement.

3. *Comment:* The Postal Service should recycle undeliverable-as-addressed items.

We are currently exploring a recycling offering by adding a new ancillary endorsement that mailers could use to assure undeliverable-as-addressed mail would be destroyed so it could not be used as originally intended. This potential offering is in its formative stage but if adopted may provide an attractive endorsement alternative for manufacturers and distributors of books and sound recordings who desire destruction of their undeliverable products for a fee.

4. *Comment:* Provide electronic notification for the reason a mailpiece was undeliverable as addressed when using the "Return Service Requested" endorsement.

The Return Service Requested endorsement provides the reason of nondelivery by hardcopy at the time of return of the product. However, we understand that mailers would prefer to know as quickly as possible why a piece was undeliverable via electronic data. We intend to evaluate the development of an electronic notification option with the Return Service Requested endorsement for a fee as a future service offering.

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 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 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:

* * * * *

500 Additional Services

* * * * *

507 Mailer Services

1.0 Treatment of Mail

* * * * *

1.9 Dead Mail

* * * * *

[Delete 1.9.2 in its entirety and renumber current 1.9.3 as new 1.9.2]

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–387 Filed 1–11–10; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 601

Purchasing of Property and Services

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising its regulations governing the supplier disagreement resolution (SDR) process to clarify and explain the purposes of that process, and to remove extraneous and duplicative language.

DATES: *Effective Date:* January 12, 2010.

FOR FURTHER INFORMATION CONTACT: Paul D. McGinn, 202–268–4368, or Edward B. Halstead, 202 268–6221.

SUPPLEMENTARY INFORMATION: The Postal Service is revising the regulations in 39 CFR 601.107 and 601.108 that govern the supplier disagreement resolution (SDR) process in order to clarify certain SDR procedures. These changes are explained in more detail below.

Explanation of Changes

Section 601.107: Initial Disagreement Resolution

Paragraph (a) has been revised to state that the Supplier Disagreement Resolution Official (SDR Official) is a contracting officer designated by the Postal Service to perform the functions established under § 601.108.

Paragraph (b) has been revised to clarify the timelines for filing initial disagreements concerning solicitations.

Paragraph (c) is revised to inform parties that the alternative dispute resolution (ADR) process may be used to resolve disagreements and that if an agreement cannot be reached under ADR, the supplier has 10 days to lodge its disagreement with the SDR Official.

Section 601.108: SDR Official Disagreement Resolution

Paragraph (a) has been revised to remove language that was extraneous or duplicative of statements made in other paragraphs.

Paragraph (b) contains editorial changes and further explains the purposes of the disagreement resolution process.

Paragraph (c) clarifies the acceptable modes for submitting a disagreement under § 601.107 or contest of decision under § 601.105 and updates the dedicated fax number.

Paragraph (d) clarifies that this paragraph covers both disagreements under § 601.107 and contests of decisions under § 601.105. Paragraph (d)(3) has been revised for clarity.

Paragraph (e) is supplemented to provide examples of remedies that the SDR Official is authorized to grant.

Paragraph (g) explains when a challenged award becomes final, a status that varies depending on how the SDR Official resolves the disagreement. The grounds upon which appeals may be taken to Federal court, previously addressed in paragraph (g), are now addressed in a new paragraph (h).

Paragraph (h) clarifies the grounds upon which the Postal Service's final contract award, as described in paragraph (g), may be appealed. Paragraph (h) further clarifies that the party lodging the disagreement may seek review of the Postal Service's final contract award only after the mandatory administrative remedies provided under § 601.107 and § 601.108 have been exhausted.

Paragraph (i) is identical to the old paragraph (h), except that it now clarifies that the resolution timeframe applies not only to disagreements under § 601.107, but also to contests of decisions under § 601.105.

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service.

■ Accordingly, 39 CFR Part 601 is amended as follows:

PART 601—[AMENDED]

■ 1. The authority citation for 39 CFR Part 601 continues to read as follows:

Authority: 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

■ 2. Revise §§ 601.107 and 601.108 to read as follows:

§ 601.107 Initial disagreement resolution.

(a) *Definitions.*

(1) *Days.* Calendar days; however, any time period will run until a day that is not a Saturday, Sunday, or legal holiday.

(2) *Disagreements.* All disputes, protests, claims, disagreements, or demands of whatsoever nature arising in connection with the acquisition of property and services within the scope of § 601.103 of this chapter, except those:

(i) That arise pursuant to a contract under the Contract Disputes Act under § 601.109;

(ii) That concern debarment, suspension, or ineligibility under § 601.113; or

(iii) That arise out of the nonrenewal of transportation contracts containing other provisions for the review of such decisions.

(3) *Interested parties.* Actual or prospective offerors whose direct economic interests would be affected by the award of, or failure to award, the contract.

(4) *Lodge.* A disagreement is lodged on the date it is received by the contracting officer or the Supplier Disagreement Resolution Official, as appropriate.

(5) *SDR Official.* The Supplier Disagreement Resolution Official, a contracting officer designated by the Postal Service to perform the functions established under § 601.108.

(b) *Policy.* It is the policy of the Postal Service and in the interest of its suppliers to resolve disagreements by mutual agreement between the supplier and the responsible contracting officer. All disagreements must be lodged with the responsible contracting office in writing via facsimile, e-mail, hand delivery, or U.S. Mail. For disagreements that concern the award of a contract, the disagreement shall be lodged within 10 days of the date the supplier received notification of award or 10 days from the date the supplier received a debriefing, whichever is later. For disagreements that concern alleged improprieties in a solicitation, the contracting officer must receive the disagreement before the time set for the receipt of proposals, unless the disagreement concerns an alleged impropriety that does not exist in the initial solicitation but which is subsequently incorporated into the solicitation, in which event the contracting officer must receive the disagreement no later than the next closing time for the receipt of proposals following the incorporation. The resolution period shall last 10 days from the date when the disagreement is lodged with the contracting officer. During the supplier-contracting officer 10-day resolution period, the responsible contracting officer's management may help to resolve the disagreement. At the conclusion of the 10-day resolution period, the contracting officer must communicate, in writing, to the supplier his or her resolution of the disagreement.

(c) *Alternative dispute resolution.* Alternative dispute resolution (ADR) procedures may be used to resolve a disagreement. If the use of ADR is agreed upon, the 10-day limitation is suspended. If agreement cannot be reached, the supplier has 10 days to lodge its disagreement with the SDR Official.

§ 601.108 SDR Official disagreement resolution.

(a) *General.* If a disagreement under § 601.107 is not resolved within 10 days after it was lodged with the contracting officer, if the use of ADR fails to resolve it at any time, if the supplier is not satisfied with the contracting officer's resolution of the disagreement, or if the decision not to accept or consider proposals under § 601.105 is contested, the SDR Official is available to provide final resolution of the matter. The Postal Service desires to resolve all such matters quickly and inexpensively in keeping with the regulations in this part.

(b) *Scope and applicability.* This procedure is established as the sole and exclusive means to resolve disagreements under § 601.107 and contests of decisions under § 601.105. This procedure is intended to expeditiously resolve disagreements that are not resolved at the responsible contracting officer level; to reduce litigation expenses, inconvenience, and other costs for all parties; to facilitate successful business relationships with Postal Service suppliers, the supplier community, and other persons; and to develop further the basis for the Postal Service's purchasing decisions and the administrative records concerning those decisions. All disagreements under § 601.107 and contests of decisions under § 601.105 will be lodged with and resolved, with finality, by the SDR Official under and in accordance with the sole and exclusive procedure established in this section.

(c) *Lodging.* The disagreement under § 601.107 or contest of decision under § 601.105 must be lodged with the SDR Official in writing via facsimile, e-mail, hand delivery, or U.S. Mail. The disagreement under § 601.107 or contest of decision under § 601.105 must state the factual circumstances relating to it and the remedy sought. A disagreement under § 601.107 must also state the scope and outcome of the initial disagreement resolution attempt with

the contracting officer. The address of the SDR Official is: Room 4130 (Attn: SDR Official), United States Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260–4130. e-mail Address: *SDROfficial@usps.gov*. Fax Number: (202) 268–0075.

(d) *Lodging timeframes.* Disagreements under § 601.107 or contests of decisions under § 601.105 must be lodged with the SDR Official within the following timeframes:

(1) Disagreements under § 601.107 not resolved with the contracting officer must be lodged with the SDR Official within 20 days after they were lodged with the contracting officer (unless ADR had been used to attempt to resolve them);

(2) Disagreements under § 601.107 for which ADR had been agreed to be used must be lodged with the SDR Official within 10 days after the supplier knew or was informed by the contracting officer or otherwise that the matter was not resolved;

(3) Where a supplier is dissatisfied with the contracting officer's resolution of a disagreement under § 601.107, the supplier must lodge the disagreement with the SDR Official within 10 days after the supplier first receives notification of the contracting officer's resolution; and

(4) Contests of decisions under § 601.105 to decline to accept or consider proposals must be lodged with the SDR Official within 10 days of the supplier's receipt of the written notice explaining the decision.

(5) The SDR Official may grant an extension of time to lodge a disagreement under § 601.107 or contest of decision under § 601.105 or to provide supporting information when warranted. Any request for an extension must set forth the reasons for the request, be made in writing, and be delivered to the SDR Official on or before the time to lodge a disagreement lapses.

(e) *Disagreement decision process.* The SDR Official will promptly provide a copy of a disagreement to the contracting officer, who will promptly notify other interested parties. The SDR Official will consider a disagreement and any response by other interested parties and appropriate Postal Service officials within a time frame established by the SDR Official. The SDR Official may also meet individually or jointly with the person or organization lodging the disagreement, other interested parties, and/or Postal Service officials, and may undertake other activities in order to obtain materials, information, or advice that may help to resolve the disagreement. The person or organization lodging the disagreement, other interested parties, or Postal Service officials must promptly provide all relevant, nonprivileged materials and other information requested by the SDR Official. If a submission contains trade secrets or other confidential information, it should be accompanied by a copy of the submission from which the confidential matter has been redacted. The SDR Official will determine whether any redactions are appropriate and will be solely responsible for determining the treatment of any redacted materials. After obtaining such information, materials, and advice as may be needed, the SDR Official will promptly issue a written decision resolving the disagreement and will deliver the decision to the person or organization lodging the disagreement, other interested parties, and appropriate Postal Service officials. When resolving a disagreement raised under § 601.107, the SDR Official may grant remedies including, but not limited to, the following:

(1) Directing the contracting officer to revise the solicitation or to issue a new solicitation;

(2) Directing the contracting officer to recompete the requirement;

(3) Directing the contracting officer to reevaluate the award on the basis of current proposals and the evaluation factors contained in the solicitation; and

(4) Directing the contracting officer to terminate the contract or to refrain from exercising options under the contract.

(f) *Guidance.* The SDR Official will be guided by the regulations contained in this part and all applicable public laws enacted by Congress. Non-Postal Service procurement rules or regulations and revoked Postal Service regulations will not apply or be taken into account. Failure of any party to provide requested information may be taken into account by the SDR Official in the decision.

(g) *Final resolution by the SDR Official and final contract award of the Postal Service.* A resolution by the SDR Official will be final and binding. If the SDR Official's final resolution affirms the original contract award of the contracting officer, the contracting officer's original contract award becomes the Postal Service's final contract award, and may be subject to judicial review as described in paragraph (h) of this section. If the SDR Official's final resolution directs that the Postal Service terminate the contract award and issue a new solicitation, recompete the requirement, or reevaluate the current award, the contracting officer shall implement promptly the SDR Official's final resolution. However, any contract award made by the contracting officer after a resolicitation, recompetition, or reevaluation directed by the SDR Official is not a final contract award of the Postal Service that may be subject to judicial review unless and until disagreements concerning that contract award have been lodged and resolved with finality by the SDR Official.

(h) *Judicial review.* The Postal Service's final contract award, as described in paragraph § 601.108(g), may be appealed to a Federal court with jurisdiction based only upon an alleged violation of the regulations contained in this part or an applicable public law enacted by Congress. The party lodging the disagreement may seek review of the Postal Service's final contract award only after the mandatory administrative remedies provided under § 601.107 and § 601.108 have been exhausted.

(i) *Resolution timeframe.* It is intended that this procedure generally will resolve disagreements under § 601.107 or contests of decisions under § 601.105 within approximately 30 days after receipt by the SDR Official. The time may be shortened or lengthened depending on the complexity of the issues and other relevant considerations.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–385 Filed 1–11–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket: EPA–R02–OAR–2009–0508; FRL–9091–4]

Approval and Promulgation of Implementation Plans; Puerto Rico; Guaynabo PM_{10} Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the Limited Maintenance Plan for the Municipality of Guaynabo nonattainment area in Puerto Rico and the request by the Commonwealth of Puerto Rico to redesignate the area from nonattainment to attainment for the National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). On March 31, 2009,

the Commonwealth of Puerto Rico submitted a Limited Maintenance Plan for the Guaynabo nonattainment area for approval and concurrently requested that EPA redesignate the Guaynabo nonattainment area to attainment for PM_{10}.

DATES: *Effective Date:* This rule is effective on *February 11, 2010.*

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2009–0508. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212–637–4249.

FOR FURTHER INFORMATION CONTACT: Kirk Wieber at telephone number: (212) 637–3381, e-mail address: *wieber.kirk@epa.gov,* fax number: (212) 637–3901, or the above EPA Region 2 address.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking?

The Environmental Protection Agency (EPA) is approving the Limited Maintenance Plan (LMP) for the Municipality of Guaynabo nonattainment area (Guaynabo NAA). EPA is concurrently redesignating the Guaynabo NAA to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

For additional details on EPA's analysis and findings, the reader is referred to the proposal published in the September 2, 2009 **Federal Register** (74 FR 45387) and a more detailed discussion is contained in the Technical Support Document which is available on line at *www.regulations.gov,* Docket number EPA–R02–OAR–2009–0508.

II. What Is the Background for EPA's Action?

As required by the Clean Air Act (Act), in 1987 the EPA revised the particulate matter NAAQS from total suspended particles to PM_{10}. The standard was changed to better protect public health and the environment.

The Act, as amended in 1990, required that all areas that have measured a violation of the NAAQS for PM_{10} before January 1, 1989 be designated nonattainment. On November 15, 1990 by operation of law, the Municipality of Guaynabo in Puerto Rico was designated nonattainment for PM_{10} and classified as moderate based on violations measured in 1987.

On November 14, 1993 the Puerto Rico Environmental Quality Board (PREQB) submitted to EPA a State Implementation Plan (SIP) revision which consisted of a PM_{10} SIP for the Municipality of Guaynabo. The Guaynabo PM_{10} SIP revision was reviewed and approved by EPA on May 31, 1995 (60 FR 28333) and became effective on June 30, 1995.

After completing the appropriate public notice and comment procedures, on March 31, 2009, the PREQB submitted to EPA a "Limited Maintenance Plan 24 Hour Particulate Matter (PM_{10}) National Ambient Air Quality Standards and Redesignation Request for the Municipality of Guaynabo Moderate Nonattainment Area State Implementation Plan Revision." On September 2, 2009 (74 FR 45387), EPA proposed to approve the LMP for the Municipality of Guaynabo and the request by the Commonwealth of Puerto Rico to redesignate the area from nonattainment to attainment for PM_{10}.

III. What Comments Were Received?

No comments were received in response to the September 2, 2009 proposal.

IV. What Are the Requirements for Redesignation?

A. Clean Air Act Requirements for Redesignation of Nonattainment Areas

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the Act, and the General Preamble for the implementation of Title I of the Act (General Preamble) provide the criteria for redesignation. See 57 FR 13498 (April 16, 1992). These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, "Procedures for Processing Requests to Redesignate Areas to Attainment". The criteria for redesignation are: (1) The Administrator has determined that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable SIP for the area under section 110(k) of the Act; (3) the state containing the area has met all requirements applicable to the area under section 110 and part D of the Act; (4) the Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions; and (5) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the Act.

B. The Limited Maintenance Plan (LMP) Option for PM_{10} Nonattainment Areas

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM_{10} nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled "Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas,") referred to as the LMP option memo. The LMP option memo contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. It follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP, are no longer necessary. To qualify for the LMP option: (1) The area should have attained the PM_{10} NAAQS; (2) the average annual PM_{10} design value for the area, based upon the most recent 5 years of air quality data at all monitors in the area, should be at or below 40 micrograms per cubic meter ($\mu g/m^3$); and (3) the 24 hour design value should be at or below 98 $\mu g/m^3$. If an area cannot meet this test, it may still be able to qualify for the LMP option if the average design value for the site is less

than the site-specific critical design values. In addition, the area should expect only limited growth in on-road motor vehicle PM_{10} emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test. The LMP option memo also identifies core provisions that must be included in the LMP. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

C. Conformity Under the Limited Maintenance Plan Option

The transportation conformity rule and the general conformity rule (40 CFR part 93; also see 40 CFR part 51) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area. While EPA's LMP option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM_{10} NAAQS would result. For transportation conformity purposes, EPA would conclude that emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in 40 CFR 93.158(a)(5)(i)(A) as these budgets also are essentially considered to be unlimited.

V. What Are EPA's Conclusions?

EPA has determined that the PM_{10} Limited Maintenance Plan submitted by the PREQB on March 31, 2009 for the Municipality of Guaynabo meets all Clean Air Act provisions and EPA policy and guidance, including the criteria outlined in EPA's LMP option memo. Therefore, EPA is approving the PM_{10} Limited Maintenance Plan for the Municipality of Guaynabo and all of its components as they were submitted by PREQB on March 31, 2009. Specifically, EPA is approving the 2002 PM_{10} attainment emissions inventory, attainment plan, maintenance demonstration, contingency measures, monitoring network, transportation conformity analysis and revisions to Rules 102 and 423 of the Puerto Rico Regulation for the Control of Atmospheric Pollution.

EPA is also approving the redesignation request for the Municipality of Guaynabo submitted by the PREQB on March 31, 2009 based on EPA's determination that the supporting documentation for redesignation satisfies all Clean Air Act requirements and EPA's policy and guidance, including the criteria outlined in EPA's redesignation guidance memorandum.

VI. Statutory and Executive Order Reviews

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

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.

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 15, 2010. 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 20, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart BBB—Puerto Rico

■ 2. Section 52.2720 is amended by adding new paragraph (c)(37) to read as follows:

§ 52.2720 Identification of plan.

* * * * *

(c) * * *

(37) On March 31, 2009, the Puerto Rico Environmental Quality Board submitted a Particulate Matter (PM_{10}) Limited Maintenance Plan and requested the redesignation of the Municipality of Guaynabo PM_{10} Nonattainment area to attainment for PM_{10}. EPA approves Puerto Rico's Limited Maintenance Plan including the 2002 PM_{10} attainment emissions inventory, attainment plan, maintenance demonstration, contingency measures, monitoring network, transportation conformity analysis and revisions to Rules 102 and 423 of the Puerto Rico Regulation for the Control of Atmospheric Pollution. On July 15, 2009, the Puerto Rico Environmental Quality Board submitted the official copy of the adopted revisions to Rules 102 and 423.

(i) Limited Maintenance Plan 24-Hour PM_{10} National Ambient Air Quality Standards (NAAQS) for the Municipality of Guaynabo Moderate Nonattainment Area which includes amendments to Rules 102 and 423 of the Regulation for the Control of Atmospheric Pollution, approved by the Puerto Rico Environmental Quality Board March 5, 2009; filed with the Secretary of State April 28, 2009; effective May 28, 2009.

(A) Rule 102 Definitions, Guaynabo PM_{10} Maintenance Area; filed with the Secretary of State April 28, 2009; effective May 28, 2009.

(B) Rule 423 Limitations for the Guaynabo PM_{10} Maintenance Area; filed with the Secretary of State April 28, 2009; effective May 28, 2009.

■ 3. Section 52.2723, the table is amended by revising the entries for Rule 102 and Rule 423 to read as follows:

§ 52.2723 EPA-approved Puerto Rico regulations.

REGULATION FOR THE CONTROL OF ATMOSPHERIC POLLUTION

Puerto Rico regulations	Commonwealth effective date	EPA approval date	Comments
* * *	*	* * *	*
Rule 102, Definitions	5/28/09	1/12/10, [Insert FR page citation].	
* * *	*	* * *	*
Rule 423, Limitations for the Guaynabo PM_{10} Maintenance Area.	5/28/09	1/12/10, [insert FR page citation].	
* * *	*	* * *	*

PART 81—[AMENDED]

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. In § 81.355, the table entitled "Puerto Rico—PM–10" is amended by removing the entry for "Guaynabo County" and adding in its place the entry "Municipality of Guaynabo" to read as follows:

§ 81.355 Puerto Rico.

* * * * *

PUERTO RICO—PM_{10}

Designated area	Designation		Classification	
	Date	Type	Date	Type
Municipality of Guaynabo	1/12/10	Attainment.		
* * *	*	*	*	*

* * * * *

[FR Doc. 2010–258 Filed 1–11–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2647; MB Docket No. 09–122; RM–11544]

Television Broadcasting Services; Bangor, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Community Broadcasting Service, the licensee of WABI–TV, channel 19, Bangor, Maine, requesting the substitution of channel 13 for channel 19 at Bangor.

DATES: This rule is effective February 11, 2010.

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. 09–122, adopted December 31, 2009, and released January 4, 2010. 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://fjallfoss.fcc.gov/ecfs/*). 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 the company's Web site, *http://www.bcipweb.com.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

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 Maine, is amended by adding channel 13 and removing channel 19 at Bangor.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. 2010–329 Filed 1–11–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 13]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2010

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2008 rail industry random testing positive rates were 0.46 percent for drugs and 0.15 percent for alcohol. Because the industry-wide random drug testing positive rate has remained below 1.0 percent for the last two years of data, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2010, through December 31, 2010, will remain at 25 percent of covered railroad employees. In addition, because the industry-wide random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2010, through December 31, 2010.

DATES: This notice is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (telephone 202–493–6313); or Kathy Schnakenberg, FRA Alcohol/Drug Program Specialist, (telephone 816–561–2714).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2010 Minimum Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year. *See* 49 CFR 219.602 and 219.608.

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent of covered railroad employees whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at a 50 percent minimum rate. For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates. If the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year, FRA will return the minimum random drug testing rate to 50 percent of covered railroad employees.

If the industry-wide random alcohol violation rate is less than 1.0 percent but greater than 0.5 percent, the minimum random alcohol testing rate will be 25 percent of covered railroad employees. FRA will raise the minimum random rate to 50 percent of covered railroad employees if the industry-wide random alcohol violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent of covered railroad employees whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate.

In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2010 through December 31, 2010, because the industry random drug testing positive rate was below 1.0 percent for the last two years (the drug testing positive rate was .046 percent in 2008 and .056 percent in 2007). The minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2010 through December 31, 2010, because the industry-wide violation rate for alcohol has remained

below 0.5 percent for the last two years (the industry-wide violation rate for alcohol was .015 percent in 2008 and .018 percent in 2007). Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on January 6, 2010.

Joseph C. Szabo,

Administrator.

[FR Doc. 2010–374 Filed 1–11–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA–2009–0050]

RIN 2127–AK46

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the Insurer Reporting Requirements. The regulations specify the requirements for annual insurer reports and lists in appendices those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices must file three copies of its report for the 2006 calendar year before October 25, 2009 as specified by law, but we acknowledge this notice has not been published by that date. Therefore, NHTSA will not take enforcement actions against any insurer that file the 2006 insurer reports after October 25, 2009, but not later than December 31, 2009. This is a one-time exception, based on the unique circumstances for 2009. All subsequent reports must be filed not later than October 25th of the year in which the reports are due. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25th.

DATES: This final rule becomes effective on February 11, 2010. Insurers listed in the appendices were required to submit reports on or before December 31, 2009. If you wish to submit a petition for reconsideration of this rule, your petition must be received by February 26, 2010.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Room W41–307, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., West Building, Room W43–439, Washington, DC 20590, by electronic mail to *carlita.ballard@dot.gov.* Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, *Insurer reports and information,* NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Pursuant to 49 U.S.C. Section 33112(f), the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state and;

(3) rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term "small insurer" is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (49 CFR Part 544; 52 FR 59, January 2, 1987), NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler, since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best [1] publishes in its *State/Line Report* each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer;

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a

[1] A.M. Best Company is a well-recognized source of insurance company ratings and information. 49 U.S.C. 33112(i) authorizes NHTSA to consult with public and private organizations as necessary.

class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to Part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from *Automotive Fleet Magazine* and *Auto Rental News*.[2]

C. When a Listed Insurer Must File a Report

Under Part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report before October 25, 2009, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

II. Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

On August 17, 2009, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in Appendices A, B, and C required to file reports (74 FR 41362). Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on August 18, 2008 (73 FR 48151). Based on the 2006 calendar year market share data from A.M. Best, NHTSA proposed to remove Auto Club Southern California Group and add Auto Club Enterprise Insurance Group to Appendix A.

Appendix B lists insurers required to report because each insurer had a 10 percent or greater market share of motor vehicle premiums in a particular State. Based on the 2006 calendar year data for market shares from A.M. Best, we proposed to remove Farm Bureau of Idaho from Appendix B.

[2] *Automotive Fleet Magazine* and *Auto Rental News* are publications that provide information on the size of fleets and market share of rental and leasing companies.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Subsequent to publishing the August 18, 2008 final rule (see 73 FR 48151), the agency was informed by Emkay, Inc., (Emkay) that it was a motor vehicle leasing company offering financial, fleet management and consulting services pertaining to operating a fleet of motor vehicles and does not provide insurance policies for its customers to purchase. However, Emkay, further stated that it does include as a condition of its lease agreement that its lessees purchase and maintain its own motor vehicle insurance coverage. Emkay also submitted a copy of its lease agreement showing that insurance was required as a condition of the lease. Therefore, NHTSA proposed to remove Emkay, Inc. from the list of insurers required to meet the reporting requirements.

Public Comments on Final Determination

Insurers of Passenger Motor Vehicles

The agency received no comments in response to the NPRM. Therefore, this final rule adopts the proposed changes to Appendix A, B and C. Accordingly, NHTSA has determined that each of the 19 insurers listed in Appendix A, each of the eight insurers listed in Appendix B and each of six companies listed in Appendix C are required to submit an insurer report on its experience for calendar year 2006 no later than December 31, 2009, and set forth the information required by Part 544. As long as these insurers and companies remain listed, they would be required to submit reports in subsequent years.

Submission of Theft Loss Report

Passenger motor vehicle insurers listed in the appendices can forward their theft loss reports to the agency in several ways:

a. *Mail:* Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, Department of Transportation, NHTSA, West Building, 1200 New Jersey Avenue, SE., NVS–131, Room W43–439, Washington, DC 20590;

b. *E-mail: carlita.ballard@dot.gov;* or

c. *Fax:* (202) 493–2990.

Theft loss reports may also be submitted to the docket electronically [identified by Docket No. NHTSA–2009–0050] by:

d. *Logging onto the Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for filing the document electronically.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866, Regulatory Planning and Review. NHTSA has considered the impact of this final rule and determined that the action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This final rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing Part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2006 (*see http://www.bls.gov/cpi*), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $107,650 for any insurer added to Appendix A, $43,060 for any insurer added to Appendix B, and $12,423 for any insurer added to Appendix C. This final rule will remove one company and add one company to Appendix A, remove one company for Appendix B, and remove one company from appendix C. Therefore, the net effect of this final rule is a decreased cost of $55,483 to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Technical Reference Division, 1200 New Jersey Avenue, SE., East Building (Ground Floor), Room E12–100, Washington, DC 20590, or by calling (202) 366–2588.

2. Paperwork Reduction Act

The information collection requirements in this final rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The existing information collection indicates that the number of respondents for this collection is thirty-three, however, the actual number of respondents fluctuate from year to year.

Therefore, because the number of respondents required to report for this final rule does not exceed the number of respondents indicated in the existing information collection, the agency does not believe that an amendment to the existing information collection is necessary. This collection of information is assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements").

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies listed on Appendices A, B or C are construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice exempts all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency exempts all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self-insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this final rule and determined that it would not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law, 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909, and section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

7. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

8. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

☐ Have we organized the material to suit the public's needs?

☐ Are the requirements in the proposal clearly stated?

☐ Does the proposal contain technical language or jargon that is not clear?

☐ Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

☐ Would more (but shorter) sections be better?

☐ Could we improve clarity by adding tables, lists, or diagrams?

☐ What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, 1200 New Jersey Avenue, SE., NVS–131, Room W43–439, Washington, DC 20590.

b. *E-mail: carlita.ballard@dot.gov*; or *Fax:* (202) 493–2990.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

PART 544—[AMENDED]

■ 1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

■ 2. In § 544.5, paragraph (a), the second sentence is revised to read as follows:

§ 544.5 General requirements for reports.

(a) * * * This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (*e.g.,* the report due by December 31, 2009 will contain the required information for the 2006 calendar year).

* * * * *

■ 3. Appendix A to part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
Auto Club Enterprise Insurance Group [1]
Auto-Owners Insurance Group
Erie Insurance Group
Berkshire Hathaway/GEICO Corporation Group
California State Auto Group [1]
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group
Mercury General Group
Nationwide Group
Progressive Group
Safeco Insurance Companies
State Farm Group
Travelers Companies
USAA Group
Farmers Insurance Group

■ 4. Appendix B to part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Auto Club (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Safety Group (Massachusetts)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

■ 5. Appendix C to part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Cendant Car Rental
Dollar Thrifty Automotive Group
Enterprise Rent-A-Car
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
U-Haul International, Inc. (Subsidiary of AMERCO)
Vanguard Car Rental USA

[1] Indicates a newly listed company which must file a report beginning with the report due December 31, 2009.

Issued on: January 5, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–268 Filed 1–11–10; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 75, No. 7
Tuesday, January 12, 2010

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

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

[DHS 2009–0141]

Chemical Facility Anti-Terrorism Standards

AGENCY: Department of Homeland Security, National Protection and Programs Directorate.

ACTION: Request for comments.

SUMMARY: The Department of Homeland Security (DHS or the Department) invites public comment on issues related to certain regulatory provisions in the Chemical Facility Anti-Terrorism Standards (CFATS) that apply to facilities that store gasoline in aboveground storage tanks.

DATES: Written comments must be submitted on or before March 15, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0141, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* U.S. Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division, Mail Stop 8100, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Todd Klessman, Office of Infrastructure Protection, Infrastructure Security Compliance Division, Mail Stop 8100, Washington, DC 20528, telephone number (703) 235–5263.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

ASP—Alternative Security Program
CFATS—Chemical Facility Anti-Terrorism Standards
COI—Chemical(s) of Interest
CVI—Chemical-terrorism Vulnerability Information
DHS—Department of Homeland Security
EPA—Environmental Protection Agency
RMP—Risk Management Program
SSP—Site Security Plan
STQ—Screening Threshold Quantity
SVA—Security Vulnerability Assessment
VCE—Vapor Cloud Explosion

I. Comments Invited

A. In General

DHS invites interested persons to submit written comments, data, or views. For each comment, please identify the document number and agency name for this notice. DHS encourages commenters to provide their names and addresses. You may submit comments and materials electronically or by mail as provided under the **ADDRESSES** section. DHS will file in the public docket all comments received by DHS, except for comments containing confidential information, sensitive information, or Chemical-terrorism Vulnerability Information (CVI) as defined in 6 CFR 27.400(b).

B. Handling of Confidential and Sensitive Information and Chemical-terrorism Vulnerability Information (CVI)

Do not submit comments that include trade secrets, confidential commercial information, Chemical-terrorism Vulnerability Information (CVI) or other sensitive information to the public docket. Please submit such comments separate from other non-sensitive comments regarding this notice. Specifically, please mark any confidential or sensitive comments as containing such information and submit them by mail to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Any comments containing CVI should be marked and handled in accordance with the requirements of 6 CFR 27.400(f).

DHS will not place any confidential or sensitive comments in the public docket; rather, DHS will handle them in accordance with applicable safeguards and restrictions on access. *See, e.g.,* 6 CFR 27.400. *See also* the DHS CVI Procedural Manual ("Safeguarding Information Designated as CVI," September 2008, located on the DHS Web site at *http://www.dhs.gov/chemicalsecurity*). DHS will hold any such comments in a separate file to which the public does not have access, and place a note in the public docket that DHS has received such materials from the commenter.

C. Reviewing Comments in the Docket

For access to the docket to read the public comments received and relevant background documents referred to in this notice, go to *http://www.regulations.gov.*

II. Background

A. Chemical Facility Security Rulemaking

Section 550 of the Homeland Security Appropriations Act of 2007 (Pub. L. 109–295, Oct. 2006) required the Department to issue, within six months, interim final regulations for the security of chemical facilities that, "in the Secretary's discretion, present high levels of security risk." Under that authority, the Department promulgated the Chemical Facility Anti-Terrorism Standards, 6 CFR Part 27 (CFATS), on April 9, 2007. *See* 72 FR 17688.

The CFATS interim final rule sought public comment on Appendix A, a tentative list of over 300 chemicals of interest (COI) with the potential to create significant human life or health consequences if released, stolen or, diverted, or sabotaged. Section 27.200(b)(2) of the CFATS regulation requires any chemical facility that possesses any COI at or above the applicable screening threshold quantity (STQ) specified in Appendix A to complete and submit an online data collection (the Top-Screen) to DHS. The Department uses the facility's Top-Screen and, where applicable, other available information to perform a preliminary assessment of the facility's capacity to cause significant adverse consequences if targeted for a terrorist attack.[1] DHS uses that preliminary consequence assessment to make an *initial* high-risk determination for the facility. *See* 6 CFR 27.200–27.210.

The Department assigns each facility that is initially determined to be high-risk to a preliminary risk-based tier level (Tiers 1–4, with Tier 1 representing the highest risk) and notifies the facility that it must submit a Security Vulnerability Assessment (SVA) to DHS. The

[1] In this notice, the terms "consequence" or "consequentiality" refer to the potential adverse effects on human life or health from a successful terrorist incident at a chemical facility. *See generally* 72 FR 17696, 17700–17701. DHS also has authority to determine that a facility is high-risk based on potential consequences to national security or critical economic assets. *See* 6 CFR 27.105; 72 FR 17700–17701.

Department uses the SVA to make a final high-risk and tiering determination. Only those facilities that are *finally* determined to be high-risk are subject to the full scope of the regulations and required to submit, for DHS approval, Site Security Plans (SSPs) or Alternative Security Programs (ASPs) that satisfy the risk-based performance standards specified in the CFATS regulations. *See* 6 CFR 27.220–27.225.

DHS issued the final Appendix A on November 20, 2007. *See* 72 FR 65396. The November 2007 rule clarified that chemicals of interest listed in Appendix A due to potential risks related to "release" are classified as Release-Explosives, Release-Flammables, or Release-Toxics, according to the type of potential harm they may cause. *See* 72 FR 65397. In response to comments on the tentative Appendix A, DHS also added provisions to CFATS to clarify under what circumstances [2] and in what manner facilities must calculate the quantities of certain types of COI under Appendix A to determine if they are required to submit Top-Screens. *See* 72 FR 65397–65398.

B. Special Provisions for Counting COI in Mixtures

Among other clarifications made in November 2007, DHS added § 27.203, which instructs facilities on when and how to calculate the STQ for certain types of chemicals of interest. With respect to chemicals in gasoline, § 27.203(b)(1)(v) requires facilities to count release-flammable COI (such as butane and pentane) contained

> in gasoline, diesel, kerosene or jet fuel (including fuels that have flammability hazard ratings of 1, 2, 3 or 4, as determined by using National Fire Protection Association (NFPA) [standard] 704 * * *) stored in aboveground tank farms, including tank farms that are part of pipeline systems.

In response to comments requesting that DHS clarify whether and how facilities should count COI in mixtures when calculating whether a facility meets or exceeds the applicable STQ under Appendix A, the November 2007 rule also added § 27.204. That section specifies how to calculate the amount of Release-Toxic, Release-Flammable and Release-Explosive COI (as well as Theft-COI) in chemical mixtures. *See* 72 FR 65399, 65416. In particular, § 27.204(a)(2) (the "flammable mixtures rule") clarified how to calculate the quantity of Release-Flammable COI contained in chemical mixtures, including gasoline [3] and the other fuels specified in § 27.203(b)(1)(v), for purposes of Appendix A.

The CFATS flammable mixtures rule generally parallels the rules previously adopted by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act's Risk Management Program (RMP) for counting—or excluding—flammable chemicals contained in mixtures that may be inadvertently or accidentally released.[4] *See* 72 FR 65402. As explained in the preamble to the November 2007 rule, however, given the different purposes, scope, and applicability of CFATS and the EPA RMP rules, there are several important differences between the CFATS and RMP mixture regulations. *See* 72 FR 65398–65399, 65401–65402.

One such difference is that the CFATS flammable mixtures rule requires that Release-Flammable COI (such as butane or pentane) contained in gasoline (and other fuels specified in § 27.203(b)(1)(v)) must be counted under Appendix A, even though EPA does not count the flammable chemicals in gasoline under the terms of the RMP "mixtures rule," 42 CFR 68.115(b)(2).[5] *See* 72 FR 65399 and n. 8. The November 2007 notice explained that, while EPA's RMP rules are premised solely on accidental releases of chemicals, the COI in these flammable mixtures, including gasoline, should be counted under Appendix A because of the potential consequences to human life or health of an *intentional* terrorist attack. *See* 72 FR 65399.

C. Implementation of CFATS

Over 36,000 facilities have submitted Top-Screens to DHS and about 6500 of those facilities were preliminarily determined by DHS to be high-risk and required to submit SVAs. DHS is now in the process of notifying those facilities that, based on review of their SVAs, DHS has finally determined to be high-risk and thus required to submit SSPs. On June 29, 2009, DHS issued final high-risk notifications to 10 aboveground gasoline storage tank facilities (*i.e.,* terminals).[6] Subsequently, DHS extended the SSP due dates for those facilities to allow the Department to coordinate further actions regarding terminals as a group. This extension is indefinite, pending the Department's consideration of certain technical issues and questions raised during the initial high-risk determination process for those facilities, as discussed below.

III. Issues Raised by the Gasoline Terminals Industry

A. Petition From International Liquid Terminals Association

Soon after promulgation of the November 2007 Appendix A final rule, several trade associations representing gasoline terminals raised both technical and procedural issues related to the applicability of Appendix A and the Top-Screen requirement to those facilities. Procedurally, those associations claimed that DHS did not provide advance notice and opportunity to comment on the provisions of §§ 27.203 and 27.204 related to aboveground fuel storage facilities that DHS added to CFATS in November 2007. Technically, the industry associations claimed that DHS had overestimated the potential consequences of a terrorist attack on gasoline terminals by relying on a model that calculates the impacts of a "vapor cloud explosion" from release of flammable liquids from aboveground storage tanks, which the industry asserted is unrealistic for gasoline terminals.

On May 13, 2009, the International Liquid Terminals Association (ILTA) submitted a petition to DHS under the Administrative Procedure Act requesting that DHS exempt gasoline from CFATS and remove all references to gasoline terminals from § 27.203(b)(1)(v) and the CFATS flammable mixtures rule (§ 27.204(a)(2)).[7] Through this notice, DHS invites comments on certain technical issues related to the

[2] Among other things, the November 2007 rule provided additional criteria related to the physical state (liquid, gas, or solid), concentration levels, and forms of packaging applicable to various chemicals of interest that must be counted under Appendix A.

[3] There is no single chemical composition for the mixture typically called "gasoline," which varies in content and blending components from company to company, region to region, and season to season. All formulations of gasoline, however, contain a significant percentage of certain release-flammable chemicals (*e.g.,* pentane, butane) and typically have a National Fire Protection Association (NFPA) flammability hazard rating of 3.

[4] *See* 40 CFR Part 68.

[5] EPA's exclusion of flammable chemicals in gasoline from the RMP rules was mandated by the Chemical Safety, Information, Site Security and Fuels Regulatory Relief Act, Public Law 106–40. *Cf.* 72 FR 65410 (EPA RMP program excludes flammable fuels). In addition, EPA agreed to delete gasoline from the original version of the RMP mixture rule, which had included gasoline, in settlement of litigation with the gasoline industry. *See* 63 FR 640 (Jan. 6, 1998). The RMP exclusion for gasoline and other flammable fuels was codified by EPA at 40 CFR 68.126.

[6] This notice will refer to all facilities with aboveground gasoline storage tanks, including facilities (such as petroleum refineries) that may possess other chemicals that trigger the Top-Screen requirement, as "gasoline terminals" or "terminals." Approximately 4000 terminals submitted Top-Screens and DHS initially identified 405 of those facilities as high-risk.

[7] The ILTA petition is included in the public docket for this notice and available for review at *http://www.regulations.gov.*

applicability of CFATS to gasoline terminals.

B. Modeling of Potential Consequences From Aboveground Gasoline Storage Tanks

In deciding to add provisions to CFATS for counting chemicals of interest in aboveground gasoline storage tanks, DHS considered several possible methods for modeling the potential consequences of terrorist incidents directed at such facilities—*i.e.,* the vapor cloud explosion (VCE) model and the "pool fire" model.

1. Modified VCE Model for Gasoline Terminals

In essence, a VCE model calculates the maximum distance at which a vapor cloud produced by release of flammable chemicals would be harmful or lethal to persons in or near the cloud (the "distance to endpoint"), based on the amount of flammable liquid chemical available, the estimated amount of the liquid that would convert to vapor, and the distance the vapor cloud could spread before becoming too "lean" to explode when exposed to an ignition source.

Since EPA had already developed a VCE model for estimating the consequences of accidental releases of flammable chemicals, including flammable mixtures, under the RMP regulations, DHS used the EPA VCE model as a starting point for modeling potential VCE consequences for all Release-Flammable COIs, including those at gasoline terminals.[8] DHS modified the EPA VCE model, however, to account for certain differences between gasoline and other flammable liquids mixtures, as explained below. DHS believes the modified VCE model reflects a plausible worst-case scenario for terminals and is an appropriate tool for assessing the potential consequences of a terrorist attack against gasoline terminals.

Specifically, DHS refined the EPA VCE model to provide an even more plausible estimate of the potential consequences of a terrorist attack on gasoline terminals in particular. While EPA's VCE model assumes that (up to) ten percent of a given amount of a flammable liquid will participate in the explosion (the "yield factor"), DHS assumes that only one percent of gasoline will participate, based on gasoline's combustion properties and its storage at ambient conditions.[9] This modification results in a reduction of the potential consequences calculated by the model, as compared to EPA's model, and appears to be consistent with the consequences from prior vapor cloud explosions involving gasoline, as discussed below. Therefore, the modified VCE model allows DHS to reasonably estimate the number of plausible worst-case casualties resulting from a successful attack on a gasoline terminal.

DHS understands that the formation of a gasoline vapor cloud with the potential to cause significant harm to human life and health requires that a number of natural and man-made circumstances combine in a certain way, and that accidental gasoline vapor cloud explosions are therefore uncommon. DHS has determined, however, that those necessary conditions are more likely to exist in the event of an intentional terrorist incident than in the context of an accident, and thus, that it is reasonable and within the Secretary's discretion under Section 550 to apply the modified VCE model to gasoline terminals. *See generally* 72 FR 65399.

For example, in 2005 (long after EPA excluded gasoline from the RMP rule, *see* n. 5, *supra*), a vapor cloud explosion resulting from an unintentional overflow of a gasoline storage tank at the Buncefield Oil Storage Depot in Hertfordshire, UK caused significant injuries and other damage. Several gasoline storage trade associations have asserted that the combination of specific circumstances resulting in the Buncefield incident—*e.g.,* accidental but prolonged and undetected overflow of the tank, failure of detection devices, congestion from nearby obstacles, weather conditions favoring accumulation rather than dispersal of the vapor cloud[10]—are so rare that DHS should disregard the possibility of such explosions at gasoline terminals.[11]

DHS has concluded, however, that a terrorist seeking to cause such an explosion could target a facility where the necessary physical conditions exist (or are likely to occur at some point in time). In order to maximize the consequences of the explosion, such a terrorist could attempt to cause gasoline to leak or overflow from the targeted tank(s) in such a way as to make formation of a vapor cloud more likely than it would be in an accident like the Buncefield explosion.[12]

Nonetheless, DHS invites public comment on the modified VCE model and on any alternatives to the specific modification made by DHS to the yield factor in the model.

2. "Pool Fire" Models

DHS considered other options for evaluating the potential consequences of a release from such facilities. Specifically, DHS considered an existing model that calculates the potential consequences from the radiated heat of a "pool fire" caused by ignition of liquid gasoline suddenly released from one or more aboveground tanks, but that implicitly assumes the pool fire is confined within dikes or other secondary containment surrounding the tank(s).[13] The gasoline industry asserts that this "contained pool fire" scenario is more realistic for terrorist incidents involving gasoline terminals (*e.g.,* attacks using explosive devices or weapons) than the VCE scenario. The industry also asserts that the potential consequences of such contained pool fires do not warrant subjecting terminals to any CFATS requirements.

DHS did not rely on the "contained pool fire" scenario, however, because any model that assumes the effectiveness of secondary containment does not represent a plausible, worst-case terrorist scenario, since an adversary seeking to maximize the consequences of attacking a terminal would also attempt to breach the secondary containment.[14]

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[8] EPA's VCE model is available in appendix C of EPA's "RMP Guidance for Offsite Consequence Analysis" (April 1999) *at http://www.epa.gov/OEM/docs?chem?oca-all.pdf.*

[9] *See* Letter dated December 10, 2008, from Sue Armstrong, DHS, to Robin Rorick, American Petroleum Institute, *et al.,* which is available in the public docket for this notice.

[10] The ignition of such a vapor cloud, and the resulting explosion, would be relatively easy to cause once the other circumstances were in place.

[11] *See* "Buncefield Major Incident Investigation Board: The Buncefield Incident," 11 December 2005 Final Report (2008), available at *http://www.buncefieldinvestigation.gov.uk/reports.* DHS does not believe that it is necessary or appropriate to detail all the circumstances of that incident, or to respond to every facet of the gasoline terminals industry analyses of those circumstances, in this notice.

[12] The pool fire model is described in EPA's "RMP Guidance for Offsite Consequence Analysis" (April 1999) at *http://www.epa.gov/OEM/docs/chem/oca-all.pdf.* As is true for the VCE model, EPA's RMP pool fire model reflects assumptions that may be appropriate for worst-case *accidental* release scenarios but that are not necessarily appropriate for plausible, worst-case *intentional* release scenarios.

[13] *See* letter dated December 10, 2008, from Sue Armstrong, DHS, to Robin Rorick, American Petroleum Institute, *et al.,* available in the public docket for this notice. The mitigating effects, if any, of secondary containment may be taken into account, however, during the Department's determination as to whether a covered facility's Site Security Plan satisfies the CFATS risk-based performance standards.

[14] Models currently available for calculating the consequences of an uncontained pool fire include assumptions that may be appropriate for releases from certain small sources (*e.g.,* a gasoline tank truck) but that are not realistic or appropriate for worst-case modeling of large-scale releases (*e.g.,* a sudden release from an aboveground gasoline storage tank). For example, the current EPA RMP model assumes that the surface upon which the gasoline has been released is perfectly flat and non-permeable. *See* EPA's "RMP Guidance for Offsite Consequence Analysis" (April 1999) at *http://www.epa.gov/OEM/docs/chem/oca-all.pdf.*

DHS is currently considering, however, and seeks comments on, whether it is feasible to refine existing models or develop a new model for *uncontained* pool fires (*i.e.,* where the contents of one or more gasoline storage tanks escape from secondary containment), so that such a model could be used for future consequence assessments for gasoline terminals—in lieu of or in addition to the modified VCE model.

IV. Issues for Commenters

Comments that will provide the most assistance to DHS should address the following issues and questions. Commenters should include explanations and relevant supporting materials with their comments whenever possible.

a. Comments on the inclusion of 6 CFR 27.203(b)(1)(v) (counting of Release-COI in gasoline, diesel, kerosene, or jet fuel in aboveground storage tanks) and 6 CFR 27.204(a)(2) (the flammable mixtures rule), as they apply to gasoline terminals.

b. Comments on the applicability of the modified VCE model to gasoline terminals, including: whether the reduction of the vapor yield for gasoline from ten percent (as in EPA's VCE model) to one percent reasonably reflects the potential consequences for a vapor cloud explosion from gasoline (as compared to other liquid flammable chemicals); and whether a different yield factor adjustment might better reflect the potential consequences for a vapor cloud explosion from gasoline.

c. Comments on whether a reasonable model exists or should be developed for future use that would allow DHS to estimate the plausible worst-case consequences of an uncontained pool fire resulting from a successful attack on gasoline terminals.

Dated: January 4, 2010.

Rand Beers,

Under Secretary for National Protection and Programs.

[FR Doc. 2010–234 Filed 1–11–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–09–0081; TM–09–04]

RIN 0581–AC93

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances (Crops)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA's) National List of Allowed and Prohibited Substances (National List) to reflect recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on November 19, 2008, and May 6, 2009. The recommendations addressed in this proposed rule pertain to amending an annotation for one exempted material on the National List and establishing an exemption (use) for another material in organic crop production. Consistent with the recommendations from the NOSB, this proposed rule would amend the annotation for a listed substance and add one substance, along with any restrictive annotation, to the National List.

DATES: Comments must be received by March 15, 2010.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

- *Internet: http://www.regulations.gov.*
- *Mail:* Comments may be submitted by mail to: Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–TMP–NOP, Room 2646–So., Ag Stop 0268, 1400 Independence Ave., SW., Washington, DC 20250–0268.

Written comments responding to this proposed rule should be identified with the document number AMS–NOP–09–0081; TM–09–04. You should identify the topic and section number of this proposed rule to which your comment refers. You should clearly state whether you support the amendment of the annotation for the substance on the national list and/or the exemption for the substance being proposed, with clearly indicated reason(s) for your position. You should also offer any recommended language changes that would be appropriate for your position. Please include relevant information and data to support your position (*e.g.* scientific, environmental, manufacturing, industry, impact information, *etc.*). Only relevant material supporting your position should be submitted.

It is USDA's intention to have all comments concerning this proposed rule, including names and addresses when provided, regardless of submission procedure used, available for viewing on the Regulations.gov (*http://www.regulations.gov*) Internet site. Comments submitted in response to this proposed rule will also be available for viewing in person at USDA—AMS, National Organic Program, Room 2646–South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Shannon Nally, Acting Director, Standards Division, Telephone: (202) 720–3252; Fax (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established, within the National Organic Program (NOP) (7 CFR part 205), the National List regulations §§ 205.600 through 205.607. This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990, as amended, (7 U.S.C. 6501 *et seq.*), (OFPA), and NOP regulations, in § 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling be on the National List.

Under the authority of the OFPA, the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the National List has been amended eleven times: October 31, 2003, (68 FR 61987); November 3, 2003,

(68 FR 62215); October 21, 2005, (70 FR 61217), June 7, 2006, (71 FR 32803); September 11, 2006, (71 FR 53299); June 27, 2007, (72 FR 35137); October 16, 2007, (72 FR 58469); December 10, 2007, (72 FR 70479); December 12, 2007, (72 FR 70479); September 18, 2008, (73 FR 59479); October 9, 2008, (73 FR 59479). Additionally, a proposed amendment to the National List was published on June 3, 2009, (74 FR 26591).

This proposed rule would amend the National List to reflect two recommendations submitted to the Secretary by the NOSB on November 19, 2008, and May 6, 2009. Based upon their evaluation of petitions submitted by industry participants, the NOSB recommended that the Secretary amend § 205.601 of the National List to amend the annotation for one exempted material (tetracycline) and add one substance (sulfurous acid) for use in organic crop production. The amended annotation and the exemption for use of the added substance in organic production were evaluated by the NOSB using the criteria specified in OFPA (7 U.S.C. 6517–6518).

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments to designated sections of the National List regulations:

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This proposed rule would amend § 205.601 of the National List regulations by: (1) Amending the annotation of paragraph (i)(11) by eliminating the parenthetical reference to a form of the exempted material and adding an expiration date; and (2) adding new paragraph (j)(9), for the purpose of allowing the use of the following substances:

Tetracycline. Tetracycline, in the form of oxytetracycline calcium complex, was included in the National List as originally published on December 21, 2000 (FR 65 80548), for use for fire blight control only. In October 2007, a petition was submitted to add oxytetracycline hydrochloride complex for fireblight control in organic crop production. Tetracycline is a broad-spectrum antibiotic for control of bacteria, fungi and mycoplasma-like organisms which functions by inhibiting protein synthesis in bacteria and altering bacterial membranes so that vital genetic material is leaked. For regulatory purposes, Environmental Protection Agency (EPA) uses the term oxytetracycline to refer to pesticides containing either calcium oxytetracycline or hydroxytetracycline monohydrochloride (oxytetracycline hydrochloride). Oxytetracycline is registered with the EPA for the following agronomic uses: fire blight of apples, pears, peaches and nectarines; pear decline; bacterial spot on peaches and nectarines; lethal yellowing of coconut palm; and lethal decline of pritchardia palm.

Oxytetracyclines are derived from the soil bacteria, *Streptomyces,* by a fermentation process. Technical grade tetracycline is a pale yellow to tan crystalline powder, is freely soluble in water, and decomposes above 180 degrees Celsius. Formulated products containing the technical grade oxytetracycline calcium complex and oxytetracyline hydrochloride for fireblight are wettable powders which are spray-applied using ground or aircraft equipment at early bloom stage, when fire blight infection usually occurs. In addition to agronomic uses, oxytetracyclines are also antibiotics used in human and animal drugs.

Per the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170, August 3, 1996), the EPA established tolerances for residues of these oxytetracycline pesticides in or on raw apples, peaches, nectarines, and pears of 0.35 parts per million (ppm) (40 CFR 180.337). In the 2006 Tolerance Reassessment Progress and Risk Management Decision (TRED), EPA deemed that the toxicity of the oxytetracylines would be similar and thus treated oxytetracycline hydrochloride and oxytetracycline calcium as equivalent for hazard characterization. In conducting the tolerance reassessment for oxytetracycline, EPA considered the aggregate risk from exposure via food and water intake and concluded that the dietary risk for all U.S. populations was below the level of concern. In regards to ecological effects, the EPA reported the potential for terrestrial and aquatic species to be exposed to oxytetracyclines due to use patterns on food crops, and the potential for acute and/or chronic toxicity. The EPA concluded that it is unlikely that antibiotic resistance from pesticidal use of oxytetracycline would result from food exposure, but could theoretically occur among bacteria in orchards. The EPA is conducting a registration review of oxytetracycline to ensure that the intended function is achieved without unreasonable adverse effects on human health or the environment. That review is scheduled for completion in 2014.

At its November 18–20, 2008, meeting in Washington, DC, the NOSB recommended revising the tetracycline listing at 205.601(i)(11) to remove the qualifying words, "oxytetracycline calcium complex," from the annotation and, in effect, permit the use of either form of oxytetracycline, i.e., oxytetracycline calcium complex and oxytetracycline hydrochloride until October 21, 2012. Both forms of oxytetracycline have EPA registered uses for fire blight control. In this open meeting, the NOSB evaluated the available technical forms of oxytetraclycline against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that the two forms of tetracycline are comparable, and that allowing the use of both substances is consistent with the prior decision to allow the use of oxytetracycline calcium complex.

The NOSB, however, recommended adding an expiration date of October 21, 2012, after which no form of tetracycline could be used in organic crop production. Therefore, tetracycline will be removed from the National List by the expiration date rather than through a petition for removal or sunset. The recommendation to change the annotation for tetracycline would have reset the sunset date to 5 years from the date on which the annotation was changed through this rulemaking. The NOSB did not support prolonging the exemption for tetracycline and recommended an expiration date to prevent that occurrence. The NOSB did not find tetracycline to be essential to, nor compatible with, organic production, but approved the use of oxytetracycline hydrochloride solely on the basis that a functionally equivalent form is already allowed for use in organic crop production. The Board was informed during the meeting, and this information is supported by EPA references, that oxytetracycline calcium complex and oxytetracycline hydrochloride are the only forms of oxytetracycline that have registered agricultural uses. NOSB approval of this petition is not expected to increase the overall use of tetracycline in organic crop production, but would allow growers to substitute one form for another until October 21, 2012.

The NOP engaged in consultations with the EPA and Food and Drug Administration (FDA). The EPA informed the NOP that the proposed amendment to exempt oxytetracycline hydrochloride for use in organic crops is consistent with EPA regulations. Concerning the use of tetracycline, FDA deferred to EPA as the appropriate

regulatory body. Therefore, after consultation with the EPA and FDA regarding NOSB's recommendation to amend the annotation for tetracycline use in organic crops, the Secretary proposes to accept NSOB's recommendation and amend § 205.601 of the National List by: (1) Removing the qualifying words in parenthesis from the annotation at (i)(11) which currently specifies, "oxytetracycline calcium complex" to allow either form of oxyetracycline to be used; and, adding the expiration date, October 21, 2012, after which no tetracycline may be used in organic crop production for fireblight control.[1]

Sulfurous Acid (CAS #–7782–99–2). Sulfurous Acid was petitioned for use in organic crop production as a soil amendment. It functions as an acidifying agent to neutralize and reduce the excessive alkalinity (bicarbonates and carbonates) in soil or water. This substance also has transient biocide properties that contribute to keeping irrigation conveyance systems clean by suppressing growth of bacteria and pathogenic microorganisms. Sulfurous acid is a clear, nearly colorless solution (6–12%) which has a pungent odor, and is soluble in water. Sulfurous acid degrades through microbial decomposition to hydrogen ion and sulfate ion. The hydrogen ions cause the acidifying effects. The sulfate ion is a nutrient to plants and micro-organisms as long as the soil is aerobic.

Sulfurous acid is produced through natural and man-made processes by reacting sulfur dioxide with water. In nature, sulfurous acid is produced by wild fires, hydro-thermal vents on the ocean floor, vents on the earth's surface, volcanic eruptions and fumaroles emitting sulfur dioxide and reacting with water. Sulfur dioxide is also produced by burning coal to produce heat or electricity. Sulfurous acid can be manufactured by oxidizing elemental sulfur in a burner chamber with pressurized water. The sulfur dioxide that is produced is immediately captured to form an aqueous solution of sulfurous acid which can be added to the irrigation water stream for application to fields. Within hours of formation, sulfurous acid degrades to a hydrogen ion and a bi-sulfite ion and is not sufficiently stable for transporting to a farm sites for use.

The EPA does not regulate the application of sulfurous acid as a soil amendment to reduce alkalinity. Sulfurous acid can cause burns from all routes of exposure and is corrosive. Handlers should have protective clothing, eyeware and gloves, and respirators may be needed in some circumstances. Sulfurous acid should be used in a well-ventilated area. Repeated exposure may cause damage to mucous membranes, upper respiratory tract, skin and eyes.

Adverse biological or chemical reactions are not likely from the proposed use in organic crops soil amendment purposes due to the quick degradation of sulfurous acid, provided, that the sulfurous acid is applied at the intended use rate and that soil pH is closely monitored. If anaerobic conditions develop in waterlogged soil, anaerobic bacteria could convert the sulfate ion to hydrogen sulfide which would be toxic to the immediate ecosystem.

At its May 4–6, 2009, meeting in Washington, DC, the NOSB recommended adding sulfurous acid to the National List as a soil amendment for use in organic crop production, to be generated on-farm only by burning 99% pure elemental sulfur per § 205.601(j)(2), due to the transient nature of the sulfurous acid. In this open meeting, the NOSB evaluated sulfurous acid against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that the use of the substance, as annotated, is consistent with the OFPA evaluation criteria. The NOSB explained that the on-farm generation is necessary because the short half-life of sulfurous acid would prohibit shipping from off-farm sites. Furthermore, the NOSB specified elemental sulfur at 99% purity as it is typically available in this form.

The NOSB also examined whether the addition of sulfurous acid was necessary in consideration of other substances on the National List, specifically elemental sulfur and organic acids. The Board indicated that the controlled application of sulfurous acid via irrigation is preferable to broadcast applications of elemental sulfur, which acts slower and can negatively impact the microbial soil life at the application rates used. Furthermore, the Board determined that relying upon organic acids, such as citric, would require the importation and application of such large quantities as to make the use of those substances impractical.

The NOP engaged in consultations with the EPA and FDA. FDA deferred to EPA as the appropriate regulatory body. EPA concurred that the use of this substance as specified would not conflict with EPA regulations. Therefore, after consultation with the EPA and FDA regarding NOSB's recommendation to permit the use of sulfurous acid as a soil amendment in organic crop production when limited to on-farm generation by burning 99% pure elemental sulfur, the Secretary is proposing to accept the NOSB's recommendation and amend § 205.601(j) of the National List by adding sulfurous acid at new paragraph (j)(9) as follows:

Sulfurous acid (CAS #–7782–99–2)—from on-farm generation of substance, by burning only 99% elemental sulfur, exempted at (j)(2) in this section.[2]

III. Related Documents

Three notices were published regarding the meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this proposed rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 73 FR 18491, April 4, 2008 (Tetracycline); (2) 73 FR 54781, September 23, 2008 (Tetracycline); (3) 74 FR 11904, March 20, 2009 (Sulfurous Acid). NOSB meetings are open to the public and allow for public participation.

IV. Statutory and Regulatory Authority

The OFPA, as amended [7 U.S.C. 6501 *et seq.*], authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of the OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the

[1] EPA (U.S. Environmental Protection Agency). 2006. Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for Oxytetracycline. EPA 738–R–06–011. *http://www.epa.gov/oppsrrd1/REDs/oxytetracycline_tred.pdf.*

EPA. 2008. Oxytetracycline Summary Document Registration Review: Initial Docket December 2008 Case #0655. EPA–HQ–OPP–2008–0686. *http://www.epa.gov/oppsrrd1/registration_review/oxytetracycline/index.htm.*

ICF Consulting. Technical Evaluation Report Tetracycline (Oxytetracycline Calcium Complex). January 27, 2006. *http://tinyurl.com/ygdtys4.*

National Organic Standards Board (NOSB). Final recommendation on Tetracycline. November 19, 2008, *http://tinyurl.com/y9gds87.*

NOSB Meeting Transcripts. November 18, 2008, pp. 185–201. November 19, 2008, pp. 130–148; 191–213. *http://tinyurl.com/ycaqqdq.*

[2] Agricultural Marketing Service Science & Technology Branch. Technical Evaluation Report Sulfurous Acid. April 3, 2009.

Harmon Systems International, LLC. Petition for sulfurous acid for inclusion on the National List. July 30, 2008. *http://tinyurl.com/yh6wsv9.*

NOSB Final Recommendation on sulfurous acid. May 6, 2009. *http://tinyurl.com/yf9s6mb.*

NOSB Meeting Transcripts. May 5, 2009, pp. 163–173. May 6, 2009, pp. 34–57.

purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5048809&acct=nopgeninfo.*

A. 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.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in § 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to § 2120(f) of the OFPA (7 U.S.C. 6519(f)), this proposed rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, the AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this proposed rule would not be significant. The effect of this proposed rule would be to allow the use of additional substances in agricultural production. This action would relax the regulations published in the final rule and would provide small entities with more tools to use in day-to-day operations. The AMS concludes that the economic impact of this addition of allowed substances, if any, would be minimal to small agricultural producers and service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include handlers and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

According to USDA, Economic Research Service data based on information from USDA-accredited certifying agents, the U.S. organic industry included nearly 6,949 certified organic crop and livestock operations at the end of 2001. These operations reported certified acreage totaling more than 2.09 million acres of organic farm production. By the end of 2005, the number of U.S. certified organic crop and livestock operations totaled about 8,500 and certified organic acreage exceeded 4 million acres. ERS, based upon information provided by domestic accredited certifying agents, estimated the number of certified handling operations as exceeding 2,790 in 2004. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

The U.S. sales of organic food and beverages have grown from $1 billion in 1990 to nearly $17 billion in 2006. The organic industry is viewed as the fasting growing sector of agriculture, representing almost 3 percent of overall food and beverage sales. Since 1990, organic retail sales have historically demonstrated a growth rate between 20 to 24 percent each year, including a 22 percent increase in 2006.

In addition, USDA has 100 accredited certifying agents who provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these accredited certifying agents would be considered small entities under the criteria established by the SBA.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* or OMB's implementing regulation at 5 CFR part 1320.

The AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires

Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

The 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.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, Subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

2. Section 205.601 is amended by:

A. Revising paragraph (i)(ll).

B. Adding new paragraph (j)(9).

The revision and addition read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(i) * * *

(11) Tetracycline, for fire blight control only, and for use in organic crop production only until October 21, 2012.

* * * * *

(j) * * *

(9) Sulfurous acid (CAS #–7782–99–2) from on-farm generation of substance by burning only 99% purity elemental sulfur per § 205.601(j)(2).

* * * * *

Dated: January 5, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–165 Filed 1–11–10; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

[Docket No. PRM–32–6; NRC–2009–0547]

Association of State and Territorial Solid Waste Management Officials; Notice of Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated November 6, 2009, filed by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) (petitioner). The petition was docketed by the NRC and has been assigned Docket No. PRM–32–6. The petitioner requests that the NRC amend its regulations and/or guidance to improve the labeling and accountability of tritium exit signs.

DATES: Submit comments by March 29, 2010. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2009–0547 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments by any one of the following methods:

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0547. Comments may be submitted electronically through this Web site. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1677).

You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0547.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

You may also obtain a copy of the petition from ADAMS under accession number ML093410012.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–492–3663, toll free 800–368–5642, *Michael.Lesar@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner is an organization representing the managers of solid waste, hazardous waste, remediation, and underground storage tank programs of the States and territories. The petitioner states it is tasked with identifying national level radiation issues of concern and promoting partnerships between States and Federal agencies to address these issues. The

petitioner states it has been working with the U.S. Environmental Protection Agency since 2002 to improve public information about existing tritium exit signs.

Background and Summary of Petitioner's Assertions

The petitioner performed an evaluation on the lack of control of tritium exit signs and contamination of landfill leachate (the final report "Lack of Tritium Exit Signs Control and Contamination of Landfill Leachate," dated July 2009, is included as part of the petition), and stated that it found that the majority of unaccounted for tritium exit signs are disposed of in solid waste landfills where they become potential sources of groundwater and surface water contamination. The petitioner states that a minority of tritium exit signs are returned to the manufacturer for recycling, or disposed of as low-level radioactive waste.

The petitioner asserts that from the standpoint of the existing market, specific changes to new tritium exit signs will improve recognition and thus accountability. The labeling should be in several locations on the sign, with a larger font, and the expiration date should be distinctly legible to a fire or building inspector without taking down the sign. The petitioner also states that manufacturers do not always demonstrate accountability in dispensing exit signs to the proper recipients, and recipients are not informed of proper ownership and regulatory requirements provided in NUREG–1556, Vol 16, Appendix L, and 10 CFR 31.5 of the NRC's regulations. The online vendors do not always highlight that tritium is radioactive and that it has special "general licensing" requirements. The petitioner asserts that radiation trefoil should be displayed on the front and back of advertisements.

The petitioner believes that, given the recent Walmart experience with the tritium exit signs, general licensing is successful only when the user understands that these devices are radioactive and subject to controls. Also, in light of the current general lack of controls, specific licensee manufacturers should be responsible for informing customers of the proper disposal of expired and used tritium exit signs. From the standpoint of solid waste management officials, the petitioner believes that the NRC should exercise its full regulatory authority to prevent the disposal of tritium exit signs in landfills.

The petitioner further asserts that, though not in NRC's purview, advances in photo-luminescent technology over the past decade have demonstrated effective alternate technology for places without electricity. Efficient Light Emitting Diodes with backup batteries are being used where electricity is available. These technologies together replace the need for tritium self-luminescent exit signs. The petitioner states that solid waste management officials simply want to stop tritium exit sign disposal in landfills.

Proposed Action

The petitioner requests that the NRC revise its regulations and/or guidance to improve the labeling and accountability of tritium exit signs. The petitioner states that it would ideally like to see tritium exit sign technology immediately replaced by alternative technologies.

The petitioner requests that NRC revise its regulations and/or guidance to state:

1. The labeling should be in several locations on the sign, with larger font.
2. An expiration date should be distinctly legible to a fire or building inspector without taking down the sign.
3. The radiation trefoil should be displayed on the front and back of advertisements.

Also, the petitioner recommends a national collection effort with distinct milestones and goals should be undertaken to consolidate all expired and disused tritium exit signs. The petitioner requests that NRC organize a meeting with ASTSWMO and all interested stakeholders to set a new path forward on this issue.

Dated at Rockville, Maryland, this 6th day of January 2010.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2010–347 Filed 1–11–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1254; Directorate Identifier 2009–NM–040–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A 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 the removal of the wing removable leading edge on a BAe 146 aircraft for a repair (not related to the subject addressed by this AD), corrosion was found on the wing fixed leading edge structure. The investigation determined that the existing scheduled environmental and fatigue inspections would not have detected the corrosion or fatigue damage. Corrosion or fatigue damage in this area, if not detected and corrected, could lead to degradation of the structural integrity of the wing.

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 February 26, 2010.

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 BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; 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–2009–1254; Directorate Identifier 2009–NM–040–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 have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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 2009–0014, dated January 21, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During the removal of the wing removable leading edge on a BAe 146 aircraft for a repair (not related to the subject addressed by this AD), corrosion was found on the wing fixed leading edge structure. The investigation determined that the existing scheduled environmental and fatigue inspections would not have detected the corrosion or fatigue damage.
>
> Corrosion or fatigue damage in this area, if not detected and corrected, could lead to degradation of the structural integrity of the wing.
>
> For the reason described above, this AD requires repetitive inspections of the wing fixed leading edge and front spar structure for corrosion and/or fatigue damage [e.g., cracking] and repair, depending on findings.

There are two alternative inspection methods: Method 1 is a combination of a detailed visual inspection and a visual inspection; Method 2 is a detailed visual inspection. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 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 1 product of U.S. registry. We also estimate that it would take about 12 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 $960.

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:

BAE SYSTEMS (Operations) Limited: Docket No. FAA–2009–1254; Directorate Identifier 2009–NM–040–AD.

Comments Due Date

(a) We must receive comments by February 26, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE SYSTEMS (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

During the removal of the wing removable leading edge on a BAe 146 aircraft for a repair (not related to the subject addressed by this AD), corrosion was found on the wing fixed leading edge structure. The investigation determined that the existing scheduled environmental and fatigue inspections would not have detected the corrosion or fatigue damage.

Corrosion or fatigue damage in this area, if not detected and corrected, could lead to degradation of the structural integrity of the wing.

For the reason described above, this AD requires repetitive inspections of the wing fixed leading edge and front spar structure for corrosion and/or fatigue damage [*e.g.,* cracking] and repair, depending on findings.

There are two alternative inspection methods: Method 1 is a combination of a detailed visual inspection and a visual inspection; Method 2 is a detailed visual inspection.

Actions and Compliance

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

(1) At the applicable time identified in paragraph (f)(1)(i), (f)(1)(ii), or (f)(1)(iii) of this AD: Perform a detailed visual inspection and visual inspection (Method 1) or a detailed visual inspection (Method 2) for cracking and corrosion of the wing fixed leading edge and front spar structure, in accordance with paragraph 2.C. or 2.D., as applicable, of the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

(i) For airplanes with less than 9 years since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness as of the effective date of this AD: Within 18 months after the effective date of this AD.

(ii) For airplanes with 9 years or more, but less than 15 years, since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness as of the effective date of this AD: Within 18 months after the effective date of this AD or within 16 years since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

(iii) For airplanes with 15 years or more since entry into service as of the effective date of this AD: Within 6 months after the effective date of this AD.

Note 1: Where BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008, refers to a "visual inspection," this term describes an inspection using visual inspection equipment as defined in Appendix 3 of the service bulletin. In other BAE SYSTEMS instructions for continued airworthiness, including the MPD and the CPCP, such an inspection is referred to as a "Special Detailed Inspection" (SDI).

Note 2: At the discretion of the aircraft owner/operator, corrosion protection may be embodied on those areas subject to a detailed visual inspection, in accordance with paragraph 2.E. or paragraph 2.F. of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008. Embodiment of enhanced corrosion protection in accordance with paragraph 2.E. BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008, allows the interval of the repetitive inspection (as required by paragraph (f)(2) of this AD) to be extended in the area(s) of application in accordance with paragraph (f)(2)(i) or (f)(2)(ii) of this AD, as applicable.

(2) After doing the initial inspection required by paragraph (f)(1) of this AD, at the applicable intervals specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, accomplish the repetitive inspections of the wing fixed leading edge and front spar structure for cracking and corrosion in the "area of inspection" specified in Table 1 of paragraph 1.D., "Compliance," of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008. Do the inspections in accordance with paragraph 2.C. (Method 1) or paragraph 2.D. (Method 2) of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008. Where previously applied, enhanced corrosion protection may then be re-applied, as an option, in accordance with paragraph 2.E. of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008. Perform the repetitive inspections at the times specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, as applicable.

(i) For airplanes having enhanced corrosion protection that was applied during the previous inspection: Inspect at intervals not to exceed 144 months.

(ii) For airplanes not having enhanced corrosion protection that was applied during the previous inspection: Inspect at intervals not to exceed 72 months.

(3) After doing the initial inspection required by paragraph (f)(1) of this AD, at intervals not to exceed 36,000 flight cycles, accomplish fatigue inspections in accordance with paragraph 2.C. (Method 1) or paragraph 2.D. (Method 2) of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

(4) If any cracking or corrosion is found during any inspection required by this AD, before further flight, repair in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

(5) No repair terminates the inspection requirements of this AD.

(6) Actions done before the effective date of this AD in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, dated September 25, 2008, are considered acceptable for compliance with the corresponding actions specified in this AD.

(7) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (f)(1) of this AD to Customer Liaison, Customer Support (Building 37), BAE Systems (Operations) Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; fax +44 (0) 1292 675432; e-mail *raengliaison@baesystems.com,* at the applicable time specified in paragraphs (f)(7)(i) and (f)(7)(ii) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane.

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

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

Note 3: The inspections required by this AD prevail over the Maintenance Review Board Report (MRBR), Maintenance Planning Document (MPD), Corrosion Prevention and Control Programme (CPCP), and Supplemental Structural Inspection Document (SSID) inspections defined in paragraph 1.C.(3) of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: Where

the EASA AD refers to "since entry into service," this AD specifies the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; 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 (44 U.S.C. 3501 *et seq.*), 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 European Aviation Safety Agency Airworthiness Directive 2009–0014, dated January 21, 2009; and BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008; for related information.

Issued in Renton, Washington, on January 6, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–381 Filed 1–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1250; Directorate Identifier 2008–NM–169–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A Series Airplanes, and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A 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: In 1991, the UK Civil Aviation Authority (CAA) issued AD 015–08–91 [which corresponds to FAA AD 93–01–11], requiring the accomplishment of inspections of, and in case of crack findings, corrective actions on, the wing top skin at rib '0' of pre-modification HCM00851C BAe 146 series aircraft in accordance with British Aerospace Service Bulletin (SB) 57–41 dated 26 July 1991. Recently, BAE Systems (Operations) Ltd has determined that a revised inspection programme for the wing top skin and joint strap at rib '0' on all BAe 146 and AVRO 146–RJ aircraft is necessary to assure the continued structural integrity of this area. Cracking of the wing centre section top skin, if undetected, could lead to structural failure and consequent loss 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 February 26, 2010.

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 BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; 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–2009–1250; Directorate Identifier 2008–NM–169–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 have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period

for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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 January 8, 1993, we issued AD 93–01–11, Amendment 39–8465 (58 FR 6081, January 26, 1993). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 93–01–11, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0168, dated September 2, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> In 1991, the UK Civil Aviation Authority (CAA) issued AD 015–08–91 [which corresponds to FAA AD 93–01–11], requiring the accomplishment of inspections of, and in case of crack findings, corrective actions on, the wing top skin at rib '0' of pre-modification HCM00851C BAe 146 series aircraft in accordance with British Aerospace Service Bulletin (SB) 57–41 dated 26 July 1991. Recently, BAE Systems (Operations) Ltd has determined that a revised inspection programme for the wing top skin and joint strap at rib '0' on all BAe 146 and AVRO 146–RJ aircraft is necessary to assure the continued structural integrity of this area. Cracking of the wing centre section top skin, if undetected, could lead to structural failure and consequent loss of the aircraft.
>
> For the reasons described above, this new EASA [European Aviation Safety Agency] AD supersedes UK CAA AD 015–08–91 and requires repetitive high-frequency eddy current (HFEC), radiographic, ultrasonic, and detailed visual inspections [for cracking and corrosion] of the wing top skin and joint strap at rib '0', the reporting of all inspection results to BAE Systems and, in case of findings, the accomplishment of corrective actions.

The corrective actions include repairing cracking and corrosion, and contacting BAE Systems (Operations) Limited for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB.57–070, dated October 15, 2007. 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 1 product of U.S. registry.

The actions that are required by AD 93–01–11 and retained in this proposed AD take about 4 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 $320 per product.

We estimate that it would take about 4 work-hours per product to comply with the new 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 $320.

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 39–8465 (58 FR 6081, January 26, 1993) and adding the following new AD:

BAE SYSTEMS (Operations) Limited: Docket No. FAA–2009–1250; Directorate Identifier 2008–NM–169–AD.

Comments Due Date

(a) We must receive comments by February 26, 2010.

Affected ADs

(b) The AD supersedes AD 93–01–11, Amendment 39–8465.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes, and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

In 1991, the UK Civil Aviation Authority (CAA) issued AD 015–08–91 [which corresponds to FAA AD 93–01–11], requiring the accomplishment of inspections of, and in case of crack findings, corrective actions on, the wing top skin at rib '0' of pre-modification HCM00851C BAe 146 series aircraft in accordance with British Aerospace Service Bulletin (SB) 57–41 dated 26 July 1991. Recently, BAE Systems (Operations) Ltd has determined that a revised inspection programme for the wing top skin and joint strap at rib '0' on all BAe 146 and AVRO 146–RJ aircraft is necessary to assure the continued structural integrity of this area. Cracking of the wing centre section top skin, if undetected, could lead to structural failure and consequent loss of the aircraft.

For the reasons described above, this new EASA [European Aviation Safety Agency] AD supersedes UK CAA AD 015–08–91 and requires repetitive high-frequency eddy current (HFEC), radiographic, ultrasonic, and detailed visual inspections [for cracking and corrosion] of the wing top skin and joint strap at rib '0', the reporting of all inspection results to BAE Systems and, in case of findings, the accomplishment of corrective actions.

The corrective actions include repairing cracking and corrosion, and contacting BAE Systems (Operations) Limited for repair instructions and doing the repair.

Restatement of Requirements of AD 93–01–11, With No Changes

(f) Unless already done, for Model BAe 146–100A, –200A, and –300A series airplanes: Prior to the accumulation of 24,000 landings, or within 60 days after March 2, 1993 (the effective date of AD 93–01–11), whichever occurs later: Perform an x-ray inspection to detect fatigue cracks in the left and right wing upper skins, joint straps, and stringers in the vicinity of rib "0," in accordance with British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991. Doing the inspection required by paragraph (g)(1) of this AD terminates the inspection required by this paragraph.

(1) If cracks are found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, Transport Airplane Directorate, FAA, or the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. As of the effective date of this AD, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Thereafter, repeat the inspection required by paragraph (f) of this AD at intervals not to exceed 9,000 landings, in accordance with British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991, until the initial inspection required by paragraph (g)(1) of this AD is accomplished.

(2) If no cracks are found, repeat the inspection required by paragraph (f) of this AD at intervals not to exceed 9,000 landings, in accordance with British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991, until the initial inspection required by paragraph (g)(1) of this AD is accomplished.

New Requirements of This AD

(g) Unless already done, do the following actions.

Note 1: The instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–070, dated October 15, 2007, which is the subject of this AD, are divided into two parts; consequently, the statement in paragraph 1.C. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–070, dated October 15, 2007, that there are three parts is incorrect and can be disregarded.

(1) At the applicable compliance time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD: Do an HFEC inspection of the front and rear spar flanges, a detailed visual inspection of the stringers, and a detailed visual inspection of the stringer crown fittings, all at the rib "0" joint strap, for cracking and corrosion, and do all applicable corrective actions, in accordance with "Part 1" of paragraph 2.C., "Inspection," of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–070, dated October 15, 2007. Repeat the inspections thereafter at intervals not to exceed 4,000 flight cycles. Do all applicable corrective actions before further flight. Accomplishment of these initial inspections terminates the inspections required by paragraphs (f), (f)(1), and (f)(2) of this AD.

(i) For airplanes on which an inspection was not done in accordance with Supplemental Structural Inspection (SSI) 57–10–101 (MPD 571001–DVI–10000–1) as of the effective date of this AD: Prior to the accumulation of 20,000 total flight cycles, or within 4,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For airplanes on which an inspection was done in accordance with SSI 57–10–101 (MPD 571001–DVI–10000–1) as of the effective date of this AD: Within 3,000 flight cycles after the effective date of this AD.

(2) At the applicable compliance time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD: Do detailed visual and HFEC inspections to detect cracking and corrosion of the rib "0" strap, a radiographic inspection of the rib "0" joint, and an ultrasonic inspection of the skin at the rib "0" joint strap, and do all applicable corrective actions, in accordance with "PART 2" of paragraph 2.C. "Inspection" of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–070, dated October 15, 2007. Do all applicable corrective actions before further flight. Repeat the inspections thereafter at intervals not to exceed 4,000 flight cycles.

(i) For airplanes on which an inspection was not done in accordance with SSI 57–10–102 and 57–10–102A (MPD 571002–SDI–10000–1 and 571002–SDI–10000–2) as of the effective date of this AD: Before the accumulation of 24,000 total flight cycles, or within 4,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For airplanes on which an inspection was done in accordance with SSI 57–10–102 or 57–10–102A (MPD 571002–SDI–10000–1 or 571002–SDI–10000–2) as of the effective date of this AD: Within 3,000 flights cycles after the effective date of this AD.

(3) Submit a report of the findings (both positive and negative) of the initial inspections required by paragraphs (g)(1) and (g)(2) of this AD to BAE Systems (Operations) Limited, at the applicable time specified in paragraph (g)(3)(i) or (g)(3)(ii) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Send reports to Customer Liaison, Customer Support (Building 37), BAE SYSTEMS (Operations) Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; fax +44 (0) 1292 675432; e-mail *raengliaison@baesystems.com.*

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

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

(4) Accomplishment of any repair does not constitute terminating action for the inspection requirements 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, 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; 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 (44 U.S.C. 3501 *et seq.*), 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 EASA Airworthiness Directive 2008–0168, dated September 2, 2008; British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991; and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–070, dated October 15, 2007; for related information.

Issued in Renton, Washington, on December 30, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–382 Filed 1–11–10; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2004

[NARA–09–0005]

RIN 3095–AB34

National Industrial Security Program Directive No. 1

AGENCY: Information Security Oversight Office, NARA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the heading to a proposed rule published in the **Federal Register** of November 30, 2009, regarding the National Industrial Security Program Directive No. 1. This correction assigns a Federal Docket Management System (FDMS) number to the proposed rule for Information Security Oversight Office (ISOO) regulations and provides a new regulation identifier number (RIN).

FOR FURTHER INFORMATION CONTACT: Laura McCarthy, 301–837–3023.

SUPPLEMENTARY INFORMATION: In proposed rule FR Doc. E9–28517, beginning on page 62531 in the issue of November 30, 2009, make the following corrections in the heading of the document.

Correction

On page 62531, correct the docket number to read "[ISOO–09–0001]"and correct the RIN to read "3095–AB63".

Dated: January 5, 2010.

Laura J. McCarthy,

Federal Register Liaison.

[FR Doc. 2010–394 Filed 1–11–10; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 58

[EPA–HQ–OAR–2005–0172; FRL–9102–3]

RIN 2060–AP98

Public Hearings for Reconsideration of the 2008 National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearings.

SUMMARY: The EPA is announcing three public hearings to be held for the proposed rule, "Reconsideration of the 2008 National Ambient Air Quality Standards for Ozone," which was signed on January 6, 2010, and will be published in an upcoming **Federal Register**. The hearings will be held concurrently in Arlington, Virginia, and Houston, Texas, on Tuesday, February 2, 2010, and in Sacramento, California, on Thursday, February 4, 2010.

In the proposed rule, EPA proposes to set different primary and secondary standards than those set in 2008 to provide requisite protection of public health and welfare, respectively.

DATES: The public hearings will be held on February 2, 2010, and February 4, 2010.

Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearings.

ADDRESSES: The hearings will be held at the following locations:

Arlington: Tuesday, February 2, 2010. Hyatt Regency Crystal City @ Reagan National Airport, Washington Room (located on the Ballroom Level), 2799 Jefferson Davis Highway, Arlington, Virginia 22202. *Telephone:* 703–418–1234.

Houston: Tuesday, February 2, 2010. Hilton Houston Hobby Airport, Moody Ballroom (located on the ground floor), 8181 Airport Boulevard, Houston, Texas 77061. *Telephone:* 713–645–3000.

Sacramento: Thursday, February 4, 2010. Four Points by Sheraton Sacramento International Airport, Natomas Ballroom, 4900 Duckhorn Drive, Sacramento, California 95834. *Telephone:* 916–263–9000.

Written comments on this proposed rule may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the notice of proposed rulemaking to be published in an upcoming **Federal Register** and also available now at the following Web site: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_fr.html* for the addresses and detailed instructions for submitting written comments.

A complete set of documents related to the proposal is available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through the electronic docket system at *http://www.regulations.gov*.

The EPA Web site for the rulemaking, which includes the proposal and information about the public hearings, can be found at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_fr.html*.

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearings or have questions concerning the public hearings, please contact Ms. Tricia Crabtree at the address given below under **SUPPLEMENTARY INFORMATION**.

Questions concerning the "Reconsideration of the 2008 National Ambient Air Quality Standards for Ozone" proposed rule should be addressed to Ms. Susan Lyon Stone, U.S. EPA, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, (C504–06), Research Triangle Park, NC 27711, telephone: (919) 541–1146, e-mail: *stone.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: The proposal for which EPA is holding the public hearings will be published in an upcoming **Federal Register**. The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be postmarked by the last day of the

comment period, as specified in the proposal.

The three public hearings will be held concurrently in Arlington, Virginia, and Houston, Texas, on February 2, 2010, and in Sacramento, California, on February 4, 2010. The public hearings will begin each day at 9:30 a.m. and continue until 7:30 p.m. (local time) or later, if necessary, depending on the number of speakers wishing to participate. The EPA will make every effort to accommodate all speakers that arrive and register before 7:30 p.m. The EPA is scheduling a lunch break from 12:30 until 2 p.m. If you would like to present oral testimony at the hearings, please notify Ms. Tricia Crabtree, (C504–02) U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, e-mail (preferred method for registering): *crabtree.tricia@epa.gov;* telephone: (919) 541–5688. She will arrange a general time slot for you to speak. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearings.

Oral testimony will be limited to five (5) minutes for each commenter to address the proposal. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations unless we receive special requests in advance. Commenters should notify Ms. Crabtree if they will need specific audiovisual (AV) equipment. Commenters should also notify Ms. Crabtree if they need specific translation services for non-English speaking commenters. The EPA encourages commenters to provide written versions of their oral testimonies either electronically on computer disk or CD–ROM or in paper copy.

The hearing schedules, including lists of speakers, will be posted on EPA's Web site for the proposal at *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_fr.html* prior to the hearings. Verbatim transcripts of the hearings and written statements will be included in the rulemaking docket.

How Can I Get Copies of This Document and Other Related Information?

The EPA has established the official public docket for the "Reconsideration of the 2008 National Ambient Air Quality Standards for Ozone" under Docket Number EPA–HQ–OAR–2005–0172. The EPA has also developed a Web site for the proposal at the address given above. Please refer to the proposal, published in an upcoming **Federal Register** for detailed information on accessing information related to the proposal.

Dated: January 4, 2010.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–351 Filed 1–11–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[DFARS Case 2009–D012]

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Foreign Participation in Acquisitions in Support of Operations in Afghanistan

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; correction of comment date.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement: Waiver of the section 302(a) of the Trade Agreements Act of 1979, as amended, which prohibits acquisitions of products or services from non-designated countries, in order to allow acquisition from the nine South Caucasus/Central and South Asian (SC/CASA) states; and Determination of inapplicability of the Balance of Payments Program evaluation factor to offers of products (other than arms, ammunition, or war materials) from the SC/CASA states to support operations in Afghanistan. The end of the comment period was erroneously published as March 9, 2009, rather than March 9, 2010.

DATES: Comment date: Comments on the proposed rule published January 6, 2010 (75 FR 832), should be submitted in writing to the address shown below on or before March 9, 2010.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D012, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2009–D012 in the subject line of the message.
- *Fax:* (703) 602–0305.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

On January 6, 2010, DoD published a proposed rule in the **Federal Register** (75 FR 832). The comment date is being corrected from March 9, 2009, to March 9, 2010.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–380 Filed 1–11–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R4-ES-2009-0029]
[92210-1111-0000 B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Eastern Population of the Gopher Tortoise as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90–day petition finding; reopening of the information solicitation period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide clarification of our request for information related to our September 9, 2009, 90–day finding on a petition to list the eastern population of the gopher tortoise (*Gopherus polyphemus*) as threatened under the Endangered Species Act of 1973, as amended (Act), and initiation of status review. This notice is intended to clarify that all interested parties may continue to submit information and materials on the status of the gopher tortoise throughout its range during the period of the status review. Information previously submitted need not be resubmitted as it has already been incorporated into the public record and will be fully considered in the 12–month finding.

DATES: To allow us adequate time to consider and incorporate submitted information into our review, we request that we receive information on or before March 15, 2010. After this date, the *Federal eRulemaking Portal* will not accept further information. Although we

will accept information submitted after that date, that information should be submitted directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT**). Please note that while we will make every effort to address or incorporate information in our status review that we receive after March 15, 2010, in order for us to make a timely finding we request submittal of information and comments as soon as possible.

ADDRESSES: You may submit information by one of the following methods:

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

• U.S. mail or hand-delivery: Public Comments Processing, Attn: **FWS-R4-ES-2009-0029**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us If your hardcopy submission includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment during normal business hours, at the Jacksonville Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

FOR FURTHER INFORMATION CONTACT: Micheal Jennings, U.S. Fish and Wildlife Service, Attn: Gopher Tortoise Review, 7915 Baymeadows Way, Suite 200, Jacksonville, Florida 32256; by telephone (904 731-3336); by facsimile (904 731-3045); or by e-mail: *northflorida@fws.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Request for Information

We, the U.S. Fish and Wildlife Service, published a 90–day finding on a petition to list the eastern population of the gopher tortoise (*Gopherus polyphemus*) as threatened in the **Federal Register** on September 9, 2009 (74 FR 46401). In that finding, we found that the petition presented substantial scientific or commercial information indicating that listing the eastern population of the gopher tortoise may be warranted. We also initiated a status review to determine if listing the species is warranted, and asked the public to submit information to assist us in our status review. We asked the public to submit information by November 9, 2009, in order for us sufficient time to consider the information in the status review.

Since that time, several interested parties have notified us that they wish to submit additional information relevant to the listing of the eastern population of the gopher tortoise. They have indicated that the information could not be submitted before November 9, 2009, but could be submitted prior to the anticipated completion of the status review in 2010. We have advised these parties individually that we would continue to accept such information after November 9, 2009. However, to ensure that all interested parties have the same opportunity to provide relevant data, this notice clarifies that information to assist us in our review of the status of the gopher tortoise may be submitted to the *Federal eRulemaking Portal* through the date specified in **DATES,** and directly to the Field Office thereafter (see **DATES** and **ADDRESSES** above). This notice also corrects errors in contact information in the September 9, 2009, notice.

We are continuing to request information on the status of the gopher tortoise throughout its range. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the eastern portion of the gopher tortoise's range. We are seeking information regarding:

(1) The species' historical and current status and distribution, its biology and ecology, and ongoing conservation measures for the species and its habitat;

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Act, which are:

a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

b) Overutilization for commercial, recreational, scientific, or educational purposes;

c) Disease or predation;

d) The inadequacy of existing regulatory mechanisms; or

e) Other natural or manmade factors affecting its continued existence and threats to the species or its habitat; and

(3) Information related to the genetics, status, distribution, and threats to the gopher tortoise in the eastern portion of its range.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq*.) directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available." Based on our status review, we will issue a 12–month finding on the petition as provided in section 4(b)(3)(B) of the Act.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.).

Dated: December 28, 2009.

Robyn Thorson,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–311 Filed 1–11–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[RIN 1018–AW21]

[Docket No. FWS–R1–ES–2009–0046]
[MO 92210–0–0009–B4]

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Limnanthes floccosa* ssp. *grandiflora* (Large-Flowered Woolly Meadowfoam) and *Lomatium cookii* (Cook's Lomatium)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, availability of draft economic analysis, amended required determinations, and announcement of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for two plants, *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam) and *Lomatium cookii* (Cook's lomatium, also known as Cook's desert parsley), under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) and an amended required determinations

section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment simultaneously on the proposed designation of critical habitat for *L.f.* ssp. *grandiflora* and *Lomatium cookii*, the associated DEA, and the amended required determinations section. If you submitted comments previously, you do not need to resubmit them because we have already incorporated previously submitted comments into the public record and will fully consider them in preparation of the final rule. We also announce a public hearing; the public is invited to review and comment on any of the above actions associated with the proposed critical habitat designation at the public hearing or in writing.

DATES: *Written Comments:* We will consider public comments received or postmarked on or before February 11, 2010. Please note that if you are using the *Federal eRulemaking Portal* (see "**ADDRESSES**" section, below), the deadline for submitting an electronic comment is Eastern Standard Time on this date.

Public Hearing: We will hold a public hearing on February 2, 2010, from 5:30 p.m. to 7:30 p.m. Pacific Time in Medford, Oregon. An informational meeting will be held earlier that day from 3:30 p.m. to 5:00 p.m.

ADDRESSES: *Written Comments:* You may submit comments by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. In the box that reads "Enter Keyword or ID," enter the docket number for this proposed rule, which is FWS-R1-ES-2009-0046. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

• *U.S. mail or hand-delivery*: Public Comments Processing, **Attn: FWS-R1-ES-2009-0046**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

Public Hearing: We will hold the public hearing at the Jackson County Library Services Medford Library Branch Conference Room, 205 South Central Avenue, Medford, OR 97501.

Availability of Comments: We will post all comments and the public hearing transcript on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; by telephone (503-231-6179); or by facsimile (503-231-6195). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* that was published in the **Federal Register** on July 28, 2009 (74 FR 37314), the DEA of the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*, and the amended required determinations provided in this rule. Verbal testimony or written comments may also be presented during the public hearing (see the **Public Hearing** section below for more information). We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

1) The reasons why we should or should not designate areas as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* from human activity, the degree of which could be expected to increase due to a designation, and whether the benefit of designation would outweigh threats to the species caused by a designation, such that the designation of critical habitat would be prudent.

2) Specific information on:

• The amount and distribution of *L.f.* ssp. *grandiflora* and *Lomatium cookii* habitat;

• What areas occupied at the time of listing that contain features essential to the conservation of the species should be included in the designation and why;

• Special management considerations or protections that the features essential to *L.f.* ssp. *grandiflora* and *Lomatium cookii* conservation that have been identified in the proposed rule, including managing for the potential effects of climate change; and

• What areas not occupied at the time of listing are essential to the conservation of the species and why.

3) Specific information on *L.f.* ssp. *grandiflora* and *Lomatium cookii* and the habitat components (physical and biological features) essential to the conservation of these species, such as soil moisture gradient, microsite preferences, and light requirements.

4) Any information on the biological or ecological requirements of these species.

5) Land-use designations and current or planned activities in areas occupied by the species, and their impacts on the species and the proposed critical habitat.

6) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities and the benefits of including or excluding areas that are subject to these impacts.

7) Whether the benefits of excluding any particular area from critical habitat would outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act.

8) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

You may submit your comments and materials concerning our proposed rule, the associated DEA, and our amended required determinations by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire submission? including any personal identifying information?will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation used to prepare this notice, will be available for public inspection at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). You may obtain copies of the proposed rule and DEA on the Internet

at *http://www.regulations.gov* at Docket Number FWS–R1–ES–2009–0046, from our Web site at *http://www.fws.gov/oregonfwo/*, or by mail from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Public Hearing

We are holding a public hearing on the date listed in the **DATES** section at the address listed in the **ADDRESSES** section. We are holding this public hearing to provide interested parties an opportunity to provide verbal testimony (formal, oral comments) or written comments regarding the proposed critical habitat designation, the associated DEA, and the amended required determinations section. An informational session will be held on the day of the hearing from 3:30 p.m. to 5:00 p.m. Pacific Time. During this session, Service biologists will be available to provide information and address questions on the proposed rule in advance of the formal hearing.

People needing reasonable accommodations in order to attend and participate in the public hearings should contact Paul Henson, Oregon Fish and Wildlife Office, at 503-231-6179, as soon as possible (see **FOR FURTHER INFORMATION CONTACT** section). In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Background

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in this notice. For more information on previous Federal actions concerning *L.f.* ssp. *grandiflora* and *Lomatium cookii*, refer to the proposed designation of critical habitat published in the **Federal Register** on July 28, 2009 (74 FR 37314). For more information on *L.f.* ssp. *grandiflora* and *Lomatium cookii* or their habitat, please refer to the final listing rule published in the **Federal Register** on November 7, 2002 (67 FR 68004), or contact the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT section**).

On December 19, 2007, the Center for Biological Diversity filed a complaint against the Service (*Center for Biological Diversity* v. Kempthorne, *et al.*, 07-CV-2378 IEG, (S.D. CA)) for failure to designate critical habitat for four plant species, including *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. In a settlement agreement reached on April 11, 2008, we agreed to complete a critical habitat determination for *L.f.* ssp. *grandiflora* and *Lomatium cookii* in a single rulemaking because they share similar habitats. We also addressed the other two species in this settlement agreement; however, further work on these species will be completed in separate rules. We agreed to submit a proposed critical habitat rule for both *L.f.* ssp. *grandiflora* and *Lomatium cookii* to the **Federal Register** by July 15, 2009, and a final rule by July 15, 2010. The proposed rule for these two species was signed on July 13, 2009, and subsequently published in the **Federal Register** on July 28, 2009 (74 FR 37314).

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection, and specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions that affect critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. In making a decision to exclude areas, we consider the economic impact, impact on national security, or any other relevant impact of the designation.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat.

We have prepared a Draft Economic Analysis (DEA), which identifies and analyzes the potential economic impacts associated with the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* that we published in the **Federal Register** on July 28, 2009 (74 FR 37314). The DEA quantifies the economic impacts of all potential conservation efforts for *L.f.* ssp. *grandiflora* and *Lomatium cookii*; some of these costs will likely be incurred regardless of whether or not we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed critical habitat designation.

The DEA estimates impacts based on activities that are reasonably foreseeable, including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* over the next 20 years, which we determined to be the appropriate period for analysis because limited planning information was available for most activities to reasonably forecast activity levels for projects beyond a 20–year timeframe. The DEA identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of conservation efforts for *L.f.* ssp. *grandiflora* and *Lomatium cookii* associated with the following categories

of activity: (1) residential, urban, and commercial development; (2) transportation; and (3) species conservation and management activities. A number of economic activities considered in the economic analysis are not forecast to incur baseline or incremental impacts. Therefore, the DEA considers potential impacts to agriculture, grazing, timber harvest, fire management, recreation, and mining activities, but does not quantify potential costs because these activities are either not forecast to occur within the proposed critical habitat, or are not subject to a Federal nexus requiring consultation with the Service.

Total forecast baseline impacts over the 20 years following the designation of critical habitat (2010–2029) are estimated to be $7.83 million to $157 million using a 7 percent discount rate. Baseline impacts are those anticipated regardless of a critical habitat designation. The majority of the total future baseline impacts are associated with development projects ($6.4 million to $156 million). The broad range in baseline impacts is due to the range of impacts estimated for future development activities. Under the low-forecast development scenario, the analysis assumes that future development will occur only in units where it has occurred in the past, at its past rate. Under the high-forecast development scenario, this analysis assumes full build-out over the next 20 years of developable areas within units where development has occurred in the past, or within units where the proposed rule identifies development as a potential threat to the two plant species and their habitat. Baseline impacts to transportation and species management activities are the same under both the low-and high-impact scenarios. Under the low-impact scenario, subunit RV9B (Medford Airport) has the highest levels of impacts ($2.2 million), stemming primarily from conservation actions applied to comply with section 404 of the Clean Water Act as part of a future airport runway expansion project. Under the high-impact scenario, subunit RV6A (White City) has the highest levels of impacts ($32.8 million), stemming primarily from conservation actions applied to comply with section 404 of the Clean Water Act during future development projects.

The DEA estimates that total potential incremental economic impacts in areas proposed as critical habitat over the next 20 years will be $95,200 to $403,000 applying a 7 percent discount rate. Development activities would be the primary economic sector affected; transportation activities and species habitat and conservation management activities would see some minor incremental impacts. All incremental impacts attributed to the designation of critical habitat are administrative costs associated with addressing adverse modification in future section 7 consultations. . As described above for baseline impacts, the range in total incremental impacts is due to the range in development forecasts.

The lack of incremental impacts stemming from sources other than administrative costs is due to the fact that critical habitat designation for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* is not expected to change the level, design, or regulation of forecast economic activities. That is, the designation of critical habitat is not expected to result in a decrease in economic activities or additional project modification above and beyond those that would be undertaken as part of the baseline (e.g., to comply with Clean Water Act requirements or to avoid jeopardy to the species).

As stated earlier, we are seeking data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period, including information received during or in response to the public hearing. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our July 28, 2009, proposed rule (74 FR 37314), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data in making these determinations. In this document, we affirm the information in our proposed rule concerning: Executive Order (E.O.) 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act, the National Environmental Policy Act, and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we are amending our required determinations concerning E.O. 12866 (*Regulatory Planning and Review*), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy Supply, Distribution, and Use), E.O. 12630 (Takings), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant and has not reviewed this proposed rule under E.O. 12866. The OMB based its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), as described below. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than

50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize this proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. In areas where *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* are present, Federal agencies are already required to consult with us under section 7 of the Act, due to the current endangered status of the species. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Appendix A.1 of the DEA evaluates the potential economic effects of the proposed designation on small entities, based on the estimated incremental impacts associated with the critical habitat. Based on the quantification of incremental impacts of the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* as detailed in Chapters 3, 4, and 5 of the DEA, we considered whether any small entities may bear the incremental impacts of this proposed rulemaking. The DEA does not forecast any incremental impacts beyond additional administrative costs associated with considering adverse modification during future Federal section 7 consultations. Small entities may participate in consultation under section 7 of the Act regarding *L.f.* ssp. *grandiflora* and *Lomatium cookii* as a third party applicant (the primary consulting parties being the Service and the Federal action agency) and may spend additional time and effort considering potential critical habitat issues. These incremental administrative costs of consultation borne by third parties were the subject of the analysis for potential impacts of the proposed rulemaking on small entities.

The DEA forecasts section 7 consultations associated with Federal involvement in development, transportation, and species conservation and management activities. The potential incremental costs associated with these activities are analyzed in Chapters 3, 4, and 5 of the DEA, and are summarized as follows.

• *Development.* Chapter 3 of the DEA anticipates that any future consultations on development will be triggered by the need for a section 404 permit pursuant to the Clean Water Act, which requires section 7 consultation if a project may affect a listed species. The U.S. Army Corps of Engineers (USACE) is the consulting Federal agency on consultations for section 404 permits. Future consultations for 404 permits would also include third parties, such as private developers or county agencies. Private developers may be considered small entities if their annual income is less than $7.0 million. The DEA assumes that consultation costs will be borne by developers as an additional project expense, rather than by landowners who would experience consultation costs as an effect on land values.

• *Transportation.* As described in Chapter 4 of the DEA, all incremental impacts are forecast to be incurred by the Service and the Oregon Department of Transportation, which, as a State agency, is not considered small.

• *Species management conservation.* Chapter 5 describes that all incremental impacts are forecast to be borne by the U.S. Bureau of Land Management, a Federal agency, and the Service. As a result, no incremental impacts are expected to be borne by small entities.

As incremental impacts to development activities are the only incremental impacts that may be borne by small entities, the remainder of this analysis focuses on development. Based on the forecast low scenario for future development activity (as described in Chapter 3 of the DEA), approximately 1.13 development projects are expected to occur annually within the study area. Based on the forecast high scenario for future development activity, approximately 6.55 development projects are expected to occur annually within the study area. This analysis assumes that all future development projects within the study area will require formal section 7 consultation triggered by the need for a section 404 permit pursuant to the Clean Water Act. Thus, 1.13 formal consultations are forecast to occur annually under the low scenario, while 6.55 formal consultations are forecast to occur annually under the high scenario. Applying the third party costs of addressing adverse modification during formal section 7 consultation (estimated at $875) to the number of forecast consultations annually, the DEA estimates that the present value of incremental third party costs is equal to $11,200 for all small entities combined under the low-impact scenario and $65,000 under the high-impact scenario over 20 years. In terms of annualized impacts, these present values translate to $1,050 for all small entities under the low-impact scenario and $6,140 under the high-impact scenario (applying a 7 percent discount rate).

Third parties involved in past development consultations include Jackson County and private developers. The population of Jackson County was approximately 201,000 in 2008; thus, Jackson County exceeds the small governmental jurisdiction population threshold of 50,000 people. Forecast consultations on development projects are expected to include Jackson County agencies, local private developers, and relatively large commercial entities as contained in the consultation history. To the extent that forecast consultations include Jackson County agencies or large commercial entities, incremental administrative costs will not be borne by small entities.

However, a large portion of forecast consultations for development activities are expected to include local private developers, which may be small entities depending on their annual revenues. In the past, development projects within the study area have included site

preparation such as leveling of land, filling of wetlands, and excavation, in addition to building construction. Therefore, land subdivision, which includes excavating land and preparing it for future residential, commercial, and industrial construction, is identified as the most-applicable industry to capture local private developers that may bear incremental administrative costs due to the designation of critical habitat.

Absent information on the specific third parties that may be involved in future development consultations, the DEA conservatively assumes that all of the entities involved in future consultation efforts are small land subdivision companies. Expected annual impacts to the land subdivision industry ($1,050 under the low-impact scenario and $6,140 under the high-impact scenario) are significantly less than the maximum annual revenues that could be generated by a single small land subdivision entity ($7.0 million). Annual revenues of small development companies within the study area are expected to be roughly $910,000. While 95 land subdivision companies operate within the counties containing proposed critical habitat, the number of these that may be involved in development projects subject to consultation for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* is unknown. The estimated annualized impact may be borne by one company or distributed across many. If all impacts were borne by a single small development company, the estimated annualized impact would represent less than 1 percent of total annual revenues under both the low-and high-impact scenarios (assuming average annual revenues for a small development company of $910,000).

In summary, we have considered whether the proposed critical habitat designation would result in a significant economic impact on a substantial number of small entities. As the only anticipated incremental cost of the designation are administrative costs associated with section 7 consultations, the vast majority of incremental costs associated with the proposed designation will be borne by Federal agencies. The only incremental costs identified for small entities are potential costs associated with development activities. Based on the DEA, even if all incremental costs associated with development activities were to be borne by a single development company, which we consider unlikely, the estimated annualized impact would be less than 1 percent of total annual revenues under both the low-and high-impact scenarios considered in the DEA. For these reasons, we certify that, if promulgated, the proposed designation of critical habitat for *Limnanthes floccosa ssp. grandiflora and Lomatium cookii* would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, and Use

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions that may affect the supply, distribution, and use of energy. The OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. As discussed in Appendix A.2, the DEA finds none of these criteria are relevant to this analysis. The DEA concludes that energy-related impacts associated with conservation actions within the potential critical habitat are not expected. All forecast impacts are expected to occur associated with the listing of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*, regardless of the designation of critical habitat. Therefore, designation of critical habitat is not expected to lead to any adverse outcomes (such as a reduction in electricity production or an increase in the cost of energy production or distribution). A Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, the Service makes the following findings:

a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments," with two exceptions. First, it excludes "a condition of federal assistance." Second, it excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or Tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must consult with the Service to ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

b) As discussed in the DEA section of the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*, we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The DEA concludes that any incremental impacts are limited to the administrative costs of section 7 consultations; however, these are not expected to affect small governments. Consequently, a critical habitat designation would not significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of

proposing critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in a takings implications assessment. Our taking implications assessment concludes that critical habitat for *L.f. grandiflora* and *Lomatium cookii* would not pose significant takings implications.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at *http://www.regulations.gov* or by contacting the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this rulemaking are the staff members of the Oregon Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 30, 2009.

Eileen Sobeck,

Acting Assistant Secretary of Fish Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2009-0066]
[MO 92210-0-0009-B4]

Endangered and Threatened Wildlife and Plants; 12–month Finding on a Petition To Revise Critical Habitat for the Florida Manatee (*Trichechus manatus latirostris*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12–month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 12–month finding on a petition to revise critical habitat for the Florida manatee (*Trichechus manatus latirostris*) under the Endangered Species Act of 1973, as amended. After a thorough review of all available scientific and commercial information, we find that revisions to critical habitat for the Florida manatee are warranted. However, sufficient funds are not available due to higher priority actions such as court-ordered listing-related actions and judicially approved settlement agreements. We intend to initiate rulemaking when we complete the higher priorities and have the necessary resources to do so.

DATES: The finding announced in this document was made on January 12, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS-R4-ES-2009-0066. Supporting documentation we used to prepare this finding is available for public inspection, by appointment during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256-7517. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Attn: Manatee CH Review, at the above address, by telephone at 904-731-3336, by facsimile at 904-731-3045, or by e-mail: *northflorida@fws.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339. Please include "Florida manatee scientific information" in the subject line for faxes and emails.

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(D)(ii) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition that is found to present substantial scientific and commercial information indicating that the requested revisions to critical habitat may be warranted, we make a finding within 12 months of the date of receipt of the petition and publish a notice in the **Federal Register** indicating how we intend to proceed with the requested revision.

Background

Previous Federal Actions

We originally listed the Florida manatee (*Trichechus manatus latirostris)*, a subspecies of the West Indian manatee (*Trichechus manatus*), as endangered in 1967 (32 FR 4001) under the Endangered Species Preservation Act of 1966 (Pub. L. 89-669; 80 Stat. 926). In 1970, Appendix A to 50 CFR Part 17 was amended to include additional names to the list of foreign endangered species (35 FR 18319). This listing incorporated West Indian manatees into the list under the Endangered Species Conservation Act of 1969 (Pub. L. 91-135; 83 Stat. 275) and encompassed the species' range in the Caribbean and northern South America, thus including both Antillean (*T. m. manatus*) and Florida manatees in the listing. The West Indian manatee is currently listed as an endangered species under the Act and the population is further protected as a depleted stock under the Marine Mammal Protection Act (16 U.S.C. 1361-1407).

Critical habitat was designated for the Florida manatee on September 24, 1976 (41 FR 41914). This designation delineated specific waterways in Florida that were known to be important concentration areas for manatees at that time.

On December 19, 2008, we received a petition from Wildlife Advocacy Project, Save the Manatee Club, Center for Biological Diversity, and Defenders of Wildlife, requesting that critical habitat be revised for the Florida manatee (*Trichechus manatus latirostris*) under the Act and the Administrative Procedure Act. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a).

In a January 17, 2009, letter to the petitioners, we responded that we had received the petition and would make a finding, to the maximum extent practicable within 90 days, as to whether or not the petition presents substantial information. We also stated that, if the initial finding concludes that the petition presents substantial information indicating that the requested action may be warranted, then we have 1 year from the date we received the petition to determine how we intend to proceed with the requested revision, and that we would promptly publish a notice of our intentions in the **Federal Register** at the end of this period.

We published our 90–day finding regarding the petition to revise critical habitat for the Florida manatee on September 29, 2009 (74 FR 49842). We determined that the petition presented substantial information indicating that revising critical habitat for the Florida manatee under the Act may be warranted, thus initiating this 12–month finding. Accordingly, we asked the public to submit information relevant to the finding by October 29, 2009. We have fully considered all information available and received in response to information requested in our 90–day finding.

This 12–month finding discusses only those topics directly relevant to the revision of existing critical habitat for the Florida manatee.

Species Information

The Florida manatee, *Trichechus manatus latirostris*, is a subspecies of the West Indian manatee (*T. manatus,* Linnaeus 1758) and is native to Florida. Manatees are long-lived marine mammals, dark grey in color, and average about 10 feet (3 m) in length and between 800 to 1,200 pounds (363 to 544 kg) in weight. Manatees have a round, flattened, paddle-shaped tail and two front flippers that are used for steering while swimming.

Female manatees are capable of reproduction at as early as 4 years of age; however, most breed between the ages of 7 and 9. Gestation lasts from 12 to 14 months. Normally an adult female would have only one calf every 2 to 5 years, but there are rare occurrences of twins. The mother and calf remain together for up to 2 years. Male manatees aggregate in mating herds around a female when she is ready to conceive, but contribute no parental care to the calf.

The major threats to the Florida manatee population are human related, and include watercraft strikes (direct impacts and propeller cuts), which can cause injury and death (Rommel *et al.* 2007, p. 111; Lightsey *et al.* 2006, p. 262); entrapment and crushing in water control structures (gates, locks, *etc.*); and entanglement in fishing gear. Natural threats include red tide and exposure to cold. A comprehensive threats analysis, recently conducted as part of the Service's 5–year status review, indicated that the single largest threat to the persistence of manatees in Florida is collisions with watercraft. The second most significant threat to the species' survival is the loss of warm-water habitat. The other threats (water control structures, entanglement, and red tide) are of substantially less impact to the overall status of the species (USFWS 2007, p. 24; Runge *et al.* 2007a, p. 10).

The Florida manatee has not experienced any curtailment in the extent of its range throughout the southeastern U.S. To the contrary, Florida manatees have expanded their summer range to other states along the Atlantic and Gulf coasts. It is now not uncommon to find manatees in coastal waters of Georgia, North and South Carolina, Alabama, and Louisiana.

Habitat Information

Florida manatees are found in freshwater, brackish, and marine environments. Typical habitats include coastal tidal rivers and streams, mangrove swamps, salt marshes, and freshwater springs (FWC 2005). As herbivores, manatees feed on the wide range of aquatic vegetation that these habitats provide. Shallow seagrass beds, with ready access to deep channels, are generally preferred feeding areas in coastal and riverine habitats (Smith 1993, p. 5). In coastal Georgia and northeastern Florida, manatees feed in salt marshes on smooth cordgrass (*Spartina alterniflora*) by timing feeding periods with high tide (Baugh *et al.* 1989, p. 89; Zoodsma 1991, p. 124). Manatees use springs and freshwater runoff sites for drinking water; secluded canals, creeks, embayments, and lagoons for resting, cavorting, mating, calving, and nurturing their young; and open waterways and channels as travel corridors (Marine Mammal Commission 1984, p. 8, and 1988, p. 88; Gannon, *et al.* 2007, p. 140; Laist and Boland 2008, p. 1).

Although manatees occupy different habitats during various times of the year (Deutsch *et al.* (2003, p. 1), they are a subtropical species with little tolerance for cold. Their year-round presence in Florida represents the northern limit of their winter range (Lefebvre *et al.* 2001, p. 425). Within Florida, they require stable, long-term sources of warm water during cold weather. Prolonged exposure to cold water temperatures can result in debilitation and death due to a phenomenon known as "cold stress syndrome" (Rommel *et al.* 2002, p. 16; Bossart *et al.* 2004, p. 437). An ambient water temperature of 68 degrees Fahrenheit (20 degrees Celsius) is generally considered as the lower threshold; below this temperature they have been observed to exhibit an increase in metabolic rate (Worthy *et al.* 1999, p. 4). When water temperatures begin to decrease to this temperature, manatees will aggregate within the confines of warm-water refuges or move to the southern tip of Florida. During periods of intense cold, they will remain at warm-water refuges; during warm interludes, they will move from the warm-water areas to feed, and return once again when water temperatures are too cold (Hartman 1979, p. 26; Deutsch *et al.* 2000, p. 22; Stith *et al.* 2006, p. 24). Recent studies focusing on manatee use of natural warm-water sites include those by Koelsch *et al.* 2000, p. 27; Taylor *et al.* 2005. p. 3; Taylor 2006, p. 5; USGS 2006, p. 3; Gannon *et al.* 2006, p. 133; Stith *et al.* 2006, p. iv; Reynolds and Barton 2005, 2008, p. 9; and Taylor and Provancha 2008, p. 2).

Historically, manatees relied on the warm, temperate waters of south Florida and on natural warm-water springs scattered throughout the State as buffers to the lethal effects of cold winter temperatures. In part, as a result of human disturbance at natural sites (Laist and Reynolds 2005, p. 740), they have expanded their winter range to include industrial sites and associated warm-water discharges as refuges from the cold. Although manatees overwinter at major springs throughout peninsular Florida, nearly two-thirds of the population winters at industrial warm-water sites, which are now made up almost entirely of power plants (FWC FWRI, unpub. synoptic aerial survey data). The thermal discharge from power plants serves as an attractant to manatees because the temperature of the discharge is much warmer than the surrounding water temperature. Power plants in Brevard, Palm Beach, and Hillsborough counties maintain the largest winter aggregations of manatees throughout the winter. There are numerous research and monitoring studies that have documented historical and recent use by manatees at power plants (Keith *et al.* 2008, p. 16; Reynolds 2007, 2009, p. 10; and Fonnesbeck *et al.* 2009, p. 563).

The Crystal River springs complex in Citrus County and Blue Springs along the St. Johns River, in Volusia County, are the northernmost natural warm-water refuges in Florida used regularly by manatees. These and other natural springs in the State have experienced an increase in manatee use as the Florida population has grown (FWC FWRI, unpub. synoptic aerial survey data).

Minor thermal refuges are also used by manatees throughout Florida. Most of these include canals or boat basins where warmer water temperatures persist as temperatures in adjacent bays and rivers decline.

The loss of Florida's warm-water habitats is one of the leading threats facing the manatee population (Runge 2007a, p. 2). Reductions in spring flows, which affect manatee access and use of springs, are being addressed through the adoption of minimum flow regulations (Florida Springs Task Force 2001, p. 15). A minimum spring discharge rate that considered the estimated flow rates necessary to support overwintering manatees has been identified for Volusia County's Blue Spring and is expected to be adopted, pending the St. Johns River Water Management District's acceptance of a monitoring plan currently under development. Similarly, other springs used by manatees have been scheduled for, or are in the process of developing, minimum flow regulations. Those requirements would assure adequate flows are secured to support manatees. All Primary sites, except the Weeki Wachee/Mud Creek/Jenkins Creek complex, have been protected. Ten of

the 47 total known warm-water sites still require protection.

In addition to protecting natural warm-water sites, efforts are under way to restore and improve them to enhance manatee use. As an example, the spring run at Homossassa Springs was dredged in 2006 to improve manatee access; since dredging, studies indicate that the run has been attracting more animals (Taylor 2009, pers. comm.).

We and our partners are defining a network of migratory corridors based on manatee travel patterns and identifying other use areas to ensure protection of feeding, calving, and nursing areas throughout the State (FWC FWRI, unpub. data 2006; USGS FISC Sirenia Project, unpub. data 2006; Gannon *et al.* 2007, p. 134). Many of these sites are already known and are variously protected under the Florida Manatee Sanctuary Act, the Endangered Species Act, and the Marine Mammal Protection Act. We are currently completing an assessment of manatee habitat use at a number of natural warm-water sites throughout Florida. Recently, we initiated a study to predict manatee carrying capacity at natural warm-water sites, and we are also evaluating effects to manatees in South Florida associated with Comprehensive Everglades Restoration Plan activities.

Industrial thermal discharges are not a reliable source of warm water for the manatee population in the long term. Power plants can be eliminated due to plant obsolescence, environmental permitting requirements, economic pressures, and other factors, and can experience disruptions and temporary shutdowns. It is difficult to predict how manatees will respond to changes at artificial warm-water sites. In some instances manatees have been observed to use less preferred nearby sites, yet, in other cases when thermal discharges have been eliminated, manatees have died due to behavioral persistence or site fidelity (USFWS 2000, p. 74).

Since release of the Service's 5–year status review in 2007, we have new information that two of the oldest power plants in Florida that attract the largest numbers of wintering manatees will be undergoing repowering over the next several years, and will continue to discharge warm water (USFWS 2007, p. 16). Repowering these facilities will reduce the probability of a catastrophic winter mortality event for the manatee population over the next several decades.

We currently assess the status of the Florida manatee population according to regional management units within the State that reflect the winter-season site fidelity of individuals in the population, as manatees tend to return to the same warm-water sites each winter. The four regional management units are: an Atlantic Coast unit that occupies the east coast of Florida, including the Florida Keys and the lower St. Johns River north of Palatka; an Upper St. Johns River unit that occurs in the river south of Palatka; a Northwest unit that occupies the Florida Panhandle south to Hernando County; and a Southwest unit that occurs from Pasco County south to Whitewater Bay in Monroe County. Typical manatee habitat within these geographic boundaries is described in Table 1. Exchange of individuals between the management units is thought to be limited during winter months, based on data from telemetry (Reid *et al.* 1991, p. 185; Weigle *et al.* 2001, p. 18; Deutsch *et al.* 1998, p. 18, and 2003, p. 2) and photo-identification (C. A. Beck, USGS FISC Sirenia Project, unpub. data, 2009; K. Higgs, FWC FWRI, unpub. data, 2009). Movement between management units does occur during warm seasons, particularly along the same coast, and there are some documented cases of wide-ranging coastal movements and isolated events of intercoastal migration (Reid *et al.* 1991, p. 185; Deutsch *et al.* 1998, p. 18, and 2003, p. 2; Beck 2009, pers. comm.).

Although natural vegetation has diminished in some locations due to human activities, and exotic vegetation has increased in other areas, the availability of aquatic vegetation as forage is not known to be a limiting factor for manatees at this time (Orth *et al.* 2006, p. 994; G.A.J. Worthy, University of Central Florida, unpub. data 2006).

Population Status

The most current information on Florida manatee population demographics (growth, survival, and reproductive rates) includes published studies by Runge *et al.* (2004, 2007b), Craig and Reynolds (2004), Kendall *et al.* (2004), and Langtimm *et al.* (2004), and unpublished reports by the Manatee Population Status Working Group (2005) and Runge *et al.* (2007a). All of these studies indicate that the manatee population is doing well throughout most of Florida. Population growth rates, determined using the Manatee Core Biological Model (Runge *et al.* 2004, p. 361, and 2007b), are as follows:

Northwest Region	4.0 percent
Upper St. Johns River Region	6.2 percent
Atlantic Coast Region	3.7 percent
Southwest Region	-1.1 percent

Craig and Reynolds (2004, p. 386) additionally suggested that populations of wintering manatees in the Atlantic Coast Region have been increasing at rates of between 4 and 6 percent per year since 1994.

In southwest Florida, estimates of adult manatee survival and reproduction are less precise than in the other regions of Florida because the time series of data is comparatively shorter for this region and there are no demographic data available for manatees in the southernmost part of this region. The estimates could also be biased low due to effects from temporary emigration (Langtimm *et al.* 2004, p. 450; Langtimm 2009 pers. comm). Updated estimates of adult survival and growth rates for manatees in this region are anticipated in early 2010.

The most current and best available count of the Florida manatee population is 3,807 animals, based on a single synoptic survey of warm-water refuges and adjacent areas in January 2009 (FWC FWRI 2009 Manatee Synoptic Aerial Survey Data).

Critical Habitat

Current Critical Habitat Designation

Critical habitat was designated for the Florida manatee (listed in that regulation as *Trichechus manatus)* in 1976 (50 CFR 17.95(a)) as follows: "*Florida.* Crystal River and its headwaters known as King's Bay, Citrus County; the Little Manatee River downstream from the U.S. Highway 301 bridge, Hillsborough County; the Manatee River downstream from the Lake Manatee Dam, Manatee County; the Myakka River downstream from Myakka River State Park, Sarasota and Charlotte Counties; the Peace River downstream from the Florida State Highway 760 bridge, De Soto and Charlotte Counties; Charlotte Harbor north of the Charlotte-Lee County line, Charlotte County; Caloosahatchee River downstream from the Florida State Highway 31 bridge, Lee County; all U.S. territorial waters adjoining the coast and islands of Lee County; all U.S. territorial waters adjoining the coast and islands and all connected bays, estuaries, and rivers from Gordon's Pass, near Naples, Collier County, southward to and including Whitewater Bay, Monroe County; all waters of Card, Barnes, Blackwater, Little Blackwater, Manatee, and Buttonwood Sounds between Key Largo, Monroe County, and the mainland of Dade County; Biscayne Bay, and all adjoining and connected lakes, rivers, canals, and waterways from the southern tip of Key Biscayne northward to and including Maule Lake, Dade County; all of Lake Worth, from its

northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway A1A southward to its southernmost point immediately north of the town of Boynton Beach, Palm Beach County; the Loxahatchee River and its headwaters, Martin and West Palm Beach Counties; that section of the intracoastal waterway from the town of Seawalls Point, Martin County to Jupiter Inlet, Palm Beach County; the entire inland section of water known as the Indian River, from its northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway 3, Volusia County, southward to its southernmost point near the town of Sewalls Point, Martin County, and the entire inland section of water known as the Banana River and all waterways between Indian and Banana Rivers, Brevard County; the St. Johns River including Lake George, and including Blue Springs and Silver Glen Springs from their points of origin to their confluences with the St. Johns River; that section of the Intracoastal Waterway from its confluences with the St. Marys River on the Georgia-Florida border to the Florida State Highway A1A bridge south of Coastal City, Nassau and Duval Counties."

No map was published with the 1976 designation. The earliest known record of a map created from the physical description of designated critical habitat for the Florida manatee was published by the Service's Office of Biological Services in 1980 (USFWS 1980). A more recent GIS depiction of the general locations of the designated critical habitat for the Florida manatee is shown in Figure 1.

Relevant Statutes and Regulations

Critical habitat is defined in section 3(5)(A) of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) essential to the conservation of the species and

(II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, or transplantation.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, specific areas within the geographical area occupied by the species at the time it is listed must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas containing the essential physical and biological features that provide for requisite life cycle needs of the species. Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Finding

The current critical habitat designation for the Florida manatee was described before critical habitat regulations and guidance were developed; it does not identify specific physical and biological features essential to the conservation of the manatee for this species' habitat. Instead, it describes specific waterways that were known to be important concentration areas for manatees at that time. We recognize that the geographic areas originally described as manatee critical habitat need to be updated, based on recent scientific studies of manatee distribution, habitat use, and habitat needs as discussed above. Since the original designation, we have more information on the specific habitat needs of the Florida manatee, including the use of warm-water sites (Koelsch *et al.* 2000, p. 27; Taylor *et al.* 2005. p. 3; Taylor 2006, p. 5; USGS 2006, p. 3; Gannon *et al.* 2006, p. 133; Stith *et al.* 2006, p. iv; Reynolds and Barton 2005, 2008, p. 9; and Taylor and Provancha 2008, p. 2) as well as power plant discharges (Keith *et al.* 2008, p. 16; Reynolds 2007, 2009, p. 10; and Fonnesbeck *et al.* 2009, p. 563, among others), that will allow us to identify the physical or biological features essential to manatee conservation. Therefore, based on this current and best available scientific and commercial information, we find that revising critical habitat for the Florida manatee under the Act is warranted.

We intend to identify the physical and biological features essential to conservation of the species, in order to address the ecological and conservation needs of the Florida manatee. Given the significance of warm water to the survival of the manatee in Florida, the most essential feature will be the availability and adequacy of warm-water refugia. Additional features to be considered in the analysis may include

adequate forage within dispersal distance of a warm-water refuge, areas needed for calving and nursing, and important travel corridors for movements throughout Florida and beyond. The revision may include both additions and deletions to the current designation, and specific areas within and outside of the geographical area currently occupied by manatees. We find that incorporating these concepts into a revised critical habitat designation for the Florida manatee is important for identifying the specific areas essential to the conservation of the species or which contain the essential features. We request any additional information or input on these potential essential features.

How the Service Intends To Proceed

Section 4(b)(3)(D)(ii) of the Act requires that if we find that a revision to critical habitat is warranted, then we are to indicate how we intend to proceed with such revision and promptly publish a notice of our intention in the **Federal Register**. We have reviewed the best available scientific data available, and we find that revisions to critical habitat for Florida manatee under the Act should be made. However, sufficient funds are not available due to higher priority actions such as listing-related actions pursuant to court orders and judicially-approved settlement agreements. We intend to undertake rulemaking to revise critical habitat for the Florida manatee when funding and staff resources become available.

The resources available for listing actions, including critical habitat designations and revisions, are determined through the annual Congressional appropriations process. We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (31 U.S.C. 1341(a)(1)(A)). Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put in place a critical habitat subcap within the overall Listing Program budget in FY 2002 and has retained it each subsequent year. Thus, through the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for critical habitat revisions. Therefore, the funds in the critical habitat subcap set the limits on our ability to designate critical habitat or revise existing designations in a given year.

In FY 2002 and each year until FY 2006, we had to use virtually all of the funds available under the subcap to address court-mandated designations of critical habitat; consequently, none of the critical habitat subcap funds have been available for other designations. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2008, we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations; however, we did use some of this money to fund the critical habitat portion of some proposed listing determinations. In those cases, the proposed listing determination and proposed critical habitat designation were combined into one rule, thereby increasing efficiency in our work. In FY 2009, we have been able to continue this practice. However, our current projection for FY 2010 is that all of the funding anticipated for the critical habitat portion of the listing allocation will be used to address court-ordered critical habitat designations. Therefore, we do not anticipate having any funding in FY 2010 available to work on additional critical habitat designations.

Nonetheless, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel, we have endeavored to make our critical habitat designation and revision actions as efficient and timely as possible. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together as described above.

We intend to proceed with a revision of critical habitat as soon as we have the necessary resources. Our critical habitat regulations (50 CFR 424.12(c)) state that critical habitat will be defined by specific limits using reference points and lines on standard topographic maps of the area. Section 4(b)(2) of the Act requires that we consider economic, national security, and other impacts of designating critical habitat. Based on these authorities, and on the definition of critical habitat under the Act, once funding is available, we will take the following steps to propose the revision of designated critical habitat for the Florida manatee: (1) Determine the geographical area occupied by the species at the time of listing; (2) identify the physical or biological features essential to the conservation of the species; (3) delineate specific areas within the geographical area occupied by the species that contain these features, and that may require special management considerations or protection; (4) delineate any areas outside of the geographical area occupied by the species that are essential for the conservation of the species; and (5) conduct appropriate analyses under section 4(b)(2) of the Act; and (6) invite the public to review and provide comments on the proposed revision through a public comment period.

We intend that any revisions to critical habitat for the Florida manatee be as accurate as possible. Therefore, even until we initiate the proposed designation we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

Current Designation and Protections

Until we are able to revise the critical habitat designation for the Florida manatee, the currently designated critical habitat, as well as areas that support manatee populations, but are outside the current critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act. Federal agency actions are subject to the regulatory protections afforded by section 7(a)(2), which requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. We expect that the majority of regulatory projects will involve a Federal nexus, in which case consultation under section 7(a)(2) would apply. In addition, federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases.

Under section 7(a)(2) of the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. For most species, as a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

Because manatees are marine mammals, they are protected under the Marine Mammal Protection Act of 1972

(MMPA). Section 17 of the Act provides that any more restrictive conflicting provisions of the MMPA take precedence over the Act (16 U.S.C. 1543). Section 7(b)(C) of the Act identifies the necessary authorization pursuant to section 101(a)(5) of the MMPA for taking of an endangered or threatened marine mammal. Because the Service has not promulgated a rulemaking under MMPA section 101(a)(5), we do not issue incidental take authorization in conjunction with consultations on Federal actions under section 7(a)(2) of the Act. In order to ensure compliance with section 7(a)(2) of the Act and the more restrictive provisions of the MMPA, any Federal action that is determined as "likely to adversely affect the Florida manatee" (USFWS 2008) will need to:

(1) Modify the project to the extent that take is no longer reasonably certain to occur and/or:

(2) Incorporate Service-approved take minimization and avoidance measures, as outlined in our 2009 Manatee Programmatic Biological Opinion (USFWS 2009).

Therefore, although we are not immediately proceeding with a revision of the current critical habitat designation for the manatee, the current designation still provides protections to the manatee in addition to the protections afforded the manatee through listing under the Act and those provided under the MMPA.

References Cited

A complete list of all references cited in this document is available, upon request, from the Jacksonville Ecological Services Field Office (see **ADDRESSES section**).

Author

The primary author of this notice is staff with the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Field Office (see **ADDRESSES section**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 30, 2009.

Eileen Sobeck,

Acting Assistant Secretary of Fish Wildlife and Parks.

TABLE 1. REGIONAL DESCRIPTION OF MANATEE HABITAT AND REGION-SPECIFIC THREATS FOR MANATEES IN FLORIDA

Features	Northwest Management Unit	Southwest Management Unit	Atlantic Coast Management Unit	Upper St. Johns River Management Unit
Geographic Boundaries	Located along Florida's northwest coast, the southern boundary of the unit is defined by the Hernando- Pasco County line. While the majority of use occurs east of the Wakulla River, manatees from this unit range as far west as Texas.	Located along Florida's southwest coast, the northern boundary is described by the Pasco-Hernando County line, extending south to the mouth of Whitewater Bay, along the western margin of the Everglades.	Includes Florida's coastal areas from south of the mouth of Whitewater Bay, through Florida Bay and north to the mid-Atlantic region. The unit extends into the St. Johns River as far south as Palatka.	This unit is located upstream of Palatka, Florida, extending to the headwaters of the St. Johns River.
Habitat Description	This unit incorporates coastal seagrass beds which extend from the shoreline out to the Gulf of Mexico. Significant features include the spring-fed Wakulla, Suwannee, Crystal, and Homosassa River systems, which empty into the Gulf.	This unit primarily includes in-shore and near-shore seagrass beds, which border mangrove systems to the south. Tampa Bay, Charlotte Harbor, and the Caloosahatchee River are dominant coastal features. There are numerous barrier islands south of Tampa Bay, accompanied by passes, inland waterways, etc. Tidal rivers and creeks are common in this area.	This unit primarily includes in-shore seagrass beds, which border mangrove systems to the south. Predominant features include Florida Bay, the Florida Keys, Biscayne Bay, and barrier islands and inland waterways that extend into the mid-Atlantic region. Significant waterways include the Indian River Lagoon, Banana River, and Mosquito Lagoon. From north Florida and into more northerly states, habitats are typified by large coastal rivers, such as the St. Johns River and coastal marshes.	This freshwater system includes extensive eel grass beds bordered largely by cypress and hardwood swamps. There are numerous rivers and lakes that make up this system. Notable features include the Ocklawaha River (dammed), Lake George, Lake Woodruff, and Lake Monroe. There are many small, spring-fed tributaries that discharge into this system.

TABLE 1. REGIONAL DESCRIPTION OF MANATEE HABITAT AND REGION-SPECIFIC THREATS FOR MANATEES IN FLORIDA—Continued

Features	Northwest Management Unit	Southwest Management Unit	Atlantic Coast Management Unit	Upper St. Johns River Management Unit
Winter Sites	Crystal River Springs Complex (Citrus) Homosassa River Springs Complex (Citrus). Weeki Wachee/ Mud Creek/ Jenkins Creek Springs (Hernando). Progress Energy Crystal River Power Plant (Citrus). Manatee/Fanning Springs (Dixie). Wakulla/St. Mark's Complex (Wakulla).	TECO Big Bend Power Plant (Hillsborough) Warm Mineral Springs (Sarasota). Matlacha Isles (Lee) FPL Ft. Myers Power Plant (Lee). Port of the Islands (Collier). Progress Energy Anclote Plant (Pasco). TECO Gannon Plant (Hillsborough). Progress Energy Bartow Power Plant (Pinellas). Ten Mile Canal Borrow Pit (Lee). Franklin Locks (Lee) Spring Bayou/Tarpon Springs (Pasco). Forked Creek (Sarasota) Tamiami Canal at Wootens (Collier). Big Cypress National Preserve Headquarters Canal (Collier). Sulphur Springs (Hillsborough).	Reliant Energy Power Plant (Brevard) FPL Canaveral Power Plant (Brevard County, FL). FPL Riviera Beach Power Plant (Palm Beach). FPL Port Everglades Power Plant (Broward). FPL Fort Lauderdale Power Plant (Broward). Coral Gables Waterway (Dade). Sebastian River (C-54 canal) (Brevard). Vero Beach Power Plant (Indian River). Henry D. King Electric Station – Ft. Pierce Utilities (St. Lucie). Big Mud Creek (St. Lucie). Berkeley Canal (Brevard) Black Point Park/Black Creek (Dade County). Palmer Lake (Dade)Little River (Dade). Turkey Point Canal (Dade). C-111 canal and canal just west of Card Sound Bridge (Dade). Biscayne Canal (Dade) Banana River Marine Service Marina (Brevard). Canals/Coves, Upper Keys (Bayside of Key Largo) (Monroe). Harbor Branch canal (St. Lucie).	Blue Spring (Volusia)Silver Glen Springs (Marion) DeLeon Springs (Volusia) Salt Springs (Marion) Ocklawaha River SpringsComplex (Marion/Lake)

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Figure 1. Florida manatee critical habitat map created from the physical description of the published designated critical habitat (50 CFR 17.95(a)).

[FR Doc. 2010–325 Filed 1–11– 10; 8:45 am]
BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 09022432–91321–03]

RIN 0648–AX50

Endangered and Threatened Species; Designation of Critical Habitat for the Cook Inlet Beluga Whale

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

ACTION: Proposed rule; extension of public comment period.

SUMMARY: We, NMFS, are extending the date by which public comments are due concerning the proposed rule to designate critical habitat for the endangered Cook Inlet beluga whale, *Delphinapterus leucas*, under the Endangered Species Act of 1973, as amended (ESA). We published a proposed rule to designate critical habitat for this species in the **Federal Register** of December 2, 2009. The original due date for receipt of public comments was scheduled to end on February 1, 2010, and today we extend the public comment period to March 3, 2010.

DATES: The comment date for the proposed rule published December 2, 2009 (74 FR 63080) is extended to March 3, 2010.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources, Alaska Region, NMFS, ATTN: Ellen Sebastian. You may submit comments, identified by "RIN 0648–AX50" by any one of the following methods:

Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.

Mail: P.O. Box 21668, Juneau, AK 99802–1668

Fax: 907–586–7557

Hand deliver to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and generally will be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g. name, address) 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, WordPerfect, of Adobe portable document file (PDF) format only.

The proposed rule and other materials relating to the proposed rule to designate critical habitat for the Cook Inlet beluga whale can be found on our Web site at: *http://www.fakr.noaa.gov/*

FOR FURTHER INFORMATION CONTACT: Kaja Brix, (907) 586–7824, or Marta Nammack, (301) 713–1401.

SUPPLEMENTARY INFORMATION: We published a proposed rule to designate critical habitat for the Cook Inlet beluga whale in the **Federal Register** of December 2, 2009 (74 FR 63080). We received several requests, including from the Alaska Congressional delegation, to extend the comment period to allow the public to provide input to the designation of critical habitat and, in particular, to comment on the economic report. The Alaska Congressional delegation asked for an additional 30 days; another commenter asked for an additional 60 days. An additional 30–day comment period should allow sufficient time for responders to comment while preserving the time needed for NMFS to prepare the final rule. The original due date for receipt of public comments was scheduled to end on February 1, 2010, and today we extend the public comment period to March 3, 2010.

Authority: 16 U.S.C. 1533 *et seq.*

Dated: January 6, 2010.

James W. Balsiger,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–384 Filed 1–7–10; 4:15 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 7
Tuesday, January 12, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

FINANCIAL CRISIS INQUIRY COMMISSION

Notice of Open Meeting

SUMMARY: The Financial Crisis Inquiry Commission (FCIC) announces that it will hold its first public hearing, in which the Commission will begin its thorough examination of the root causes of the crisis by hearing testimony on the causes and current state of the crisis. Top leaders of both private and public sector entities that played critical roles in the crisis will testify.

DATES: The open meeting will be held on Wednesday, January 13, 2010, and Thursday, January 14, 2010, commencing on both days at 9 a.m.

ADDRESSES: The open meeting will be held in the hearing room of the Committee on Ways and Means U.S. House of Representatives, 1100 Longworth House Office Building, Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: The Financial Crisis Inquiry Commission, 1717 Pennsylvania Avenue, Suite 800, Washington, DC 20006, 202–292–2799, 202–632–1604 fax.

SUPPLEMENTARY INFORMATION: The purpose of the Financial Crisis Inquiry Commission is to examine the causes, domestic and global, of the current financial and economic crisis in the United States, per the requirements of the Fraud Enforcement and Recovery Act of 2009 (“FERN’s), Section 5, Public Law 111–21,123 Stat. 1617 (2009).

Public Participation: The meeting is open to the public. The Chairman of the Commission will lead the meeting for the orderly conduct of business.

Dated: January 7, 2009.

Phil Angelides,

Chairman, Financial Crisis Inquiry Commission.

[FR Doc. 2010–442 Filed 1–11–10; 8:45 am]

BILLING CODE 6820–RK–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 7, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of burden 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Secure Rural Schools Act.

OMB Control Number: 0596–NEW.

Summary of Collection: The Secure Rural Schools and Community Self-Determination Act of 2000 (the Act) reauthorized in Public Law 110–343, requires the appropriate official of a county that receives funds under Title III of the Act to submit to the Secretary of Agriculture or the Secretary of the Interior, as appropriate, an annual certification that the funds have been expended for the uses authorized under section 302(a) of the Act. The information will be collected annually in the form of conventional correspondence such as a letter and, at the respondent’s option, attached tables or similar graphic display. At the respondent’s discretion, the information may be submitted by hard copy and/or electronically scanned and included as an attachment to electronic mail.

Need and Use of the Information: The information collected will identify the participating county and the year in which the expenditures were made and will include the name, title, and signature of the official certifying that the expenditures were for uses authorized under section 302(a) of the Act, and the date of the certification. Information will also be collected including the amount of funds expended in the applicable year and the uses for which the amounts were expended referencing the authorized categories; (1) carry out activities under the Firewise Communities program; (2) reimburse the participating county for emergency services performed on Federal land and paid for by the participating county; and (3) to develop community wildfire protection plans in coordination with the appropriate Secretary or designee. The information will be used to verify that participating counties have certified that funds were expended as authorized in the Act.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 360.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,440.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–341 Filed 1–11–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 7, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission @OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Rural Business-Cooperative Service

Title: Small Socially-Disadvantaged Producer Grant Program.

OMB Control Number: 0570–0052.

Summary of Collection: The Small Socially-Disadvantaged Producer Grant Program was authorized by section 2744 of the Federal Agriculture Improvement and Reform Act of 2006, Public Law 109–97. The Act provides for the Secretary of Agriculture to make grants to cooperatives or associations of cooperative whose primary focus is to provide assistance to small producers and whose governing board and/or membership are comprised of at least 75 percent socially-disadvantaged.

Need and Use of the Information: Rural Business Service needs to receive the information contained in this collection of information to make prudent decisions regarding eligibility of applicants and selection priority among competing applicants, to ensure compliance with applicable laws and regulations and to evaluate the projects it believes will provide the most long-term economic benefit to rural areas.

Description Of Respondents: Not-for-profit institutions.

Number of Respondents: 30.

Frequency of Responses: Reporting: Annually; Semi-Annually; and Monthly.

Total Burden Hours: 468.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–342 Filed 1–11–10; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 7, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Summer Food Service Program Claim for Reimbursement.

OMB Control Number: 0584–0041.

Summary of Collection: The Summer Food Service Program Claim for Reimbursement Form is used to collect meal and cost data from sponsors to determine the reimbursement entitlement for meals served. The form is sent to the Food and Nutrition Service's (FNS) Regional Offices where it is entered into a computerized payment system. The payment system computes earnings to date and the number of meals to date and generates payments for the amount of earnings in excess of prior advance and claim payments. To fulfill the earned reimbursement requirements set forth in the Summer Food Service Program Regulations issued by the Secretary of Agriculture (7 CFR 225), the meals and the cost data must be collected on the FNS–143, Claim for Reimbursement form.

Need and Use of the Information: FNS will collect information to manage, plan, evaluate, and account for government resources. If the information is not collected on the claim form, the sponsor could not receive reimbursement.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 111.

Frequency of Responses: Reporting: Other: (3 per year).

Total Burden Hours: 167.

Food and Nutrition Service

Title: 7 CFR Part 225, Summer Food Service Program.

OMB Control Number: 0584–0280.

Summary of Collection: Section 13 of the National School Lunch Act, as amended, 42 U.S.C. 1761, authorizes the Summer Food Service Program (SFSP). The SFSP provides assistance to States to initiate and maintain nonprofit food service programs for needy children during the summer months and at other approved times. Under the program, a sponsor receives reimbursement for

serving nutritious, well-balanced meals to eligible children at the food service sites. Information is gathered from State agencies and other organizations wishing to participate in the program to determine eligibility. FNS uses a variety of forms to collect information.

Need and Use of the Information: FNS uses the information collected to determine an organization's eligibility and to monitor program performance for compliance and reimbursement purposes.

Description of Respondents: Individuals or household; Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 105,249.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Quarterly; Monthly.

Total Burden Hours: 182,683.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–343 Filed 1–11–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Collection of Public Information With the Use of a Survey

AGENCY: Rural Development, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Development's intention to request clearance for continuation of information collection to measure the quality of loan servicing provided by the Rural Development, Centralized Servicing Center (CSC) in St. Louis, MO.

DATES: Comments on this notice must be received by March 15, 2010 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Terrie Barton, Customer Service Branch Chief, Centralized Servicing Center, 4300 Goodfellow Blvd., Mail Code FC 25, St. Louis, Missouri 63120–1703, phone: (314) 457–5133, e-mail: *Terrie.barton@stl.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rural Development—Customer Satisfaction Survey.

Type of Request: Continuation of information collection.

Abstract: USDA, Rural Development provides insured loans to low- and moderate-income applicants located in rural geographic areas to assist them in obtaining decent, sanitary and safe dwellings. Rural Development currently processes loan originations through approximately 700 Field Offices. The Rural Development, Centralized Servicing Center (CSC), located in St. Louis, Missouri, provides support to the Field Offices and is responsible for loan servicing functions for Single Family housing direct program borrowers. The CSC was established to achieve a high level of customer service and operating efficiency. The CSC has established a fully integrated call center and is able to provide borrowers with convenient access to their loan account information.

To facilitate CSC's mission and in an effort to continuously improve its services, a survey has been developed that will measure the change in quality of service that borrower's receive when they contact the CSC. Three previous surveys have been completed under prior authorization. Respondents will only need to report information on a one-time basis.

The results of the survey will provide a general satisfaction level among borrowers throughout the nation. The data analysis will provide comparisons to prior surveys and reveal areas of increased satisfaction as well as areas in need of improvement. CSC's goal is to continuously improve program delivery, accessibility and overall customer service satisfaction. A follow up survey will be conducted in 18–24 months, but may or may not be sent to the same initial respondents. Additionally, in accordance with Government Performance and Results Act (GPRA), the survey will enable CSC to measure the results and overall effectiveness of customer services provided as well as implement action plans and measure improvements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 16 minutes per response.

Respondents: Rural Development, SFH Program Borrowers.

Estimated Number of Respondents: 6,000.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 6,000.

Estimated Total Annual Burden on Respondents: 960.

Copies of this information collection can be obtained from Linda Watts Thomas, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0226.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Linda Watts Thomas, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 29, 2009.

Sylvia Bolivar,

Acting Administrator, Rural Housing Service.

[FR Doc. E9–31336 Filed 1–11–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2007-0044]

Draft Environmental Impact Statement; Determination of Regulated Status of Alfalfa Genetically Engineered for Tolerance to the Herbicide Glyphosate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability of a draft environmental impact statement and public meetings.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental impact statement in connection with making a determination on the status of the Monsanto Company and Forage Genetics International alfalfa lines designated as events J101 and J163 as regulated articles. This notice also provides notice of public meetings.

DATES: We will consider all comments that we receive on or before February

16, 2010. We will also consider comments made at public meetings to be held on January 19, 2010, and on February 3, 4, and 9, 2010.

ADDRESSES: The public meetings will be held in Las Vegas, NV, Kearney, NE, Lincoln, NE, and Riverdale, MD (see the Supplementary Information section of this notice for the address of each hearing site). You may submit written comments on the draft environmental impact statement by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0044*) to view the draft environmental impact statement, or to submit or view public comments.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2007-0044, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2007-0044.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Huberty, Branch Chief, Regulatory and Environmental Analysis Branch, BRS, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737; (301) 734-0485.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

In a notice published in the **Federal Register** on June 27, 2005 (70 FR 36917-36919, Docket No. 04-085-3), APHIS advised the public of its determination, effective June 14, 2005, that the Monsanto/Forage Genetics International (FGI) alfalfa events J101 and J163 were no longer considered regulated articles under the regulations governing the introduction of certain genetically engineered organisms. That determination was subsequently challenged in the United States District Court for the Northern District of California by the Center for Food Safety, other associations, and several organic alfalfa growers. The lawsuit alleged that APHIS' decision to deregulate the genetically engineered glyphosate-tolerant alfalfa events J101 and J163 violated the National Environmental Policy Act (NEPA), the Endangered Species Act, and the Plant Protection Act.

On February 13, 2007, the court in that case issued its memorandum and order in which it determined that APHIS had violated NEPA by not preparing an environmental impact statement (EIS) in connection with its deregulation determination. The court ruled that the environmental assessment prepared by APHIS for its deregulation determination failed to adequately consider certain environmental impacts in violation of NEPA. The deregulation determination was vacated and APHIS was directed by the court to prepare an EIS in connection with its new determination on the regulated status of the events.

APHIS has prepared a draft EIS, titled "Glyphosate-Tolerant Alfalfa Events J101 and J163: Request for Nonregulated Status" (November 2009), regarding this determination of regulated status. The EIS is available on Regulations.gov for review and comment, and may be accessed via the Internet address provided above under the heading **ADDRESSES**.

A notice of availability regarding the draft EIS was also published by the Environmental Protection Agency in the **Federal Register** on December 18, 2009 (74 FR 67206-67207, Docket No. ER-FRL-8986-6).

Public Meetings

We are advising the public that we are hosting four public meetings. The public meetings will be held as follows:

- Tuesday, January 19, 2010, in the Golden Nugget Hotel, 129 Fremont Street, Las Vegas, NV, from 11 a.m. to 2 p.m., local time.
- Wednesday, February 3, 2010, in the Buffalo County Fairgrounds Exhibit Center, 3807 Avenue N, Kearney, NE, from 3 p.m. to 6 p.m., local time.
- Thursday, February 4, 2010, in the Holiday Inn Haymarket, 141 North 9th Street, Lincoln, NE, from 4 p.m. to 7 p.m., local time.
- Tuesday, February 9, 2010, in the USDA Center at Riverside, 4700 River Road, Riverdale, MD, from 4 p.m. to 7 p.m., local time.

A representative of APHIS will preside at the public meetings. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the meeting record.

Registration will take place 30 minutes prior to the scheduled start of the meeting. Persons who wish to speak at a meeting will be asked to sign in with their name and organization to establish a record for the meeting. We ask that anyone who reads a statement provide two copies to the presiding officer at the meeting.

The presiding officer may limit the time for each presentation, so that all interested persons appearing at each meeting have an opportunity to participate. Each meeting may be terminated at any time if all persons desiring to speak have been heard.

Parking and Security Procedures

Please note that a fee of $4 in exact change is required to enter the parking lot at the USDA Center at Riverside. The machine accepts $1 bills or quarters.

Upon entering the building, visitors should inform security personnel that they are attending the public meeting regarding the regulated status of alfalfa genetically engineered for tolerance to the herbicide glyphosate. State issued photo identification is required and all bags will be screened. Security personnel will direct people to the registration tables. Registration upon arrival is required for all participants.

Done in Washington, DC, this 6th day of January 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–345 Filed 1–11–10: 11:49 am]

BILLING CODE: 3410–34–S

DEPARTMENT OF AGRICULTURE

Forest Service

Medford-Park Falls Ranger District, Chequamegon-Nicolet National Forest, Park Falls Hardwoods Project

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service, Chequamegon-Nicolet National Forest, Medford-Park Falls Ranger District intends to prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental effects of proposed land management activities, and corresponding alternatives within the Park Falls Hardwoods project area. The primary purpose of this proposal is to implement activities consistent with direction in the Chequamegon-Nicolet National Forests Land and Resource Management Plan (Forest Plan) and respond to specific needs identified in the project area. The project area is located on the Park Falls unit of the Medford-Park Falls Ranger District, Chequamegon-Nicolet National Forest, approximately 13–15 miles northeast of Phillips, Wisconsin. The legal description for the area is: Portions of the eastern Sections of Township 37 North, Range 3 East; Township 38 North, Range 3 East; and Township 39 North, Range 3 East; Fourth Principal Meridian.

DATES: Comments concerning the scope of the analysis must be received within 30 days of publication of this notice to receive timely consideration in preparation of the draft Environmental Impact Statement (EIS). The draft EIS is expected May 2010 and the final EIS is expected November 2010.

ADDRESSES: Send written comments to District Ranger Bob Heimes, c/o Jane Darnell, Medford-Park Falls Ranger District, 850 N. 8th St., Medford, Wisconsin 54451. Comments may also be sent via e-mail to *jdarnell01@fs.fed.us* with a subject line that reads "Park Falls Hardwoods Project", or via facsimile to 715–748–5675.

FOR FURTHER INFORMATION CONTACT: Jane Darnell, NEPA Coordinator, Medford–Park Falls Ranger District, Chequamegon-Nicolet National Forest, USDA Forest Service; telephone: 715–748–4875 (individuals who use telecommunication devices for the deaf, TDD, may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday). For a mailing address, see above under **ADDRESSES**. Copies of documents may be requested at the same address. Another means of obtaining information is to visit the Forest Web page at *http://www.fs.fed.us/r9/cnnf/natres/index.html.* Click on "Park Falls Hardwoods Project" under the "Current Proposed Actions" heading.

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by this proposed project. The information presented in this notice is summarized. Those who wish to comment on this proposal or are otherwise interested in or potentially affected by it are encouraged to review more detailed documents such as the Proposed Action for the Park Falls Hardwoods project and the draft EIS as these documents become available. See the preceding section of this notice for contact information.

Purpose and Need for Action

The Park Falls Hardwoods project primarily falls within the area defined in the Chequamegon-Nicolet National Forests 2004 Land and Resource Management Plan (Forest Plan) as Management Area (MA) 2B. MA 2B is described in the Forest Plan as having a desired condition as an uneven-aged, northern hardwood, interior forest. Guidance in the Forest Plan identifies this area to be managed for relatively continuous mid to late successional northern hardwood and northern hardwood-hemlock forest communities where large patch conditions and a relatively continuous canopy is maintained or recreated. The primary purpose of the Park Falls Hardwoods proposal is to implement activities consistent with direction in the Forest Plan and to respond to specific needs identified in the project area. Through an analysis of the existing conditions within the project area compared to the desired conditions as documented in the Forest Plan, six needs for action have been identified (A–F):

A. Need to Maintain and Improve Forest Health (Forest Plan Goal 1.4): Nine needs have been identified related to forest health.

There is a need to understand the processes controlling forest-atmosphere exchange of carbon dioxide and the response of these processes to climate change.

Emerald ash borer (EAB) is an introduced insect that has the potential to devastate all native ash species similar to what occurred to the American chestnut and American elm. There is a need to identify site-specific strategies to control or minimize impacts to ash and the forest ecosystem from EAB.

There is a need to re-establish healthy, vigorous forest in areas impacted by disease and wind damage.

There is a need to restore and expand Canada yew populations within the project area.

Most of the mid to late successional upland forest within the project area is well over the stocking levels prescribed in the Forest Plan to maintain forest health and productivity. There is a need to treat these areas to promote forest health and vigor.

There is a need to reduce the amount of early successional species (primarily aspen) within the project area. For MA 2B, Chapter 3 of the Forest Plan has a desired condition for aspen of a maximum of 10% of the upland forest. The existing condition is that aspen comprises about 25% of the upland forest type.

The majority of the hardwood forest within the project area was established 70 to 80 years ago and is comprised of trees that are all about the same age. In MA 2B, the Forest Plan describes the desired condition for the area as mid to late successional uneven-aged northern hardwood forests. There is a need to increase the amount of uneven-aged hardwood forest within the project area.

Much of the hardwood forest within the project area is connected in large blocks. There are some instances, particularly in the southern portion of the project area, where treatment of early successional forest to convert it to later successional species, will increase the potential and meet the need for larger patches of the desired forest type (hardwoods, spruce, pine, hemlock, oak).

As described earlier, the 2B management prescription calls for upland forest of primarily mid to late successional species. While there is an overabundance of early successional species in the project area, the early successional species that are present are also overabundant in the older age groups, with limited representation in the youngest age groups (0–10 years of age).

B. Need to Maintain and Improve Threatened, Endangered, and Sensitive Species Habitats (Forest Plan Goal 1.1): Based on monitoring, the habitat for spruce grouse (a sensitive species) as identified by the Forest Plan is near the minimum threshold identified for this species forest-wide. There is a need to increase the amount of habitat for this species where feasible. The project area contains some habitat for spruce grouse which could be improved and expanded.

C. Need to Maintain and Improve Coldwater Fisheries (Forest Plan Goal 1.5): There is a need to reduce the amount of aspen adjacent to streams within the project area, particularly cold water streams. Beaver activity (primarily feeding or utilization of aspen close to these streams) results in lack of shade trees adjacent to the stream and potentially leads to increases in water temperature, making it unsuitable for cold water species.

D. Need to Maintain or Enhance the Quality of the Recreation Experience (Forest Plan Goal 2.1): The Fould's Creek spring ponds have long been utilized as a recreational fishery. Also, there are currently no designated non-motorized trails within the project area. Some of the project area is designated for non-motorized public access, so public access is limited to foot travel. There is a need to provide adequate foot travel access within the project area which would improve the quality of the recreational experience.

E. Need for Supplying Wood Products (Forest Plan Goal 2.5): The harvest activities being proposed to meet the needs for action would result in the availability of wood products, including pulpwood, sawtimber, and biomass products. Environmentally sound harvest through commercial timber sales would meet this need.

F. Need to Develop and Maintain Capital Infrastructure (Forest Plan Goal 3.1 Transportation Systems): Based on a roads analysis, there is a need to provide an adequate, safe, and efficient transportation system in the project area. More specifically, total road densities are slightly above the desired road density in portions of the project area, some roads are in areas susceptible to resource damage, other roads are located in areas where there are no foreseeable access needs, and some areas lack access.

Proposed Action

The proposed land management activities (proposed actions) to meet the needs of the area include the following:

A. The following tree harvest activities address the needs to maintain or improve forest health in the project area: (1) Selection harvest on about 14,500 acres; (2) Improvement harvest on about 1,400 acres; (3) Thinning harvest on about 150 acres; (4) Shelterwood harvest on about 380 acres; (5) Overstory removal harvest on about 160 acres; and (6) Clearcut harvest on about 450 acres. Selection, thinning, and improvement harvest are types of harvest activities that remove only a portion of the existing trees to encourage regeneration of an understory, to encourage age-class development, or to encourage growth, health and vigor in the remaining trees. Other proposed projects related to forest health include restoration of about 2 acres of Canada yew by supplemental planting and fencing and restoration of desired tree species (conifer and oak for example) through supplemental planting within a portion of the proposed harvest areas.

B. The following project addresses the need to maintain or improve Regional Forester Sensitive Species habitat (spruce grouse habitat): Supplemental planting and retention of spruce on about 50 acres.

C. The following project addresses the need to maintain or improve coldwater fisheries: Retention of shade trees and discouragement of aspen adjacent to 12 miles of coldwater streams.

D. The following project addresses the need to provide and enhance recreation opportunities: Designation of about 6 miles of walking trails.

E. The following project addresses the need for supplying wood products: Proposed harvest activities will be conducted through commercial timber sales with an estimated 91 million board feet of pulpwood and sawtimber products, and potentially 14,000 dry tons of tree top material which could be utilized for biomass.

F. The following projects address transportation needs for timber harvest and for providing a safe and efficient transportation system to meet administrative and public access needs: (1) New permanent road construction of about 12 miles; (2) New temporary road construction of about 1 mile; (3) Road reconstruction of about 43 miles; and (4) Road decommissioning of about 29 miles. In addition, the proposal includes designation of about 16 miles of road that would be open to public highway vehicle use and another 14 miles that would also be open to OHV (off highway vehicle) use.

Possible Alternatives

Alternatives to the proposed action that are currently being considered for display in the draft EIS are as follows: The required No Action alternative. Other alternatives will be developed as the analysis progresses.

Responsible Official

Bob Heimes, Medford-Park Falls District Ranger, Chequamegon-Nicolet National Forest.

Nature of Decision To Be Made

The primary decision will be whether or not to implement the proposed projects or alternatives of the projects within the project area that respond to the purpose and need. The decision will also include resource protection measures as identified in the applicable Forest Plan standards and guidelines. The decision may also include monitoring requirements and whether Forest Plan amendments are needed to implement the decision.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Comments in response to this solicitation for information should focus on (1) the proposal; (2) issues or impacts from the proposal; and (3) possible alternatives for addressing issues associated with the proposal. We are especially interested in information that might identify a specific undesired result of implementing the proposed actions.

It is important that reviewers provide their comments at such times and in such maimer that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: January 4, 2010.

Jeanne M. Higgins,

Forest Supervisor.

[FR Doc. 2010–214 Filed 1–11–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes and Ochoco National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco National Forests Resource Advisory Committee will meet in Redmond, Oregon. The purpose of the meeting is to review proposed projects and make recommendations under Title II (division C of Pub. L. 110–343 reauthorized and amended the Secure rural Schools and community Self-Determination Act of 2000 (SRS Act) as

originally enacted in Public Law 106–393.

DATES: The meeting will be held January 27, 2010 from 9 a.m. to 5 p.m., and January 28, 2010 from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the office of the Central Oregon Intergovernmental Council, 2363 SW Glacier Place, Redmond, Oregon 97756. Send written comments to Jeff Walter as Designated Federal Official, for the Deschutes and Ochoco National Forests Resource Advisory Committee, c/o Forest Service, USDA. Ochoco National Forest, 3160 NE., 3rd St., Prineville, OR 97754 or electronically to *jwalter@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeff Walter, Designated Federal Official, Ochoco National Forest, 541–416–6625.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Title II matters to the attention of the Committee may flle written statements with the Committee staff before the meeting. A public input session will be provided and individuals who made written requests by January 15, 2010 will have the opportunity to address the Committee at the session.

Dated: January 4, 2010.

Jeff Walter,

Designated Federal Official.

[FR Doc. 2010–252 Filed 1–11–10; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Limitation of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries From Regional Country Fabric

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Amending the 12–month cap on duty- and quota-free benefits.

DATES: *Effective Date:* January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION: *Authority:* Section 3103 of the Trade Act of 2002, Public Law 107–210; Presidential Proclamation 7616 of October 31, 2002, 67 FR 67283 (November 5, 2002); Executive Order 13277, 67 FR 70305 (November 19, 2002); and the Office of the United States Trade Representative's Notice of Authority and Further Assignment of Functions, 67 FR 71606 (November 25, 2002).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty- and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. Section 204(b)(3)(B)(iii) of the amended ATPA provides duty- and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from regional fabric and components, subject to quantitative limitation. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric components, or components knit-to-shape.

Title VII of the Tax Relief and Health Care Act (TRHCA) of 2006, Public Law 107–432, extended the expiration of the ATPA to June 30, 2007. *See* Section 7002(a) of the TRHCA 2006. H.R. 1830, 110th Cong. (2007), further extended the expiration of the ATPA to February 29, 2008. H.R. 5264, 110th Cong. (2008), further extended the expiration of the ATPA to December 31, 2008. H.R. 7222, 110th Cong. (2008), further extended the expiration of the ATPA to December 31, 2009. H.R 4284, 111th Cong. (2009), further extended the expiration of the ATPA to December 31, 2010.

The purpose of this notice is to extend the period of the quantitative limitation for preferential tariff treatment under the regional fabric provision for imports of qualifying apparel articles for a full 12-month period, through September 30, 2010.

For the period beginning on October 1, 2009 and extending through September 30, 2010, the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 1,163,423,598 square meters equivalent. Apparel articles entered in excess of this quantity will be subject to otherwise applicable tariffs.

This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2010–377 Filed 1–11–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will resubmit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). The clearance request was withdrawn and is now being resubmitted because the Census Bureau has made changes to the request. The sample size has been lowered, the reinterview rate has been increased and a new Census Coverage Measurement Recall Bias Panel Study has been added. Two previous notices were published in the **Federal Register** announcing plans to submit this request (June 19, 2009 on page 29166 and Nov. 24, 2009 on page 61329). Neither of the previous notices included information about these changes.

Agency: U.S. Census Bureau.

Title: 2010 Census Coverage Measurement, Person Interview, Person Interview Reinterview, and Recall Bias Panel Study.

OMB Control Number: None.

Form Number(s): All data will be collected using automated instruments on computers.

Type of Request: New collection.

Burden Hours: 68,938.

Number of Respondents: 275,750.

Average Hours per Response: 15 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget to conduct the Census Coverage Measurement (CCM) Person Interview (PI) and Person Interview Reinterview (PIRI) operations as part of the 2010

Census. The CCM program will provide estimates of net coverage error and components of coverage error (omissions and erroneous enumerations) for housing units and persons in housing units. The data collection and matching methodologies for previous coverage measurement programs were designed only to measure net coverage error, which reflects the difference between omissions and erroneous inclusions.

The 2010 CCM will be comprised of two samples selected to measure census coverage of housing units and the household population: The population sample (P sample) and the enumeration sample (E sample). The primary sampling unit is a block cluster, which consists of one or more contiguous census blocks. The P sample is a sample of housing units and persons obtained independently from the census for a sample of block clusters. The E sample is a sample of census housing units and enumerations in the same block cluster as the P sample. The results of the housing unit matching operations will be used to determine which CCM and Census addresses will be eligible to go to the CCM Person Interview (PI) Operation. The PI Operations will contain approximately 205,000 sample addresses. The Person Interview Reinterview Operation will be a sample of those cases with an estimate of 30,750 sample addresses.

The automated PI instrument will be used to collect the following information for persons in housing units only:

1. Roster of people living at the housing unit at the time of the CCM PI Interview.
2. Census Day (April 1, 2010) address information from people who moved into the sample address since Census Day.
3. Other addresses where a person may have been counted on Census Day.
4. Other information to help us determine where a person should have been counted as of Census Day (relative to Census residence rules). For example, enumerators will probe for persons who might have been left off the household roster; ask additional questions about persons who moved from another address on Census Day to the sample address; collect additional information for persons with multiple addresses; and collect information on the addresses of other potential residences for household members.
5. Demographic information for each person in the household on Interview Day or Census Day, including name, date of birth, sex, race, Hispanic Origin, and relationship.
6. Name and above information for any person who has moved out of the sample address since Census Day (if known).

We also will conduct a quality control operation—PI Reinterview (PIRI) on 15 percent of the PI cases. The purpose of the operation is to confirm that the PI enumerator conducted a PI interview with an actual household member or a valid proxy respondent and conduct a full person interview when falsification is suspected. If PIRI results indicate falsified information by the original enumerator, all cases worked by the original enumerator are reworked by reassigning the cases to a different PI enumerator.

In addition to the CCM PI Operation, CCM will conduct a Recall Bias Panel Study that will be conducted using an automated instrument over the phone. The study will examine recall bias in the CCM with respect to residence during the 2010 Census cycle. One of the recurring questions regarding the 2010 CCM is whether conducting the CCM Person Interview (PI) and CCM Person Followup (PFU) operations, later than in previous post-enumeration surveys, will cause degradation on the data collection of respondent moves since Census Day (April 1, 2010) and the information on alternate addresses for the residents. The main goal of the study is to provide initial insight into the issue of recall bias for the CCM PI and PFU. This initial study will measure if we can detect a problem as our contact moves away from Census Day, but will not be able to detect if the reporting errors cancel each other out. Therefore, if no problem is found, we will not be able to conclude that there is not a problem with recall bias. The plan is to design and implement further studies of this issue for CCM in the 2020 Decennial testing life cycle.

Four panels of random digit dialing (RDD) respondents will be interviewed during May, June and September 2010, and February 2011. These time periods represent the current timing for 2010 Census Nonresponse Followup, Coverage Followup, CCM Person Interview (PI), and the CCM Person Followup (PFU) operations. The study will collect the sample information as the CCM PI operation. The study will include 10,000 numbers per panel for a total of 40,000 individuals that can be contacted.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: PI Operation: Mandatory.

Recall Study: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: January 6, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–286 Filed 1–11–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold its first plenary meeting of 2010 to discuss environmental technologies trade liberalization, industry competitiveness issues, and general Committee administrative items.

DATES: January 28, 2010.

ADDRESSES: U.S. Department of Commerce, 1401 and Constitution Avenue, NW., Washington DC 20230, Room 4830.

FOR FURTHER INFORMATION CONTACT: Ellen Bohon, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–0359. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225.

SUPPLEMENTARY INFORMATION: This is the second time this ETTAC will meet since its re-chartering in September 2009. The meeting is open to the public and time will be permitted for public comment. Written comments concerning ETTAC

affairs are welcome anytime before or after the meeting. Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until September 2010.

Dated: January 5, 2009.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2010–369 Filed 1–11–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Economic Performance in the Commercial Stone Crab and Lobster Fisheries in Florida

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 15, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jim Waters, (252) 728–8710 or *Jim.Waters@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service proposes to continue its collection of socio-economic data from commercial fishermen in Florida's stone crab and lobster fisheries. The survey intends to collect economic information about revenues, variable and fixed costs, capital investment and other auxiliary and demographic information. The data gathered will be used to describe economic performance and to evaluate the socio-economic impacts of future federal regulatory actions. The information will improve fishery management decisionmaking and satisfy legal requirements under Executive Order 12866, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801, *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, the National Environmental Policy Act, and other pertinent statutes.

II. Method of Collection

The Southeast Fisheries Science Center plans to conduct approximately 150–225 voluntary, in-person interviews from approximately 1,000 commercial stone crab and lobster fishermen who do not live in the Florida Keys. A stratified random sampling strategy will be employed, with strata defined by county. Approximately 160 interviews have been completed in counties along the west coast of Florida. The next phase of the project intends to collect data in counties along the east coast of Florida.

III. Data

OMB Control Number: 0648–0560.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 225.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 75.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 6, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–292 Filed 1–11–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Green Technology Pilot Program

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 the new information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 15, 2010.

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

- *E-mail: Susan.Fawcett@uspto.gov.* Include A0651–0062 Green Technology Pilot Program comment@ in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Brian Hanlon, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–5047; or by e-mail at *Brian.Hanlon@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) is implementing a streamlined examination pilot program for patent applications pertaining to green technologies, including greenhouse gas reduction.

The green technology pilot program will permit patent applications pertaining to green technology, i.e., environmental quality, energy conservation, development of renewable energy, or greenhouse gas emission reduction, to be accorded special status for examination using an expedited procedure that is similar to the existing first action interview pilot program without meeting the current requirements of the accelerated examination program. The first action interview pilot and accelerated examination programs are both covered under OMB Control Number 0651–0031.

This pilot will support national and international green technology initiatives and is expected to run for six months.

II. Method of Collection

Electronically using the USPTO online filing system EFS–Web.

III. Data

OMB Number: 0651–0062.

Form Number(s): PTO/SB/420.

Type of Review: New collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 5,225 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public between 1 hour and 10 hours to gather the necessary information, prepare the appropriate form or other documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 6,850 hours per year.

Estimated Total Annual Respondent Cost Burden: $2,123,500 per year. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of $310 per hour for attorneys in private firms, the USPTO estimates that the respondent cost burden for this collection will be approximately $2,123,500 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Request for Green Technology Pilot Program (PTO/SB/420)	1 hour	5,000	5,000
Protests by the public against pending applications under 37 CFR 1.291	10 hours	65	650
Third-party submissions in published applications under 37 CFR 1.99	7.5 hours	160	1,200
Total		5,225	6,850

Estimated Total Annual Non-Hour Respondent Cost Burden: $30,210 per year. There are no capital start-up or maintenance costs associated with this information collection. However, this collection does have record keeping costs and filing fees for the second or subsequent protest filed by the same real party in interest and for a third-part submission under 37 CFR 1.99.

When submitting the information in this collection to the USPTO electronically through EFS–Web, the applicant is strongly urged to retain a copy of the file submitted to the USPTO as evidence of authenticity in addition to keeping the acknowledgment receipt as clear evidence of the date the file was received by the USPTO. The USPTO estimates that it will take 5 seconds (0.001 hours) to print and retain a copy of the EFS–Web submissions and that approximately 5,225 submissions per year will be submitted electronically, for a total of approximately 5 hours per year for printing this receipt. Using the paraprofessional rate of $100 per hour, the USPTO estimates that the recordkeeping cost associated with this collection will be approximately $500 per year.

There is no fee for filing protests under 37 CFR 1.291 unless the filed protest is the second or subsequent protest by the same real party in interest, in which case the 1.17(I) fee of $130 must be included (the USPTO estimates 7 of the 65 protests filed per year will trigger this fee). Third-party submissions under 37 CFR 1.99 must include the 1.17(p) fee of $180. The USPTO estimates that the total fees associated with this collection will be approximately $29,710 per year.

The total non-hour respondent cost burden for this collection in the form of record keeping costs ($500) and filing fees ($29,710) is approximately $30,210 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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; e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 6, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–373 Filed 1–11–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–806

Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 9, 2009, the Department of Commerce (the "Department") published in the **Federal Register** the *Preliminary Results* of the 2007–2008 administrative review of the antidumping duty order on silicon metal from the People's Republic of China ("PRC"). We gave interested parties an opportunity to comment on the *Preliminary Results*.[1] Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final

[1] *See Silicon Metal From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review*, 74 FR 32885 (July 9, 2009) ("Preliminary Results").

results. We continue to find that certain exporters have sold subject merchandise at less than normal value during the period of review ("POR"), June 1, 2007, through May 31, 2008.

EFFECTIVE DATE: January 12, 2010.

FOR FURTHER INFORMATION CONTACT: Bobby Wong, Susan Pulongbarit, or Jerry Huang, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0409, (202) 482–4031, or (202) 482–4047.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 2008, the Department initiated an administrative review of five producers/exporters of subject merchandise from the PRC: Jiangxi Gangyuan Silicon Industry Co., Ltd. ("Jiangxi Gangyuan"); Lao Silicon Co., Ltd. ("Lao Silicon"); S. AU Trade Co., Ltd. ("AU Trade"); and Shanghai Jinneng International Trade Co., Ltd. ("Shanghai Jinneng") and its affiliated producer, Datong Jinneng Industrial Silicon Co., Inc. ("Datong Jinneng") (collectively, the "Jinneng Companies"). In the *Preliminary Results* the Department rescinded the review with respect to Datong Jinneng and Lao Silicon in accordance with 19 CFR 351.213(d)(3), because the Department preliminary determined that neither company had made shipments of subject merchandise during the POR. Also, in the *Preliminary Results*, the Department preliminarily determined that AU Trade will remain part of the PRC–wide entity for the purposes of this review because the Department received an untimely filing of AU Trade's Separate Rate Application ("SRA"). Thus, two companies remain subject to this review: Shanghai Jinneng and Jiangxi Gangyuan.

As noted above, on July 9, 2009, the Department published the *Preliminary Results* of this administrative review.[2] On July 29, 2009, Globe Metallurgical Inc. ("Petitioner") submitted additional surrogate value information. On July 29, 2009, the Jinneng Companies and Jiangxi Gangyuan ("Respondents") submitted additional surrogate value information.

On August 10, 2009, Petitioner requested a hearing. On September 17, 2009, the Department held public and closed hearings to discuss the final results of the instant review.

In response to requests by interested parties, on August 18, 2009, we extended the deadline for parties to submit case briefs and rebuttal briefs until August 21, 2009, and September 4, 2009, respectively. On August 21, 2009, we received case briefs from Petitioner and Respondents. On September 3, 2009, we extended the deadline for parties to submit rebuttal briefs until September 9, 2009. On September 10, 2009, we received rebuttal briefs from Petitioner and Respondents.

On October 29, 2009, the Department partially extended the deadline for the completion of the final results of this review until November 6, 2009.[3] On December 1, 2009, the Department fully extended the deadline for the completion of the final results of this review until January 5, 2010.[4]

On November 10, 2009, the Department received letters from the Embassy of the PRC and the Ministry of Commerce for the PRC ("MOFCOM") (collectively, "PRC government letters"), and subsequently requested comments from interested parties regarding the letters and a related remand determination.[5] On December 2, 2009, the Department received comments from MOFCOM pursuant to the Department's request. On December 3, 2009, the Department received comments from Petitioner and Respondents pursuant to the Department's request. On December 5, 2009, the Department received a letter from the Chinese Minister of Commerce, and subsequently requested comments from interested parties regarding the letter.[6] On December 16, 2009, the Department received comments from Petitioner regarding the December 5, 2009, letter.

On December 22, 2009, the Department requested comments on Indian import data from the World Trade Atlas under Harmonized Tariff Schedule 6305.330.00 "Sacks and Bags, for Packing of Goods, of Polyethylene/Polypropylene Strips Nes." from the 2005–2006 new shipper reviews of silicon metal from China.[7] No parties submitted comments to the Department regarding this data.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Silicon Metal from the People's Republic of China: Issues and Decision Memorandum for the Final Results of 2007/2008 Administrative Review," which is dated concurrently with this notice ("I&D Memo"). A list of the issues which parties raised and to which we respond in the I&D Memo is attached to this notice as an Appendix. The I&D Memo is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room 1117, and is accessible on the Department's website at http://www.trade.gov/ia. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results*, we have made revisions to Jiangxi Gangyuan and Shanghai Jinneng's margin calculations for the final results. For all changes to Jiangxi Gangyuan and Shanghai Jinneng's calculations, *see* I&D Memo and the company specific analysis memorandums.

Scope of the Order

Imports covered by this review are shipments of silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Also covered by this review is silicon metal from the PRC containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor–grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this review. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Final Partial Rescission

[2] *See Preliminary Results.*

[3] *See Silicon Metal From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the 2007 - 2008 Administrative Review*, 74 FR 55811 (October 29, 2009).

[4] *See Silicon Metal from the People's Republic of China: Notice of Second Extension of Time Limit for the Final Results of the 2007-2008 Administrative Review*, 74 FR 62745 (December 1, 2009).

[5] *See* Letter From the Department of Commerce, To All Interested Parties Regarding 2007/2008 Administrative Review of Silicon Metal from the People's Republic of China, dated November 18, 2009.

[6] *See* Letter From the Department of Commerce, To All Interested Parties Regarding 2007/2008 Administrative Review of Silicon Metal from the People's Republic of China, dated December 11, 2009.

[7] *See Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews ("New Shipper Reviews"),* 72 FR 58641 (October 16, 2007).

In the *Preliminary Results*, the Department preliminarily rescinded this review with respect to the following companies: Datong Jinneng and Lao Silicon. Subsequent to the *Preliminary Results*, no information was submitted on the record indicating that the above companies made sales to the United States of subject merchandise during the POR. Thus, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice, we are rescinding this review with respect to the above–named companies for the period of June 1, 2007, through May 31, 2008.

Separate Rates

In our *Preliminary Results*, we treated Jiangxi Gangyuan and Datong Jinneng as separate rate companies. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for the reconsideration of this treatment. Therefore, the Department continues to find that Jiangxi Gangyuan and Datong Jinneng meet the criteria for a separate rate.

In our *Preliminary Results*, we determined that the Department received an untimely filing of AU Trade's SRA. The Department notes that AU Trade was considered as part of the PRC–wide entity and did not receive its own separate rate. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for the reconsideration of this determination. Therefore, the Department continues to find that AU Trade will remain part of the PRC–wide entity for the purposes of this review, as the Department did not conduct a review of its separate rate eligibility.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

For this final determination, in accordance with section 776(a)(2)(B) of the Act and 782(e)(3) of the Act, we have determined that the use of facts available is appropriate for Shanghai Jinneng's consumption of electricity. The record evidence demonstrates that Shanghai Jinneng consumed additional electricity in the preparation of raw materials and in finishing production, which was not previously reported as production electricity. Therefore, we have adjusted the production electricity factor of production ("FOP") to include electricity consumed in the raw material and finishing workshops. However, since the workshops are used in the production of other non–subject merchandise, and that the company only began to report the electricity consumption in January of 2008, we have applied neutral facts available to allocate the proper consumption in the production of subject silicon metal, and to derive estimated electricity consumption for the first seven months of the POR. *See* I&D Memo at Comment 13.

Final Results of Review

The weighted–average dumping margins for the POR are as follows:

SILICON METAL FROM THE PRC

Exporter	Weighted–Average Margin (Percent)
Jiangxi Gangyuan	50.02%
Shanghai Jinneng	23.16%
PRC–Wide Entity	139.49%

Assessment

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer–specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these 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, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis, i.e.*, less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non–PRC 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 PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 139.49 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: January 5, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I Decision Memorandum

I. General Issues:

Comment 1: Treatment of VAT and Export Taxes
Comment 2: Selection of Appropriate Surrogate Value for Silica Fume
Comment 3: Selection of Appropriate Surrogate Value for Electricity
Comment 4: Selection of Appropriate Surrogate Value Financial Statements
Comment 5: Treatment of the Silica Fume By–Product Offset
Comment 6: Selection of Appropriate Surrogate Value for Coal
Comment 7: Selection of Appropriate Surrogate Value for Truck Freight
Comment 8: Selection of Appropriate Surrogate Value for Oxygen
Comment 9: Selection of Appropriate Surrogate Value for Polypropylene Bags
Comment 10: Inclusion of Certain U.S. Sales in Margin Calculations
Comment 11: Freight Distances Reported by the Respondents

II. Shanghai Jinneng Issues

Comment 12: Treatment and Valuation of Graphite Powder
Comment 13: Datong Jinneng Reported Electricity Usage

III. Jiangxi Gangyuan Issues

Comment 14: Jiangxi Gangyuan's Production Quantity
Comment 15: Jiangxi Gangyuan's By–Product Offset

[FR Doc. 2010–378 Filed 1–11–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AW92

Pacific Halibut Fisheries; Limited Access for Guided Sport Charter Vessels in Alaska

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

ACTION: Notice of application period.

SUMMARY: NMFS will accept applications from persons applying to receive a charter halibut permit under the Limited Access System for Guided Sport Charter Vessels in Alaska. Potential eligible applicants are notified of the one-time opportunity to apply for a charter halibut permit for the 60–day period from February 4, 2010, through April 5, 2010. Any applications received by NMFS after the ending date will be considered untimely and will be denied.

DATES: An application for a charter halibut permit will be accepted by NMFS from 8 a.m. Alaska local time (A.l.t.) on February 4, 2010, through 5 p.m. A.l.t. on April 5, 2010.

ADDRESSES: Application forms are available on the internet through the Alaska Region website at *http://alaskafisheries.noaa.gov/ram/default.htm* or by contacting NMFS at 1–800–304–4846 (option 2). An application form may be submitted by mail to NMFS, Alaska Region, Restricted Access Management, P.O. Box 21668, Juneau, AK 99802, by facsimile (907–586–7354), or by hand delivery to NMFS, 709 West 9th Street, Room 713, Juneau, AK 99081.

FOR FURTHER INFORMATION CONTACT: Rachel Baker, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS published a final rule implementing a limited access system for charter vessels in the guided sport fishery for Pacific halibut in waters of International Pacific Halibut Commission Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska) in the **Federal Register** on January 5, 2010 (75 FR 554). Under this rule, NMFS will issue a charter halibut permit to the owner of a licensed charter fishing business based on the business's past participation in the charter halibut fishery. Section 300.67(h)(1) of the final rule requires NMFS to specify an application period for charter halibut permits of no less than 60 days in the **Federal Register**, and to deny any applications received after the last day of the application period.

This notice specifies a 60–day application period of February 4, 2010, through April 5, 2010. An application period was referenced in the proposed rule published on April 21, 2009 (74 FR 18178) and in the final rule published on January 5, 2010 (75 FR 554). This 60–day application period is consistent with the intent of the final rule to give adequate time for participants in the charter halibut fisheries in Areas 2C and 3A to review the final rule and prepare materials necessary for the application procedure specified at 50 CFR 300.67(h)(3). Beginning on February 1, 2011, all vessels with charter anglers on board that are catching and retaining Pacific halibut in Areas 2C and 3A will be required to have on board the vessel a valid original charter halibut permit with an angler endorsement equal to or greater than the number of charter anglers that are fishing for halibut.

All persons are hereby notified that they must obtain an application on the Internet or request a charter halibut application from NMFS (see ADDRESSES). The application period for charter halibut permits begins at 8 a.m. A.l.t. on February 4, 2010, and ends at 5 p.m. A.l.t. on April 5, 2010. Applicants with incomplete applications will be notified in writing of the specific information necessary to complete the application. Charter halibut permit applications submitted to NMFS (see ADDRESSES) after 5 p.m. A.l.t. on April 5, 2010, will be considered untimely and will be denied.

Authority: 16 U.S.C. 773 *et seq.*

Dated: January 6, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–389 Filed 1–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Establishment of NIST Smart Grid Advisory Committee and Solicitation of Nominations for Members

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of establishment of the NIST Smart Grid Advisory Committee and solicitation of nominations for members.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the National Institute of Standards and Technology (NIST) announces the establishment of the NIST Smart Grid Advisory Committee (Committee). The Committee will advise the Director of NIST in carrying out duties authorized by the Energy Independence and Security Act of 2007.

DATES: Nominations for members of the initial NIST Smart Grid Advisory Committee must be received on or before February 11, 2010. NIST will continue to accept nominations on an ongoing basis and will consider them as vacancies arise.

ADDRESSES: All nominations should be submitted to George Arnold, National Coordinator for Smart Grid

Interoperability, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 2000, Gaithersburg, MD 20899–2000 or via e-mail to *nistsgfac@nist.gov.*

FOR FURTHER INFORMATION CONTACT: George Arnold, National Coordinator for Smart Grid Interoperability, Tel: (301) 975–2232, E-mail: *nistsgfac@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Smart Grid Advisory Committee (Committee), is established to advise the Director of the National Institute of Standards and Technology (NIST) in carrying out duties authorized by section 1305 of the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The Committee is established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The Committee will provide input to NIST on the Smart Grid Standards, Priorities and Gaps; and provide input to NIST on the overall direction, status and health of the Smart Grid implementation by the Smart Grid industry including identification of issues and needs. The Committee's input to NIST will be used to help guide Smart Grid Interoperability Panel activities and also assist NIST in directing research and standards activities. Upon request of the Director of NIST, the Committee will prepare reports on issues affecting Smart Grid activities.

II. Structure

The Director of NIST shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commence guidance. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting Smart Grid deployment and operations. Members shall serve as Special Government Employees. Members serve at the discretion of the NIST Director.

Members shall reflect the wide diversity of technical disciplines and competencies involved in the Smart Grid deployment and operations and will come from a cross section of organizations. Members may come from organizations such as electric utilities, consumers, IT developers and integrators, smart grid equipment manufacturers/vendors, RTOs/ITOs, electricity market operators, electric transportation industry stake holders, standards development organizations, professional societies, research and development organizations and academia.

The Committee shall consist of not fewer than 9 nor more than 15 members. The term of office of each member of the Committee shall be 3 years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy and that the initial members shall have staggered terms such that the Committee will have approximately ⅓ new or reappointed members each year. Members who are not able to fulfill the duties and responsibilities of the Committee will have their membership terminated. Any person who has completed two consecutive full terms of service on the Committee shall be ineligible for appointment for a third term during the one year period following the expiration of the second term.

The Director of NIST shall appoint the Chairperson and Vice Chairperson from among the members of the Committee. The Chairperson and Vice Chairperson's tenure shall be at the discretion of the Director of NIST. The Vice Chairperson shall perform the duties of the Chairperson in his or her absence. In case a vacancy occurs in the position of the Chairperson or Vice Chairperson, the NIST Director will select a member to fill such vacancy.

III. Compensation

Members of the Committee shall not be compensated for their service, but will, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5701 *et seq.* while attending meetings of the Committee or subcommittees thereof, or while otherwise performing duties at the request of the Chair, while away from their homes or regular place of business.

IV. Nominations

Nominations are sought from all fields involved in issues affecting the Smart Grid. Nominees should have established records of distinguished service. The field of expertise that the candidate represents he/she is qualified should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on Federal advisory boards and Federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Committee, and will actively participate in good faith in the tasks of the Committee. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership. Registered lobbyists may not be members.

Date: January 7, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–344 Filed 1–11–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1657

Grant of Authority for Subzone Status, Reynolds Packaging LLC (Aluminum Foil Liner Stock), Louisville, Kentucky

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for "...the establishment...of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Louisville and Jefferson County Riverport Authority, grantee of Foreign–Trade Zone 29, has made application to the Board for authority to establish a special–purpose subzone at the aluminum foil liner stock manufacturing and distribution facilities of Reynolds Packaging LLC, located in Louisville, Kentucky (FTZ Docket 12–2009, filed3–25–2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 14956, 4–2–2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and

that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing and distribution of aluminum foil liner stock and aluminum foil at the facilities of Reynolds Packaging LLC, located in Louisville, Kentucky (Subzone 29J), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 30th day of December 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 2010–376 Filed 1–11–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT33

Western Pacific Crustacean Fisheries; 2010 Northwestern Hawaiian Islands Lobster Harvest Guideline

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

ACTION: Notification of lobster harvest guideline.

SUMMARY: NMFS announces that the annual harvest guideline for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) for calendar year 2010 is established at zero lobsters.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS Pacific Islands Region, 808–944–2271.

SUPPLEMENTARY INFORMATION: The NWHI commercial lobster fishery is managed under the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region. The regulations at 50 CFR 665.50(b)(2) require NMFS to publish an annual harvest guideline for lobster Permit Area 1, comprised of Federal waters around the NWHI.

Regulations governing the Papahanaumokuakea Marine National Monument in the NWHI prohibit the unpermitted removal of monument resources (50 CFR 404.7), and establish a zero annual harvest guideline for lobsters (50 CFR 404.10(a)). Accordingly, NMFS establishes the harvest guideline at zero lobsters for the NWHI commercial lobster fishery for calendar year 2010. Thus, no harvest of NWHI lobster resources is allowed.

Furthermore, the NMFS Regional Administrator determined that all 15 NWHI lobster limited entry permits held by vessel owners (i.e., permit holders) are no longer valid. This action complies with the final rule governing compensation to Federal commercial bottomfish and lobster fishermen due to fishery closures in the Monument (74 FR 47119, September 15, 2009). During December 2009 and January 2010, eligible NWHI lobster permit holders voluntarily accepted and received monetary payments, as authorized by Congress under the Consolidated Appropriations Act of 2008 (P.L. 110–161). Thus, no fishing for NWHI lobster resources is allowed.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 6, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–388 Filed 1–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–949)

Wire Decking from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 12, 2010.

SUMMARY: The Department of Commerce ("Department") preliminarily determines that wire decking from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Pursuant to requests from interested parties, we are postponing the final determination and extending the provisional measures from a four–month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Trisha Tran, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4295 or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On June 5, 2009, the Department received an antidumping duty ("AD") petition concerning imports of wire decking from the PRC filed in proper form by AWP Industries, Inc., ITC Manufacturing, Inc., J&L Wire Cloth, Inc., and Nashville Wire Products Mfg. Co., Inc., (collectively, "Petitioners"). *See* the Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as amended ("Petition"), filed on June 5, 2009. On June 22, 2009, Petitioners submitted a letter stating that another domestic producer of the like product, Wireway Husky Corporation, had joined the petition.

The Department initiated this investigation on June 25, 2009.[1] In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate–rate status in non–market economy ("NME") investigations. The process requires exporters and producers to submit a separate–rate status application ("SRA")[2] and to demonstrate an absence of both *de jure* and *de facto* government control over its export activities. The SRA for this investigation was posted on the Department's website http://ia.ita.doc.gov/ia–highlights-and–news.html on July 2, 2009. The due date for filing an SRA was August 31, 2009.

On July 31, 2009, the International Trade Commission ("ITC") determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of wire decking from the PRC.[3]

[1] *See Wire Decking from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 31691 (July 2, 2009) ("*Initiation Notice*").

[2] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) ("Policy Bulletin 05.1"), available at http://ia.ita.doc.gov/policy/bull05-1.pdf.

[3] *See Investigation Nos. 701-TA-466 and 731-TA-116 (Preliminary): Wire Decking from China*, 74 FR 38229 (July 31, 2009).

Period of Investigation

The period of investigation ("POI") is October 1, 2008, through March 31, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was June 2009. *See* 19 CFR 351.204(b)(1).

Postponement of Preliminary Determination

On October 15, 2009, petitioners made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) for a 50–day postponement of the preliminary determination. On October 27, 2009, the Department published a postponement of the preliminary antidumping duty determination on wire decking from the PRC.[4]

Scope of the Investigation

The scope of the investigation covers welded–wire rack decking, which is also known as, among other things, "pallet rack decking," "wire rack decking," "wire mesh decking," "bulk storage shelving," or "welded–wire decking." Wire decking consists of wire mesh that is reinforced with structural supports and designed to be load bearing. The structural supports include sheet metal support channels, or other structural supports, that reinforce the wire mesh and that are welded or otherwise affixed to the wire mesh, regardless of whether the wire mesh and supports are assembled or unassembled and whether shipped as a kit or packaged separately. Wire decking is produced from carbon or alloy steel wire that has been welded into a mesh pattern. The wire may be galvanized or plated (*e.g.*, chrome, zinc or nickel coated), coated (*e.g.*, with paint, epoxy, or plastic), or uncoated ("raw"). The wire may be drawn or rolled and may have a round, square or other profile. Wire decking is sold in a variety of wire gauges. The wire diameters used in the decking mesh are 0.105 inches or greater for round wire. For wire other than round wire, the distance between any two points on a cross–section of the wire is 0.105 inches or greater. Wire decking reinforced with structural supports is designed generally for industrial and other commercial storage rack systems.

Wire decking is produced to various profiles, including, but not limited to, a flat ("flush") profile, an upward curved back edge profile ("backstop") or downward curved edge profile ("waterfalls"), depending on the rack storage system. The wire decking may or may not be anchored to the rack storage system. The scope does not cover the metal rack storage system, comprised of metal uprights and cross beams, on which the wire decking is ultimately installed. Also excluded from the scope is wire mesh shelving that is not reinforced with structural supports and is designed for use without structural supports.

Wire decking enters the United States through several basket categories in the Harmonized Tariff Schedule of the United States ("HTSUS"). U.S. Customs and Border Protection has issued a ruling (NY F84777) that wire decking is to be classified under HTSUS 9403.90.8040. Wire decking has also been entered under HTSUS 7217.10, 7217.20, 7326.20, 7326.90, 9403.20.0020 and 9403.20.0030. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the investigations is dispositive.

Scope Comments

As discussed in the preamble to the regulations, we set aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encouraged all interested parties to submit such comments within 20 calendar days of signature of the *Initiation Notice*. *See Initiation Notice*, 74 FR at 31692. The Department did not receive scope comments from any interested party.

Non–Market Economy Country

For purposes of initiation, Petitioners submitted an LTFV analysis for the PRC as an NME.[5] The Department's most recent examination of the PRC's market status determined that NME status should continue for the PRC.[6] Additionally, in two recent investigations, the Department also determined that the PRC is an NME country.[7] In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The Department has not revoked the PRC's status as an NME country, and we have therefore treated the PRC as an NME in this preliminary determination and applied our NME methodology.

Selection of Respondents

In accordance with section 777A(c)(2) of the Act, the Department selected the two largest exporters of wire decking (*i.e.*, Dalian Huameilong Metal Products Co., Ltd. ("DHMP") and Dalian Eastfound Metal Products Co., Ltd. ("Eastfound Metal") and its affiliate Dalian Eastfound Material Handling Products Co., Ltd. ("Eastfound Material") (collectively, "Eastfound") by volume as the mandatory respondents in this investigation based on the quantity and value ("Q&V") information from exporters/producers that were identified in the Petition, of which eight firms filed timely Q&V questionnaire responses.[8] Of the eight Q&V questionnaire responses, two companies (*i.e.* Eastfound Material and Eastfound Metal) filed a consolidated Q&V questionnaire response.

The Department issued its antidumping questionnaire to DHMP and Eastfound on August 31, 2009. In its questionnaire, the Department requested that the respondents provide a response to section A of the Department's questionnaire on September 21, 2009, and to sections C and D of the questionnaire on October 7, 2009. On September 16, 2009, and September 18, 2009, the Department granted DHMP's and Eastfound's requests, respectively, to extend the deadline to submit Sections A, C, and D. As such, Section A was timely submitted on September 28, 2009, by both parties. DHMP timely submitted its Sections C and D Response on October 16, 2009. On October 16, 2009, the Department granted Eastfound an extension to submit its Sections C and D

[4] *See Wire Decking from the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 74 FR 55211 (October 27, 2009).

[5] *Initiation Notice*, 72 FR at 31693-94.

[6] *See* the Department's memorandum entitled, "Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") - China's status as a non-market economy ("NME")," dated August 30, 2006. This document is available online at: http:// ia.ita.doc.gov/download/ prc-nmestatus/ prc-lined-paper-memo-08302006.pdf.

[7] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591 (March 5, 2009) ("*Kitchen Racks Prelim*") unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009) ("*Kitchen Racks Final*") and *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 4929 (January 28, 2009) unchanged in *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 29167 (June 19, 2009).

[8] *See* the Department's memorandum entitled, "Antidumping Duty Investigation of Wire Decking from the People's Republic of China: Selection of Respondents," dated August 19, 2009 ("Respondent Selection Memo").

questionnaire. Eastfound timely submitted its Sections C and D Response on October 23, 2009. The Department issued several supplemental questionnaires to both DHMP and Eastfound between October and December 2009. Both respondents responded timely to those supplemental questionnaires.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, between December 31, 2009, and January 4, 2010, Eastfound, DHMP, and Petitioners requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination by 60 days. Eastfound, DHMP, and Petitioners also each requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four–month period to a six–month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the requests and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production ("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 at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department's practice with respect to determining economic comparability is explained in Policy Bulletin 04.1,[9] which states that "OP {Office of Policy} determines per capita economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of the *World Development Report* (The World Bank)." On September 15, 2009, the Department identified six countries as being at a level of economic development comparable to the PRC for the specified POR: India, the Philippines, Indonesia, Colombia, Thailand, and Peru.[10] The Department considers the six countries identified in the Surrogate Countries Memo as "equally comparable in terms of economic development." *See* Policy Bulletin 04.1 at 2. Thus, we find that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are all at an economic level of development equally comparable to that of the PRC.

On September 30, 2009, the Department invited all interested parties to submit comments on the surrogate country selection.[11] The Department did not receive any comments regarding the Department's selection of a surrogate country for the preliminary determination.

Policy Bulletin 04.1 provides some guidance on identifying comparable merchandise and selecting a producer of comparable merchandise. As noted in the Policy Bulletin, comparable merchandise is not defined in the statute or the regulations, since it is best determined on a case–by-case basis. See Policy Bulletin 04.1 at 2. As further noted in Policy Bulletin 04.1, in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise. *Id.*

The Department examined worldwide export data for comparable merchandise, using the six–digit level of the HTS numbers listed in the scope language for this investigation.[12] Specifically, we reviewed the POI export data from the World Trade Atlas ("WTA") for the HTS headings. The merchandise subject to the scope of the order is currently classifiable under subheading HTSUS 9403.90.8040. Wire decking has also been entered under HTSUS 7217.10, 7217.20, 7326.20, 7326.90, 9403.20.0020, and 9403.20.0030.[13] The Department found that, of the countries provided in the Surrogate Country List, using the six–digit level of the HTS numbers listed in the scope language for this investigation (the best data available to the Department for this purpose), all six countries were exporters of comparable merchandise. Thus, all countries on the Surrogate Country List are considered as appropriate surrogates because each exported comparable merchandise.

Policy Bulletin 04.1 also provides some guidance on identifying significant producers of comparable merchandise and selecting a producer of comparable merchandise. Further analysis was required to determine whether any of the countries which produce comparable merchandise are significant' producers of that comparable merchandise. The HTS data is reported in either kilograms or pieces, depending upon the HTS category and country. The data we obtained shows that, during the POI, worldwide exports from these countries under the relevant HTS categories were as follows: (1) 355,679 kilograms (HTS 7217.10, 7217.20) and 11,080,755 pieces (HTS 9403.90, 9403.20, 7326.20, 7326.90) from Colombia; (2) 37,994,423 kilograms from Indonesia; (3) 5,385,873 kilograms from Philippines; (4) 89,367,977 kilograms from Thailand; (5) 1,065,699 kilograms (HTS 7217.10, 7217.20) and 618,727 pieces (HTS 9403.90, 9403.20, 7326.20, 7326.90) from Peru; and (6) 53,185,837 kilograms from India. We find that these exports are sufficient to establish that all of the potential surrogate countries are significant producers of comparable merchandise. Thus, all countries on the Surrogate Country List are considered as appropriate surrogates because each exported significant comparable merchandise. Finally, we have reliable data from India on the record that we can use to value the FOPs. Petitioners, DHMP, and Eastfound submitted surrogate values using Indian sources, suggesting greater availability of appropriate surrogate value data in India.

The Department is preliminarily selecting India as the surrogate country on the basis that: (1) it is at a similar

[9] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process, (March 1, 2004), ("Policy Bulletin 04.1") at Attachment II of the Department's Surrogate Country Letter, also available at *http://ia.ita.doc.gov/policy/bull04-1.html*.

[10] *See* the Department's Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Wendy Frankel, Office Director, AD/CVD Operations, Office 8, regarding, "Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Wire Decking from the People's Republic of China ("PRC")," dated September 15, 2009 ("Surrogate Countries Memo").

[11] *See* the Department's letter regarding, "Antidumping Duty Investigation of Wire Decking from the People's Republic of China " requesting all interested parties to provide comments on surrogate-country selection and provide surrogate FOP values from the potential surrogate countries (*i.e.*, India, Indonesia, the Philippines, Thailand, Colombia, and Peru), dated September 30, 2009.

[12] Because the Department was unable to find production data, we relied on export data as a substitute for overall production data in this case.

[13] *See Harmonized Tariff Schedule of the United States (2007) (Rev. 2)*, available at www.usitc.gov.

level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOPs. Thus, we have calculated normal value ("NV") using Indian prices when available and appropriate to the respondents' FOPs. *See* Surrogate Value Memorandum.[14] In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[15]

Surrogate Value Comments

Surrogate factor valuation comments and surrogate value information with which to value the FOPs in this proceeding were filed on November 13, 2009, by DHMP and Petitioners. On November 18, 2009, DHMP and Eastfound filed rebuttal surrogate factor valuation comments. On November 23, 2009, Eastfound filed additional surrogate valuation comments. On November 24, 2009, Petitioners filed additional comments on appropriate surrogate values for factors of production reported by Eastfound and DHMP. For a detailed discussion of the surrogate values used in this LTFV proceeding, *see* the "Factor Valuation" section below and the Surrogate Value Memorandum.

Affiliation

Based on the evidence presented in Eastfound's questionnaire responses, we preliminarily find that Eastfound Metal is affiliated with Eastfound Material, which also produces subject merchandise, pursuant to sections 771(33)(E) and (G) of the Act. In addition, based on the evidence presented in Eastfound's questionnaire responses, we preliminarily find that Eastfound Metal and Eastfound Material should be collapsed for the purposes of this investigation. This finding is based on the determination that Eastfound Metal and Eastfound Material are affiliated, that Eastfound Metal and Eastfound Material Handling are both producers of identical products and no retooling would be necessary in order to restructure manufacturing priorities, and that there is significant potential for manipulation of price or production between the parties. *See* 19 C.F.R. Sec. 351.401(f)(1) and (2). For further discussion, see the Department's Memorandum regarding, "Antidumping Duty Investigation of Wire Decking from the People's Republic of China: Affiliation and Collapsing of Dalian Eastfound Metal Products Co., Ltd. and Dalian Eastfound Material Handling Products Co., Ltd.," dated concurrently with this notice.

In response to allegations raised by Petitioners,[16] we reviewed Eastfound's relationship with its U.S. customer and we preliminarily find that Eastfound and its U.S. customer were not affiliated during the POI under the meaning of section 771(33) of the Act. Specifically, based on Eastfound's questionnaire responses identifying its ownership structure, we preliminarily find that Eastfound is not affiliated with its U.S. customer within the meaning of sections 771(33)(B) and (E) of the Act. In addition, we preliminarily find that Eastfound is not affiliated with its U.S. customer within the meaning of sections 771(33)(F) and (G) of the Act, because in its response, Eastfound presented evidence that the distributor agreement between Eastfound and its U.S. customer does not offer either party control over the other party to the agreement. Accordingly, we have used Eastfound's reported export price ("EP") sales to the United States for the preliminary determination. However, we intend to issue additional questions to Eastfound following the publication of the preliminary determination with respect to this affiliation issue.

Separate Rates

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate–rate status in NME investigations. *See Initiation Notice*, 74 FR at 31695. The process requires exporters and producers to submit an SRA. *See also* Policy Bulletin 05.1.[17] The standard for eligibility for a separate rate is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities. In this instant investigation, the Department received timely–filed SRA's from seven companies.[18] The two mandatory respondents (*i.e.*, Eastfound Metal and Eastfound Material (collectively Eastfound) and DHMP) and the four separate–rate respondents provided company–specific information and each[19] stated that it meets the criteria for the assignment of a separate rate.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588*

[14] *See* the Department's memorandum to the file entitled, "Antidumping Investigation of Wire Decking from the People's Republic of China: Factor Valuations for the Preliminary Determination," dated concurrently with this notice ("Surrogate Value Memorandum").

[15] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[16] *See* Letter from Kelley Drye & Warren LLP, regarding "Wire Decking from the People's Republic of China - Eastfound Is Affiliated with Its Exclusive North American Importer and Distributor," dated December 18, 2009, where they allege that Eastfound and its U.S. Customer are affiliated pursuant to sections 771(33)(B), (E), (F), and (G) of the Act.

[17] *Policy Bulletin 05.1* states: "while continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ≥combination rates≥ because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." *See Policy Bulletin 05.1* at 6.

[18] The seven separate-rate applicants are: (1) Eastfound Material; (2) Eastfound Metal; (3) DHMP; (4) Dandong Riqian Logistics Equipment Co. Ltd. ("Riqian"); (5) Globsea Co., Ltd. ("Globsea"); (6) Ningbo Xinguang Rack Co., Ltd. ("Ningbo Xinguang"); and (7) Dalian Xingbo Metal Products Co. Ltd. ("Dalian Xingbo").

[19] The non-selected respondents are as follows: Riqian, Globsea, Ningbo Xinguang, and Dalian Xingbo.

(May 6, 1991) ("*Sparklers*"), as further developed in *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* "). However, if the Department determines that a company is wholly foreign–owned or located in a market economy, then a separate–rate analysis is not necessary to determine whether it is independent from government control. In this investigation, one company, Eastfound Material has provided company–specific information that indicates it is a wholly–foreign owned entity. Therefore, a separate rate–analysis is not necessary to determine whether it is independent from government control.

The other remaining companies have all stated that they are either joint ventures between PRC and foreign companies, or are wholly PRC–owned companies. Thus, the Department must analyze whether Eastfound Metal, DHMP, Riqian, Globsea, Ningbo Xinguang, and Dalian Xingbo can demonstrate the absence of both *de jure* and *de facto* government control over their export activities.

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; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by Eastfound Metal, DHMP, Riqian, Globsea, Ningbo Xinguang, and Dalian Xingbo supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) applicable legislative enactments that decentralize control of the companies; and (3) formal measures by the government decentralizing control of companies. *See* each company's SRA submission, dated August 21, 2009, through August 31, 2009, where each separate–rate respondent stated that it had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations.

b. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *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). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

In this investigation, Eastfound Metal, DHMP, Riqian, Globsea, Ningbo Xinguang, and Dalian Xingbo each asserted the following: (1) that the export prices are not set by, and are not subject to, the approval of a governmental agency; (2) they have authority to negotiate and sign contracts and other agreements; (3) they have autonomy from the government in making decisions regarding the selection of management; and (4) they retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses. Additionally, each of these companies' SRA responses indicate that its pricing during the POI does not involve coordination among exporters. *See* each company's SRA submissions dated August 21, 2009, through August 31, 2009. However, evidence placed on the record by Dalian Xingbo indicates that it did not export wire decking to the United States during the POI. *See* the "Companies Not Receiving a Separate Rate" section below for further details.

Evidence placed on the record of this investigation by Eastfound Material, Eastfound Metal, DHMP, Riqian, Globsea, and Ningbo Xinguang demonstrate an absence of *de jure* and *de facto* government control with respect to their respective exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we are preliminary granting a separate rate to these entities.

Companies Not Receiving a Separate Rate

We preliminarily determine that Dalian Xingbo does not qualify for a separate rate because Dalian Xingbo did not export wire decking to the United States during the POI. Dalian Xingbo stated that the invoice it provided in its SRA, which is dated within the POI, for its first sale to an unaffiliated customer in the United States, is not its commercial invoice. *See* Dalian Xingbo's SRA dated August 21, 2009, at Exhibit 1. The commercial invoice provided by Dalian Xingbo is dated outside the POI. *See* Dalian Xingbo's Supplemental SRA questionnaire dated September 21, 2009, at Exhibit 1. Furthermore, evidence on the record (U.S. Customs and Border Protection ("CBP") entry summary form 7501) indicates that Dalian Xingbo exported the above goods from the PRC to the United States prior to the POI. *See* Dalian Xingbo's SRA dated August 21, 2009, at Exhibit 1. Nevertheless, Dalian Xingbo asserts that because the shipment entered the United States during the POI, this shipment represents Dalian Xingbo's first sale to an unaffiliated customer in the United States during the POI. *See* Dalian Xingbo's Supplemental SRA questionnaire dated September 21, 2009, at 7/16.

In the introductory paragraph of the Department's SRA, we state that the Department will limit its consideration of SRAs in the wire decking investigation to firms that either exported or sold wire decking to the United States during the POI. Though Dalian Xingbo argues that the entry date into the United States of its wire decking establishes that it either exported or sold wire decking to the United States during the POI, the Department normally considers the shipment date as establishing when a product is exported, and the Department normally considers the date of invoice as establishing the date of sale, unless record evidence demonstrates otherwise. The documentation provided by Dalian Xingbo (*i.e.*, CBP entry summary form 7501 and commercial invoice) indicate that the goods were both sold and exported to the United States prior to the POI. Thus, we preliminarily determine that Dalian Xingbo does not qualify for a separate rate in this investigation.

In addition, though we received a Q&V response from Brynick Enterprises Limited and Shanghai Hesheng Hardware Products Co., neither company submitted a separate rate

application, and therefore will be treated as part of the PRC–wide entity.

Application of Facts Otherwise Available and Total Adverse Facts Available

The PRC–Wide Entity and PRC–Wide Rate

The Department has data that indicate there were more exporters of wire decking from the PRC than those indicated in the response to our request for Q&V information during the POI. *See* the Department's memorandum regarding, "Antidumping Duty Investigation of Wire Decking from the People's Republic of China: Delivery of Quantity and Value Questionnaire and Separate Rate Application to Exporters/Producers," dated September 2, 2009 ("Q&V Delivery Memo"). We issued our request for Q&V information to 83 potential Chinese exporters of the subject merchandise, in addition to posting the Q&V questionnaire on the Department's website. *See* Q&V Delivery Memo. While information on the record of this investigation indicates that there are numerous producers/exporters of wire decking in the PRC, we received only nine timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Therefore, the Department has preliminarily determined that there were exporters/producers of the subject merchandise during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC producers/exporters as part of the PRC–wide entity because they did not apply for a separate rate. *See, e.g., Kitchen Racks Prelim, unchanged in Kitchen Racks Final*.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC–wide entity was non–responsive. Certain companies did not respond to our questionnaire requesting Q&V information. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available ("FA") is appropriate to determine the PRC–wide rate. *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103–316, 870 (1994) ("*SAA*"); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). We find that, because the PRC–wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776 indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available ("AFA"), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum, at "Facts Available." As AFA, we have preliminarily assigned to the PRC–wide entity a rate of 289.00 percent, the highest calculated rate from the petition. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department's reliance on the petition rate to determine an AFA rate is subject to the requirement to corroborate secondary information, discussed in the Corroboration section below.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as FA, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise."[20] The SAA explains that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* The SAA also explains that independent sources used to corroborate may include, for example, published price lists, official import statistics and CBP data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[21]

The AFA rate that the Department used is derived from information in the Petition and from the Antidumping Duty Investigation Initiation Checklist: Wire Decking from the PRC ("Initiation Checklist").[22] Petitioners' methodology for calculating the EP and NV in the petition, and modified by the

[20] *See SAA* at 870.

[21] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

[22] *See* Initiation Checklist at Exhibit V.

Department, is discussed in the Initiation Checklist.[23]

Based on our examination of information on the record, including examination of the petition export prices and normal values, we find that, for purposes of this investigation, there is not a sufficient basis to consider that certain petition margins have probative value. However, there is a sufficient basis to determine that the petition margin selected does have probative value. In this case, we have selected a margin that is not so much greater than the highest CONNUM–specific margin calculated for one of the mandatory respondents in this proceeding that it can be considered to not have probative value. This method of selecting an AFA dumping margin is consistent with the recent final determination involving kitchen appliance shelving and racks from the PRC and prestressed concrete steel wire strand from the PRC. *See* July 20, 2009, Memorandum to the File, regarding Corroboration of the PRC–Wide Entity Rate and the Wireking Total AFA Rate for the Final Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, *see also*, *Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 74 FR 68232 (December 23, 2009).

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55796 (Aug. 30, 2002); *see* also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (Feb. 23, 1998). As guided by the SAA, the information used as AFA should ensure an uncooperative party does not benefit more by failing to cooperate than if it had cooperated fully. *See* SAA at 870. We conclude that using DHMP's highest transaction–specific margin as a limited reference point, the highest petition margin that can be corroborated within the meaning of the statute is 289.00 percent, which is sufficiently adverse so as to induce cooperation such that the uncooperative companies do not benefit from their failure to cooperate. *See* Memorandum to the File, regarding Corroboration of the PRC–Wide Entity Rate and for the Preliminary Determination in the Antidumping Duty Investigation of Wire Decking from the People's Republic of China, dated concurrently with this notice. Accordingly, we find that the rate of 289.00 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying 289.00 percent as the single antidumping rate to the PRC–wide entity. The PRC–wide rate applies to all entries of the merchandise under investigation except for entries from Eastfound Metal, Eastfound Material, DHMP, and the separate rate applicants receiving a separate rate (*i.e.*, Riqian, Globsea, and Ningbo Xinguang).

Margin for the Separate Rate Companies

As discussed above, the Department received timely and complete separate rate applications from Riqian, Globsea, and Ningbo Xinguang, who are all exporters of wire decking from the PRC during the POI and who were not selected as mandatory respondents in this investigation. Through the evidence in their applications, these companies have demonstrated their eligibility for a separate rate, as discussed above. Consistent with the Department's practice, as the separate rate, we have established a margin for the Riqian, Globsea, and Ningbo Xinguang based on the average of the rates we calculated for the mandatory respondents, Eastfound and DHMP, excluding any rates that were zero, *de minimis*, or based on total adverse facts available.[24]

Date of Sale

19 CFR 351.401(i) states that, "in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube*, the Court of International Trade ("CIT") noted that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to satisf{y}' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'" *Allied Tube & Conduit Corp. v. United States* 132 F. Supp. 2d at 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) ("*Allied Tube*"). Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i); *see also Allied Tube*, 132 F. Supp. 2d 1087, 1090–1092. The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. *See Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

Eastfound

For the preliminary determination, we used the shipment date as the date of sale rather than Eastfound's reported sale date (booking date), because based on the record evidence to date, we preliminarily find that shipment date best reflects the date on which the essential terms of sale are fixed and final. In our analysis of Eastfound's information, we determined that the sale date reported in Eastfound's sales database only represents the date that Eastfound chose to record the sale of merchandise under consideration in its books and records, not the date the material terms of the sale were established with its U.S. customer. We asked Eastfound to provide sales based on commercial invoice date or explain why Eastfound's booking date better reflects the date on which the exporter established the material terms of sale (*e.g.*, price, quantity, *etc.*). Instead, Eastfound explained how it uses its commercial invoice numbering and dating system to assign invoice numbers and dates and how it recorded its sales in its books and records. The information that Eastfound provided did not adequately demonstrate when the material terms of its sale were established. Because Eastfound has not adequately demonstrated that the material terms of sale for Eastfound's

[23] *See* Initiation Checklist at Exhibit V.

[24] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

sales were established on its reported sale date (*i.e.*, booking date) or any other date, we preliminarily determine Eastfound's shipment date best reflects the date on which the essential terms are fixed and final. However, subsequent to the preliminary determination we will request additional information with respect to this issue.

DHMP

For the preliminary determination, we used DHMP's shipment date as the date of sale, because, based on record evidence to date, we preliminarily find that it best represents the date on which the essential terms of sale are fixed and final. In DHMP's October 16, 2009, questionnaire response, DHMP designated a date of sale other than the invoice date but did not produce sufficient evidence to establish that "a different date better reflects the date on which the exporter or producer establishes the material terms of sale." On November 16, 2009, the Department issued a supplemental questionnaire and explained that the Department will normally use the date of invoice, unless DHMP demonstrates that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. In DHMP's December 1, 2009, Supplemental Questionnaire Response, DHMP submitted an alternate database for its U.S. sales during the POI based on the shipment date. Additionally, in DHMP's December 23, 2009 submission, DHMP stated that the material terms of sale are set at the time of shipment. Thus, for the preliminary determination, the Department has used the shipment date as the date of sale. However, subsequent to the preliminary determination we will request additional information with respect to this issue.

Fair Value Comparisons

To determine whether sales of wire decking to the United States by the respondents were made at LTFV, we compared EP to NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the merchandise subject to this investigation is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the merchandise subject to this investigation outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for DHMP's and Eastfound's U.S. sales because the merchandise subject to this investigation was sold directly to the unaffiliated customers in the United States prior to importation and because constructed export price ("CEP") was not otherwise indicated. *See* Affiliation Section above.

We calculated EP based on the packed prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.*, foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation, etc.) in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate value rates from India. *See* "Factor Valuation" section below for further discussion of surrogate value rates.

In determining the most appropriate surrogate values to use in a given case, the Department's stated practice is to use period–wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the POI, and publicly available data.[25] We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot–rolled carbon steel flat products from India, and Himalya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. Because these values were not concurrent with the POI of this investigation, we adjusted these rates for inflation using the Wholesale Price Indices ("WPI") for India as published in the International Monetary Fund's ("IMF's") *International Financial Statistics*, available at http://ifs.apdi.net/imf, and then calculated a simple average of the three companies' brokerage expense data.[26] See Surrogate Value Memo.

To value marine insurance, the Department used data from RGJ Consultants (*http://www.rjgconsultants.com/*). This source provides information regarding the per–value rates of marine insurance of imports and exports to/from various countries. We valued international freight shipping expenses using contemporaneous rates reported by Maersk Line Shipping. Where applicable, the Department used the international freight rates reported for each corresponding origin and destination port for each month of the POI.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the 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. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. *See, e.g., Kitchen Racks Prelim*, 71 FR at 19703 (unchanged in *Kitchen Racks Final*).

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by respondents during the POI. To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. As

[25] *See, e.g., Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 38366 (July 6, 2006), and accompanying Issues and Decision Memorandum* at Comment 1.

[26] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of the 2007 2008 Administrative Review of the Antidumping Duty Order*, 74 FR 32539 (July 8, 2009), (unchanged in final results) ("*07-08 TRBs*").

appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for DHMP and Eastfound can be found in the Surrogate Value Memorandum.

For the preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics and other publicly available Indian sources in order to calculate surrogate values for DHMP's and Eastfound's FOPs (direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non–export average values, most contemporaneous with the POI, product–specific, and tax–exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product–specific, and tax–exclusive. *See* Surrogate Value Memorandum. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian WPI as published in the IMF's *International Financial Statistics*. *See, e.g., Kitchen Racks*, 74 FR at 9600.

Furthermore, with regard to the Indian import–based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7.

Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized. *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008). Therefore, we have not used prices from these countries in calculating the Indian import–based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. *See id.*

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in December 2009. *See 2009 Calculation of Expected Non–Market Economy Wages*, 74 FR 65092 (December 9, 2009), and http://ia.ita.doc.gov/wages/index.html. The source of these wage–rate data on the Import Administration's web site is the 2006 and 2007 data in Chapter 5B of the International Labour Organization's *Yearbook of Labour Statistics*. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondents.

We valued truck freight expenses using a per–unit average rate calculated from data on the infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm*. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. This value is contemporaneous with the POI.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India ("CEA") in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated July 2006. These electricity rates represent actual country–wide, publicly available information on tax–exclusive electricity rates charged to industries in India.

Because water is essential to the production process of the merchandise under consideration, the Department considers water to be a direct material input, not overhead, and valued water with a surrogate value according to our practice. *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 61395 (October 23, 2003), and accompanying Issues and Decision Memorandum at Comment 11. To value water, we used the revised Maharashtra Industrial Development Corporation water rates available at *http://www.midcindia.com/water–supply*. *See* Surrogate Value Memorandum.

To value low carbon steel wire rod, we used price data from the Indian Join Plant Committee ("JPC"), which is a joint industry/government board that monitors Indian steel prices. These data are fully contemporaneous with the POI, and are specific to the reported inputs of the respondents. *See* Eastfound's Surrogate Value Rebuttal Comments, dated November 18, 2009. Further, these data are publicly available, represent a broad market average, and we are able to calculate them on a tax–exclusive basis. *See* 19 CFR 351.408(c)(1). For a detailed discussion of all surrogate values used for this preliminary

determination, *see* Surrogate Value Memo.

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements of Bansidhar Granites Private Limited ("Bansidhar"), Bedmutha Wire Com. Ltd. ("Bedmutha"), and Mekins Agro Products ("Mekins"), each covering the fiscal period April 1, 2007, through March 31, 2008. Each of the three surrogate producers makes a range of products including: wire decking, drawn and welded wire products, fasteners or nuts and bolts, or some combination thereof. These are all comparable merchandise to that produced by the respondents.[27] The Department may consider other publicly available financial statements for the final determination, as appropriate.

Use of Facts Available

Section 776(a)(1) of the Act mandates that the Department use FA if necessary information is not available on the record of an antidumping proceeding.

Eastfound

In our review of Eastfound's reported information, we found that Eastfound did not report FOPs for certain control numbers ("CONNUMs") in its sales database. In our original questionnaire, we instructed Eastfound to ensure that its FOP database contains a separate record for each unique CONNUM contained in its U.S. sales file. Additionally, in a supplemental questionnaire, we pointed out to Eastfound that the FOP database did not contain FOPs for certain sales CONNUMs. We requested that Eastfound report consumption factors for all of these CONNUMs. In its December 7, 2009, response, Eastfound stated that it had no production for these CONNUMs during the POI and it provided alternate CONNUMs for the Department to use in its margin program for the missing FOPs. However, in its supplemental questionnaire response, Eastfound did not adequately explain why the Department should use the FOPs of these alternate CONNUMs in lieu of obtaining FOPs for the actual CONNUMs. Eastfound stated that the missing CONNUMs represent a small percentage of its reported sales and that its alternate CONNUMs are "very similar" to the CONNUMs that did not have production during the POI. On December 23, 2009, Eastfound submitted an update to its alternate CONNUM recommendation and also provided an explanation as to why the FOPs for these alternate CONNUMs should be used in lieu of the actual CONNUMs.

Pursuant to section 776(a)(2)(B) of the Act, Eastfound failed to provide information relevant to the Department's analysis with respect to the above–mentioned missing FOPs for certain CONNUMs. Thus, consistent with section 782(d) of the Act, the Department has determined it necessary to apply facts otherwise available for these CONNUMs. For the preliminary determination, as FA, we will use the FOPs of the CONNUMs recommended by Eastfound in its December 23, 2009, submission because they represent a very small percentage of Eastfound's U.S. sales, and based on a review of the product characteristics we find that Eastfound's suggested alternate CONNUMs represent very similar products to the CONNUMs with no FOPs.

In our review of Eastfound's FOP database, we found that for certain CONNUMs the consumption of hot–rolled steel strip in coils and wire rods (collectively "steel weight"), which is the amount of steel needed to produce Eastfound's wire decking, is less than the reported "standard weight" of the finished product. *See* Eastfound's Preliminary Analysis Memorandum. Because we did not provide Eastfound an opportunity to remedy the above weight discrepancies, we intend to issue a supplemental questionnaire after this preliminary determination. However, for the preliminary determination, for those CONNUMs where the steel weight in Eastfound's FOP database is less than the standard weight reported in its sales database, we applied partial FA. Pursuant to section 776(b) of the Act, as FA, we applied the weighted average margin calculated for Eastfound to these transactions. *See* Eastfound's Analysis Memorandum.

The Department instructed Eastfound to provide an FOP database for the processing performed for Eastfound Metal and/or Eastfound Material by their galvanizing tollers during the POI. Eastfound stated that its unaffiliated galvanizing tollers refused to provide the requested information because the information is proprietary. Eastfound recommends that for the preliminary determination, the Department use the galvanizing costs used in the Petition, which were also used in *Certain Steel Threaded Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 58931 (October 8, 2008). Petitioners recommend that we use an average of the galvanizing surrogate values from the Petition. For the preliminary determination, we are applying the average of both surrogate values from the Petition as a surrogate cost to the galvanizing performed by Eastfound's unaffiliated tollers.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from DHMP and Eastfound upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.[28] This practice is described in Policy Bulletin 05.1.

Preliminary Determination

The weighted–average dumping margin percentages are as follows:

Exporter	Producer	Percent Margin
Dalian Huameilong Metal Products Co., Ltd.	Dalian Huameilong Metal Products Co., Ltd.	50.95%
Dalian Eastfound Metal Products Co., Ltd. / Dalian Eastfound Material Handling Products Co. Ltd	Dalian Eastfound Metal Products Co., Ltd., or Dalian Eastfound Material Handling Products Co. Ltd.	42.61%
Globsea Co., Ltd	Dalian Yutiein Storage Manufacturing Co. Ltd., or Dalian Xingbo Metal Products Co. Ltd.	46.78%
Ningbo Xinguang Rack Co., Ltd.	Ningbo Xinguang Rack Co., Ltd.	46.78%
Dandong Riqian Logistics Equipment Co. Ltd.	Dandong Riqian Logistics Equipment Co. Ltd.	46.78%

[27] *See* Surrogate Value Memorandum.

[28] *See Initiation Notice*, 74 FR at 31695.

Exporter	Producer	Percent Margin
PRC–Wide Entity*		289.00%

* This rate also applies to Brynick Enterprises Limited, Shanghai Hesheng Hardware Products Co., and Dalian Xingbo Metal Products Co. Ltd.

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of merchandise subject to this investigation, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

The Department has determined in *Wire Decking from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 57629 (November 9, 2009) ("*CVD Wire Decking Prelim*"), that the product under investigation, exported and produced by Eastfound, benefitted from an export subsidy. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted–average amount by which the NV exceeds the EP, as indicated above, minus the amount determined to constitute an export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306, 67307 (November 17, 2007).

Accordingly, the following cash deposit requirements will be effective upon publication of the preliminary determination. For merchandise under consideration entered, or withdrawn from warehouse, for consumption on or after the publication date of this preliminary determination in the **Federal Register** that is exported and produced by Eastfound, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted–average amount by which the NV exceeds U.S. price, as indicated above, adjusted for the export subsidy rate determined in *CVD Wire Decking Prelim*.

For merchandise under consideration entered, or withdrawn from warehouse, for consumption on or after the publication date of this preliminary determination in the **Federal Register** that is exported and produced by DHMP, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted–average amount by which the NV exceeds U.S. price, as indicated above. For the non–individually examined separate rate recipients in this investigation, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted–average amount by which the NV exceeds U.S. price, as indicated above.[29]

For all other entries of wire decking from the people's republic of china, the following cash deposit/bonding instructions apply: (1) For all PRC exporters of wire decking which have not received their own rate, the cash–deposit or bonding rate will be the PRC–wide rate; (2) for all non–PRC exporters of wire decking from the people's republic of china which have not received their own rate, the cash–deposit or bonding rate will be the rate applicable to the exporter/producer combinations that supplied that non–PRC exporter. This suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wire decking, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309. A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. The Department also requests that parties provide an electronic copy of its case and rebuttal brief submissions in either a "Microsoft Word" or a "pdf" format.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. 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 after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, at a time and location to be determined. See 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

[29] Normally, where the non-individually examined entities receiving a separate rate in an AD investigation are found to have benefitted from export subsidies in a concurrent CVD investigation on the same product (either through individual examination or through the "All Others" rate), the Department will instruct CBP to collect a cash deposit or the posting of a bond equal the amount of the AD margin adjusted for the amount of the export subsidy. In this case, none of the non-individually examined entities receiving a separate rate in the AD investigation were individually examined in the companion CVD investigation. Further, the export subsidy found for "All Others" in *CVD Wire Decking Prelim* is so small (0.005 percent) as to have no impact on the AD margin. Accordingly, we will not adjust the AD margins for these entities in our instructions to CBP.

Dated: January 4, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–372 Filed 1–11–10; 8:45 am]

BILLING CODE 3510–DS–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

The following notice of meeting is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 1 p.m., January 14, 2010.

PLACE: Three Lafayette Center, 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room (Room 1000).

STATUS: Open.

MATTERS TO BE CONSIDERED: Issuance of a proposed rule on energy position limits and hedge exemptions on regulated futures exchanges, derivatives transaction execution facilities and electronic trading facilities.

CONTACT PERSON FOR MORE INFORMATION: David A. Stawick, Secretary of the Commission, 202–418–5071.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–450 Filed 1–8–10; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, January 13, 2010, 2 p.m.–4 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Weekly Report—Commission Briefing

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: January 5, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–305 Filed 1–11–10; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed Stakeholder Assessment of Senior Corps RSVP grantees. This information collection is a requirement of the Serve America Act. The information collection will be used by the community partners of current Senior Corps grantees for the national RSVP re-competition beginning in 2013. Completion of the Stakeholder Assessment is required in order for RSVP grantees to receive pre-competition training and technical assistance.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 15, 2010.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Senior Corps; Attention Katharine Delo Gregg, Program Officer, Room 9408A, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3475, Attention Katharine Delo Gregg, Program Officer.

(4) *Electronically through the Corporation's e-mail address system: kgregg@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Katharine Delo Gregg, (202) 606–6965, or by e-mail at *kgregg@cns.gov.*

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected to respond, including 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).

Background

The Serve America Act requires re-competition of RSVP grants beginning in 2013. In preparation for the re-competition, the legislation requires a stakeholder assessment. Each grantee will receive a custom report with feedback, based on the results of the assessments. The Stakeholder Assessment will be completed electronically using Zoomerang.

Current Action

The information collection is intended to be completed by the Community Advisory Boards of current RSVP grantees. The individual questions have previously existed in grant applications, program handbooks and guidance, however, the format of the information collection is new.

The information collection will be used to collect data to enhance technical assistance for current grantees. The Corporation will not use the results of this information collection for decisionmaking purposes regarding grant awards.

Type of Review: New.
Agency: Corporation for National and Community Service.
Title: Senior Corp RSVP Community Stakeholder Assessment.
OMB Number: None.
Agency Number: None.
Affected Public: Community Advisory Boards of current recipients of Senior Corps RSVP Grants.
Total Respondents: 700.
Frequency: Annual.
Average Time per Response: 2.5 hours.
Estimated Total Burden Hours: 1,750 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 6, 2010.

Angela Roberts,

Acting Director, Senior Corps.

[FR Doc. 2010–357 Filed 1–11–10; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled VISTA Alumni Outreach to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Elizabeth Matthews at (202) 606–6774. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: 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 Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to 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.

Comments

A 60-day public comment Notice was published in the **Federal Register** on November 5, 2009. This comment period ended on Friday, December 4, 2009. No public comments were received from this Notice.

Description: The Corporation is seeking approval of VISTA Alumni Outreach information collection. The goal of this project is to contact the 177,000 VISTA Alumni and ask them to take three actions; (1) Go online to VISTACampus.org and create an account; (2) Go online to My.AmeriCorps.gov and register; (3) Fill out a questionnaire IF they are interested in promoting and recruiting for VISTA. By creating an account through the VISTACampus.org and registering through MyAmeriCorps.gov, we can obtain their email addresses and keep them informed about future alumni-related activities. This is especially important as VISTA is celebrating its 45th anniversary in 2010 and there will be numerous activities for alumni to participate in across the country.

The Corporation has obtained the mailing addresses for all 177,000 alumni. There have been two postcards designed to mail to the alumni. The postcard text directs alumni to the VISTACampus.org and MyAmeriCorps.gov to update their contact information. When approved, the postcards will be mailed, information will be posted on the VISTA Campus explaining the registration process, the questionnaire will be posted, and alumni can begin to participate in recruitment efforts.

Type of Review: New Information Collection.
Agency: Corporation for National and Community Service.
Title: VISTA Alumni Outreach.
OMB Number: None.
Agency Number: None.
Affected Public: AmeriCorps VISTA Alumni.
Total Respondents: 177,000.
Frequency: Ongoing.
Average Time per Response: Estimated at 30 minutes for first time respondents and 15 minutes for previously registered alumni updating information. Estimated 30 minutes for VISTA alumni outreach questionnaire (estimated 500 people).
Estimated Total Burden Hours: 88,500 (for alumni creating and updating accounts on both VISTACampus.org and My.AmeriCorps.gov/250 (for alumni completing questionnaire).
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Dated: January 6, 2010.

Paul Davis,

Acting Director, AmeriCorps VISTA.

[FR Doc. 2010–371 Filed 1–11–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for Beddown of Training F–35A Aircraft

AGENCY: Air Education and Training and Air National Guard, United States Air Force, Defense.

ACTION: Revised Notice of Intent.

SUMMARY: The United States Air Force published a Notice of Intent to prepare an EIS in the **Federal Register** (Vol. 74, No. 247, page 68597) on Dec 28, 2009. As stated in the previous Notice of Intent, the Air Force intended to conduct scoping meeting in the following cities: Truth or Consequences, NM, Socorro, NM, and Sun City, AZ; however, Scoping Meetings will no

longer be conducted in these locations. Additional public scoping meetings will be held at Cloudcroft, NM, Boise, ID, City of Surprise/Sun Cities, AZ, and Tucson, AZ. In addition, exact meeting locations were not known at the time the Notice of Intent was published. This revised Notice of Intent has been prepared to notify the public of the changes in the cities in which the public scoping meetings will be held and to provide locations and dates for the meetings.

DATES: The Air Force intends to hold scoping meetings in the following communities: Holloman Air Force Base: Monday, January 25, 2010, at Lincoln County Manager's Building Commissioners Chambers, 300 Central Avenue Carrizozo, New Mexico; Tuesday, January 26, 2010, at Sgt. Willie Estrada Memorial Civic Center, 800 E. First Street, Alamogordo, New Mexico; Wednesday, January 27, 2010 at The Lodge Resort Pavilion Room, 601 Corona Place, Cloudcroft, New Mexico; Thursday, January 28, 2010 at Best Western Pine Springs Inn, 1420 W. Highway 70, Ruidoso Downs, New Mexico; Friday, January 29, 2010 at De Baca County Courthouse Annex, 248 East Avenue C, Fort Sumner, New Mexico; Boise Air Terminal Air Guard Station: Monday, February 8, 2010, at Marsing High School Commons, 301 W. Eighth Avenue, Marsing, Idaho; Tuesday, February 9, 2010, at Boise Senior Activities Center Dining Room, 690 Robbins Road, Boise, Idaho; Wednesday, February 10, 2010, at Meridian Middle School Foyer/Auditorium, 1507 W. Eighth Street, Meridian, Idaho; Thursday, February 11, 2010, at Best Western Vista Inn Rocky Mountain Conference Center, 2645 Airport Way, Boise, Idaho; Friday, February 12, 2010, at Rimrock Jr./Sr. High School Auditorium, 39678 State Highway 78, Bruneau, Idaho; Luke Air Force Base: Monday, February 22, 2010 at Gila Bend Unified School District, 308 N. Martin Avenue, Gila Bend, Arizona; Tuesday, February 23, 2010 at Pueblo El Mirage RV Resort RC Roberts Memorial Building, 11201 N. El Mirage Road, El Mirage, Arizona; Wednesday, February 24, 2010 at Communiversity @ Surprise, 15850 West Civic Center Plaza, City of Surprise/Sun Cities, Arizona; Thursday, February 25, 2010 at Wickenburg High School Media Center, 1090 S. Vulture Mine Road, Wickenburg, Arizona; Friday, February 26, 2010 at Wigwam Resort, 300 Wigwam Boulevard, Litchfield Park, Arizona; Tucson International Airport Air Guard Station: Monday, March 1, 2010, at Sunnyside High School Foyer/Auditorium, 1725 E. Bilby Road, Tucson, Arizona; Tuesday, March 2, 2010, at San Carlos High School Cafeteria, Milepost 270 Highway 70, San Carlos, Arizona; Wednesday, March 3, 2010, at Eastern Arizona College Gila/Galiuro Room, Activities Center, 1014 N. College Avenue, Thatcher, Arizona; Thursday, March 4, 2010, at Bisbee High School Cafeteria, 475 School Terrace Road, Bisbee, Arizona; Friday, March 5, 2010, at Roskruge Elementary School Auditorium 501 East Sixth Street, Tucson, Arizona. The scheduled dates, times, locations and addresses for the meetings will be published in local media a minimum of 15 days prior to the scoping meetings. All meetings will be held from 6 p.m. to 8 p.m.

Comments will be accepted at any time during the environmental impact analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by April 5, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. David Martin, HQ AETC/A7CPP, 266 F Street West, Randolph AFB, TX 78150–4319, telephone 210/652–1961.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–287 Filed 1–11–10; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 15, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 7, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Carl D. Perkins Vocational and Technical Education Act (PL 105–332)—State Plan.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 3,834.

Abstract: PL 105–332 requires eligible State agencies to submit a 5-year State plan, with annual revisions as the agency deems necessary, in order to receive Federal funds. Program staff review the plans for compliance and quality.

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 4198. When you access the

information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–370 Filed 1–11–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Elementary and Secondary School Counseling Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215E.

Dates: Applications Available: January 12, 2010.

Deadline for Transmittal of Applications: February 26, 2010.

Deadline for Intergovernmental Review: April 27, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Elementary and Secondary School Counseling program is to support efforts by local educational agencies (LEAs) to establish or expand elementary school and secondary school counseling programs.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 5421 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7245).

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:

Establish or expand counseling programs in elementary schools, secondary schools, or both.

Definitions: The following definitions are from 34 CFR part 77 and apply to this competition:

Elementary school means a day or residential school that provides elementary education, as determined under State law.

Secondary school means a day or residential school that provides secondary education, as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term includes education beyond the twelfth grade.

Under this competition we are particularly interested in applications that address the following priority.

Invitational 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 invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute priority over other applications.

This priority is:

Low-Achieving Schools

Projects that are designed to dramatically improve student achievement in schools identified for corrective action or restructuring under Title I of the ESEA or in secondary schools with graduation rates of less than 60 percent through either comprehensive interventions or targeted approaches to reform.

Program Authority: 20 U.S.C. 7245.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final eligibility requirements for the Office of Safe and Drug-Free Schools discretionary grant programs published in the **Federal Register** on December 4, 2006 (71 FR 70369).

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $15,437,591.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2010 and in FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $250,000–$400,000.

Estimated Average Size of Awards: $350,000.

Maximum Award: $400,000.

Note: Section 5421(a)(5) of the ESEA limits the amount of a grant under this program in any one year to a maximum of $400,000.

Estimated Number of Awards: 44.

Note: Section 5421(g)(1) of the ESEA requires that for any fiscal year in which the amount of funds made available by the Secretary for this program equals or exceeds $40,000,000, the Secretary shall award not less than $40,000,000 to enable LEAs to establish or expand counseling programs in elementary schools. Under this notice applicants may propose projects that establish or expand counseling programs in elementary schools, secondary schools, or both.

Note: We will use the highest grade level an applicant proposes to serve under its grant, along with the information obtained by examining the applicant State's law that defines what grade levels constitute an elementary school in the State, to determine if the application will be considered for funding from amounts available for elementary school counseling programs only or from amounts available for elementary or secondary school counseling programs or both.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months. Budgets should be developed for each year of funding requested up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) LEAs, including charter schools that are considered LEAs under State law.

(b) LEAs that currently have an active grant under the Elementary and Secondary School Counseling Program are not eligible to apply for an award in this competition. For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Section 5421(b)(2)(G) of the ESEA requires applicants under this program to assure that program funds will be used to supplement, and not supplant, any other Federal, State, or local funds used for providing school-based counseling and mental health services to students.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the

Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/elseccounseling/applicant.html.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.215E.

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 program contact person 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 program.

3. *Submission Dates and Times: Applications Available:* January 12, 2010.

Deadline for Transmittal of Applications: February 26, 2010.

Applications for grants under this program 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: April 27, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Section 5421(d) of the ESEA requires that no more than four percent of a grant award may be used for administrative costs to carry out the project. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program 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 program 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 84.215E), 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 84.215E), 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 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 program are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are from section 5421(a)(3) of the ESEA, which requires an equitable geographic distribution among the regions of the United States and among LEAs located in urban, rural, and suburban areas.

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:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measures for the Elementary and Secondary School Counseling Program:

(1) The percentage of grantees closing the gap between their student/mental health professional ratios and the student/mental health professional ratios recommended by the statute; and

(2) The average number of referrals per grant site that are made for disciplinary reasons in schools participating in the program.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for the applicant's proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about the grantee's progress against these measures.

VII. Agency Contacts

For Further Information Contact: Loretta McDaniel, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, room 10080, Washington, DC 20202–6450. Telephone: (202) 245–7870 or by e-mail: *Loretta.McDaniel@ed.gov.*

If you use a TDD, call the Federal Relay Service, 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) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

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.

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.*

Dated: January 6, 2010.

Kevin Jennings,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 2010–390 Filed 1–11–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Submission for OMB Review—2010 Election Administration and Voting Survey; Comment Request

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: On September 8, 2009, the EAC published a notice in accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. EAC announced an information collection and sought public comment on the provisions thereof. The EAC, pursuant to 5 CFR 1320.5(a)(iii), intends to submit this proposed information collection (2010 Election Administration and Voting Survey) to the Director of the Office of Management and Budget for approval. The 2010 Election Administration and Voting Survey (Survey) asks election officials questions concerning voting and election administration. These questions request information concerning ballots cast; voter registration; overseas and military voting; Election Day activities; voting technology; and other important issues. The EAC issues the survey to meet its obligations under the Help America Vote Act to serve as national clearinghouse and resource for the compilation of information with respect to the administration of Federal elections; to fulfill its data collection requirements under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); and meet its National Voter Registration Act (NVRA) mandate to collect information from states concerning the impact of that statute on the administration of Federal Elections.

DATES: Written comments must be submitted on or before 4 p.m. EDT on February 11, 2010.

Comments: Public 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Additional Information: Please note that the Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection, but may respond after 30 days. Comments on the proposed information collection should be submitted to OMB within 30 days of this notice. Comments should be sent to the attention of the Alex Hunt, Desk Officer for the U.S. Election Assistance Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments sent to OMB should also be sent to EAC at *electiondaysurvey@eac.gov.*

Obtaining a Copy of the Survey: To obtain a free copy of the survey: (1) Access the EAC Web site at *http://www.eac.gov*; (2) write to the EAC (including your address and phone number) at U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, ATTN: Election Administration and Voting Survey.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Lynn-Dyson or Ms. Shelly Anderson at (202) 566–3100.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: 2010 Election Administration and Voting Survey; OMB Number Pending.

Summary of the Collection of Information: The survey requests information on a state- and county-level (or township-, independent city-, borough-level, where applicable) concerning the following categories:

Voter Registration Applications (From the Period of Federal General Election Day +1, 2008 Through Federal General Election Day, 2010)

(a) Total number of registered voters; (b) Number of active and inactive registered voters; (c) Number of new registrations in jurisdictions with Same Day Registration or Election Day registration; (d) Number of voter registration applications received from all sources; (f) Number of voter registration applications that were duplicates, invalid or rejected, new, changes of name, address, party, and not categorized; (g) Number of new, duplicate, and invalid registration applications received from all sources; (h) Total number of removal/confirmation notices mailed to voters and the reason for removal; (i) total number of voters removed from the registration list or moved to the inactive registration list.

Uniformed & Overseas Citizens Absentee Voting Act (UOCAVA)

(a) Total number of UOCAVA absentee ballots transmitted, returned and submitted for counting (cast), and counted; (b) Total number of UOCAVA absentee ballots not counted and the reason for rejection; (c) Total number of Federal Write-in Absentee Ballots returned and cast by UOCAVA voters.

Election Administration

(a) Total number of precincts in the state/jurisdiction; (b) Number of polling places available for voting in the November 2010 Federal general election; (c) Number of poll workers used for Election Day; (d) Extent to which jurisdictions had enough poll workers available for the general election.

Election Day Activities

(a) Total number of persons who voted in the 2010 Federal general election; (b) The source of the participation number—poll books, ballots counted, vote history; (c) Total number of first-time voters who registered by mail and were required to provide identification in order to vote; (d) Number of voters who appeared on the permanent absentee voter registration list; (e) Number of absentee ballots requested, received, counted, and not counted; (f) Reasons for absentee ballot rejection; (g) Number of provisional ballots cast, counted, and rejected; (h) Reasons for provisional ballot rejection; (i) Use of electronic and printed poll books during the 2010

Federal general election; (j) Type and number of voting equipment used for the 2010 Federal general election; (k) Type of process in which voting equipment was used—precinct, absentee, early vote site, accessible to disabled voters, provisional voting; (l) Location in which votes were tallied—central location, precinct/polling place, or early vote site; (m) General comments regarding the jurisdiction's Election Day experiences.

2010 Election Results

Total number of votes cast—at polling places, via absentee ballot, at early vote centers, via provisional ballots.

Statutory Overview (2010 Federal General Election)

(a) Information on whether the state is exempt from the National Voter Registration Act (NVRA); (b) State definition of terms—over-vote, under-vote, blank ballot, void/spoiled ballot, provisional/challenged ballot; (c) State definition of inactive and active voter; (d) State provision for voter identification at registration, for in-person voting, and for mail-in or absentee voting; (e) information on legal citation for changes to election laws or procedures enacted or adopted since the previous Federal general election; (f) State definition of voter registration; (g) Process used for moving voters from active to inactive lists and from inactive to active; (h) State deadline for registration for the Federal general election; (i) Information of whether the state is an Election Day/Same Day Registration state; (j) Description of state voter registration database system—bottom-up or top-down; (k) State voter removal/confirmation notices processes; (l) Agency or department that is responsible for list maintenance; (m) Information on whether there are electronic links between the voter registrar's office and other state agencies; (n) State's use of National Change of Address (NCOA); (o) State's voting eligibility requirements as they relate to convicted felons; (p) Tabulation of votes cast at a place other than the voter's precinct; (q) Provision for voting absentee; (r) State tracking of the date of all ballots cast before election day; (s) Provision for mail-in voting in place of at-the-precinct voting; (t) Acceptance or rejection of provisional ballots of voters registered in a different precinct; (u) State process for capturing over-votes and under-votes; (v) Processes and procedures for implementing the MOVE Act and capturing data related to MOVE Act requirements. States and territories that submitted a Statutory Overview for 2008 will be asked to provide updates to the information above, where applicable.

Needs and Uses: The EAC issues the survey to meet its obligations under the Help America Vote Act to serve as national clearinghouse and resource for the compilation of information with respect to the administration of Federal elections; to fulfill its data collection requirements under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); and meet its National Voter Registration Act (NVRA) mandate to collect information from states concerning the impact of that statute on the administration of Federal Elections. The Help America Vote Act of 2002 (HAVA) (42 U.S.C. 15322) requires the EAC to serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal Elections. This includes the obligation to study and report on election activities, practices, policies, and procedures, including methods of voter registration, methods of conducting provisional voting, poll worker recruitment and training, and such other matters as the Commission determines are appropriate. In addition, under the National Voter Registration Act (NVRA), the EAC is responsible for collecting information and reporting, biennially, to the United States Congress on the impact of that statute. The information the States are required to submit to the EAC for purposes of the NVRA report are found under Title 11 of the Code of Federal Regulations. States that respond to questions in this survey concerning voter registration related matters will meet their NVRA reporting requirements under 42 U.S.C. 1973gg–7 and EAC regulations. Finally, the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) mandates that EAC create a standardized format for state reporting of UOCAVA voting information (42 U.S.C. 1973ff–1). Additionally, UOCAVA requires that "not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such a report available to the general public." States that complete and timely submit the UOCAVA section of the survey to the EAC will fulfill their UOCAVA reporting requirement under 42 U.S.C. 1973ff–1(c). In order to fulfill the above requirements, the EAC is seeking information relating to the period from the Federal general Election Day 2008 +1 through the November 2010 Federal general election.

Affected Public (Respondents): State governments, the District of Columbia, Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

Affected Public: State government
Number of Respondents: 55
Responses per Respondent: 1
Estimated Burden per Response: 147 hours
Estimated Total Annual Burden Hours: 8,085 hours
Frequency: Biennially

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2010–367 Filed 1–11–10; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Amended Record of Decision: Idaho High-Level Waste and Facilities Disposition Final Environmental Impact Statement; Correction

AGENCY: U.S. Department of Energy.

ACTION: Amended Record of Decision; Correction.

SUMMARY: The Department of Energy (DOE) published a document in the **Federal Register** of January 4, 2010, announcing an amended Record of Decision (ROD) for the Idaho High-Level Waste and Facilities Disposition Final Environmental Impact Statement. This document corrects an error in that notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this Amended ROD should be directed to Nolan R. Jensen, Federal Project Director, U.S. DOE Idaho Operations Office, 1955 Fremont Avenue, MS 1222, Idaho Falls, ID 83415, telephone (208) 526–5793.

Correction

In the **Federal Register** of January 4, 2010, in FR Doc. E9–31151, please make the following correction:

On page 137, third column, under the heading DEPARTMENT OF ENERGY, the heading is corrected to read: Amended Record of Decision: Idaho High-Level Waste and Facilities

Disposition Final Environmental Impact Statement

Issued in Washington, DC, on January 5, 2010.

Mark Gilbertson,

Acting Chief Technical Officer for Environmental Management.

[FR Doc. 2010–319 Filed 1–11–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2010 Resource Pool, Pick-Sloan Missouri Basin Program—Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final power allocation.

SUMMARY: Western Area Power Administration (Western), Upper Great Plains Region, a Federal power marketing agency of the Department of Energy (DOE), hereby announces the Post-2010 Resource Pool Power Allocation (Power Allocation) to fulfill the requirements of the Energy Planning and Management Program (Program). The Power Allocation comes from a Federal power resource pool of the long-term marketable resource of the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) that is available January 1, 2011. Western will use power previously returned to Western for this resource pool and will not need to withdraw power from existing customers.

The Final Power Allocation is published to show Western's decisions prior to beginning the contractual phase of the process. A firm electric service contract, between Western and the allottee in this notice, will provide for an allocation of power to the allottee beginning with the January 2011 billing period through the December 2020 billing period.

DATES: The Power Allocation is effective February 11, 2010.

ADDRESSES: Information about this Power Allocation, including letters and other supporting documents made or kept by Western in developing the final allocation, is available for public inspection and copying at the Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266.

FOR FURTHER INFORMATION CONTACT: John A. Pankratz, Public Utilities Specialist, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 247–7392, e-mail *pankratz@wapa.gov.*

SUPPLEMENTARY INFORMATION: Western published the final Post-2010 Resource Pool Allocation Procedures (Procedures) in the **Federal Register** (74 FR 20697, May 5, 2009), to implement Subpart C–Power Marketing Initiative of the Program's Final Rule (10 CFR 905), published in the **Federal Register** (60 FR 54151, October 20, 1995). The Program, developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. The goal of the Program is to require planning for efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments. One aspect of the Program is to establish project-specific power resource pools and allocate power from these pools to new preference customers. This Post-2010 Resource Pool is the final resource pool under the Program.

Western published its proposed allocation in the **Federal Register** (74 FR 37702, July 29, 2009), and initiated a public comment period. A public information and comment forum on the proposed allocation was held on September 17, 2009. The public comment period ended on September 28, 2009. Western received no public comments during the public comment period on the proposed allocation.

The Procedures, in conjunction with the Post-1985 Marketing Plan (45 FR 71860, October 30, 1980), establish the framework for allocating power from the P–SMBP—ED.

Final Allocation of Power

The Power Allocation for the new customer was calculated using the Procedures. As defined in the Post-1985 Marketing Plan criteria under the Procedures, the summer allocation is 24.84413 percent of peak summer load; the winter allocation is 35.98853 percent of peak winter load. The final Power Allocation of power for the new eligible customer and the load, which this allocation is based upon, is as follows:

New customer	2007 Summer season peak load (kilowatts)	2007 Winter season peak load (kilowatts)	Post-2010 Resource pool power allocation	
			Summer kilowatts	Winter kilowatts
City of New Ulm, MN	1,626	1,301	404	468

The final Power Allocation for the City of New Ulm, Minnesota, is based on the P–SMBP—ED marketable resource available at this time. Western, in accordance with 10 CFR 905.32(e)(2) of the Program, will use power previously placed under contract and subsequently returned to Western through termination of that contract for this final Power Allocation. A firm electric service contract will be offered by Western to the City of New Ulm, Minnesota. If the P–SMBP—ED marketable resource is adjusted in the future, the Power Allocation may be adjusted accordingly.

Post-2010 Resource Pool Procedures Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347 (2007)); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from further NEPA review.

Dated: January 5, 2010.

Timothy J. Meeks,

Administrator.

[FR Doc. 2010–320 Filed 1–11–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9102–4]

Cross-Media Electronic Reporting Rule State Authorized Program Revision Approval: State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval, under regulations for Cross-Media Electronic Reporting, of the State of New York's request to revise its EPA-authorized program to allow electronic reporting.

DATES: EPA's approval is effective January 12, 2010.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov,* or David Schwarz, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1704, *schwarz.david@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR, requires that State, Tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and get EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the State, Tribe, or local government will use to implement the electronic reporting. Additionally, in § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the State, Tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the State, Tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On August 21, 2009, the State of New York Department of Environmental Conservation (NYDEC) submitted an application for its Hazardous Waste Annual Reporting System (HWARS) for revision of its EPA-authorized program under title 40 CFR. EPA reviewed NYDEC's request to revise its EPA-authorized program and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve New York's request for revision to its authorized program is being published in the **Federal Register**.

Specifically, EPA has approved the State of New York's request to revise its Part 272—Approved State Hazardous Waste Management Programs EPA-authorized program for electronic reporting of hazardous waste information under 40 CFR parts 262, 264, and 265, for electronic submissions that do not include an electronic signature but instead provide for a handwritten signature on a separate paper submission report.

NYDEC was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: December 29, 2009.

Lisa Schlosser,

Director, Office of Information Collection.

[FR Doc. 2010–339 Filed 1–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9097–6; Docket ID No. EPA–HQ–ORD–2009–0398]

Draft Toxicological Review of Methanol: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and listening session.

SUMMARY: EPA is announcing a public comment period and a public listening session for the external review draft document titled "Toxicological Review of Methanol: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (EPA/635/R–09/013). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within the EPA's Office of Research and Development (ORD). The public comment period and the EPA Science Advisory Board (SAB) meeting, which will be scheduled at a later date and announced in the **Federal Register**, are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward the public comments that are submitted in accordance with this notice to the SAB peer-review panel prior to the meeting for their consideration. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice.

EPA is also announcing a listening session to be held on February 23, 2010, during the public comment period for this draft document. This listening session is a step in EPA's revised IRIS process, announced on May 21, 2009, to develop human health assessments for inclusion in the IRIS database. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties during the public comment period and before the external peer review meeting. EPA welcomes the scientific and technical comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft assessment in response to the independent external peer review and the public comments. All presentations submitted to EPA according to the instructions below will become part of the official public record.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

DATES: The public comment period begins January 12, 2010, and ends March 15, 2010. Technical comments should be in writing and must be received by EPA by March 15, 2010.

The listening session on the draft IRIS health assessment for methanol will be held on February 23, 2010, beginning at 9 a.m. and ending at 4 p.m., Eastern Standard Time. If you would like to make a presentation at the listening

session, you should register by February 16, 2010, indicate that you wish to make oral comments at the session, and indicate the length of your presentation. When you register, please indicate if you will need audio-visual aid (*e.g.,* lap top and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by February 16, 2010, the listening session will be cancelled and EPA will notify those registered of the cancellation.

Listening session participants who want EPA to share their comments with the external peer reviewers should also submit written comments during the public comment period using the detailed and established procedures described in the **SUPPLEMENTARY INFORMATION** section of this notice. Comments submitted to the docket prior to the end of the public comment period will be submitted to the external peer reviewers and considered by EPA in the disposition of public comments. All comments must be submitted to the docket. Comments received after the public comment period closes will not be submitted to the external peer reviewers.

ADDRESSES: The draft "Toxicological Review of Methanol: In Support of Summary Information on the Integrated Risk Information System (IRIS)" is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

The listening session on the draft methanol assessment will be held at the EPA offices at Two Potomac Yard (North Building), 7th Floor, Room 7100, 2733 South Crystal Drive, Arlington, Virginia, 22202. To attend the listening session, register by February 16, 2010, by sending an e-mail to *IRISListeningSession@epa.gov,* (subject line: Methanol Listening Session); by calling Christine Ross at 703–347–8592; or by faxing a registration request to 703–347–8689. Please reference the "Methanol Listening Session" and include your name, title, affiliation, full address and contact information. Please note that to gain entrance to this EPA building to attend the meeting, attendees must have photo identification with them and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, attendees should give the name Christine Ross and the telephone number, 703–347–8592, to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188 and the access code is 926–378–7897, followed by the pound sign (#). The teleconference line will be activated at 8:45 am, and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the Methanol Listening Session and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Christine Ross at 703–347–8592 or *IRISListeningSession@epa.gov.* To request accommodation of a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For information on the public listening sessions, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8592; facsimile: 703–347–8689; or e-mail: *IRISListeningSession@epa.gov.*

If you have questions about the document, contact Jeffrey Gift, Ph.D., National Center for Environmental Assessment (NCEA), U.S. EPA, 109 T.W. Alexander Drive, B243–01, Durham, NC 27711; telephone: 919–541–4828; facsimile: 919–541–0245; or e-mail: *gift.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0398 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's 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. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit

one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0398. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a 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 OEI Docket in the EPA Headquarters Docket Center.

Dated: December 17, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–338 Filed 1–11–10; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 141]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request, OMB 3048–0020.

Form Title

Notification by Insured of Amounts Payable Under Multi-Buyer Export Credit Insurance Policy (Standard Assignment) EIB 92–31.

Notification by Insured of Amounts Payable Under Single Buyer Export Credit Insurance Policy (Standard Assignment) EIB 92–32.

Small Business Multi-Buyer Export Credit Insurance Policy Enhanced Assignment of Policy Proceeds EIB 92–53.

Small Business Single Buyer Export Credit Insurance Policy Enhanced Assignment of Policy Proceeds EIB 99–17.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. By neutralizing the effect of export credit insurance and guarantees offered by foreign government and by absorbing credit risks that the provide section will not accept, Export Import Bank enables U.S. exporters to compete fairly in foreign markets. These collections of information are used by exporters to convey legal rights to their financial institution lenders to share insurance policy proceeds from Export Import Bank approved insurance claims.

Changes to Form: Notification by Insured of Amounts Payable under Multi-Buyer Export Credit Insurance Policy (Standard Assignment) EIB 92–31.

Section B 5(b)

Change:

in the event Ex-Im Bank approves the Insured's claim for payment, a check will be issued payable to the order of the Insured, unless the Insured provides the name of an assignee on the "Notice of Claim and Proof of Loss" in which case a check will be forwarded to the assignee, made payable jointly to the order of the Insured and the assignee named on the Notice of Claim and Proof of Loss.

To:

in the event Ex-Im Bank approves the Insured's claim for payment, a wire transfer will be made to an assignee designated by the Insured on the "Notice of Claim and Proof of Loss."

Section C 2(b)

Change:

to make all claim payments relating to this assignment by check forwarded to the Assignee, made payable jointly to the order of the Insured and the Assignee.

To:

to make all claim payments relating to this assignment by wire transfer to the Assignee, payable to the Assignee.

Changes to form: Notification by Insured of Amounts Payable under Single Buyer Export Credit Insurance Policy (Standard Assignment) EIB 92–32.

Section B 3(b)

Change:

in the event Ex-Im Bank approves the Insured's claim for payment, a check will be issued payable to the order of the Insured, unless the Insured provides the name of an assignee on the "Notice of Claim and Proof of Loss". In which case a check will be forwarded to the assignee, made payable jointly to the order of the Insured and the assigned named on the Notice of Claim and Proof of Loss.

To:

in the event Ex-Im Bank approves the Insured's claim for payment, a wire transfer will be made to an assignee designated by the Insured on the "Notice of Claim and Proof of Loss."

Section C 2(b)

Change:

to make all claim payments relating to this assignment by check forwarded to the Assignee, made payable jointly to the order of the Insured and the Assignee.

To:

to make all claim payments relating to this assignment by wire transfer to the Assignee, payable to the Assignee.

Changes to Form: Small Business Multi-Buyer Export Credit Insurance Policy Enhanced Assignment of Policy Proceeds EIB 92–53.

Section C.2. (c)

Change:

A bill of lading identifying the Insured and the Buyer and evidencing the export of the products shipped; and

To:

A bill of lading (or other shipping documents) identifying the Insured and the Buyer and evidencing the export of the products shipped; and

Section D 2

Change:

If in Ex-Im Bank's sole discretion, it determines that the Insured has complied with the terms of the Policy and the Agreements of the Insured contained herein, amounts payable under the Policy will be made jointly to the Assignee and the Insured; otherwise payable under the Policy and this Agreement will be made solely to the Assignee.

To:

If in Ex-Im Bank's sole discretion, it determines that the Insured has complied with the terms of the Policy and the Agreements of the Insured contained herein, amounts payable under the Policy will be made solely to the Assignee by wire transfer.

Changes to Form: Small Business Single Buyer Export Credit Insurance Policy Enhanced Assignment of Policy Proceeds EIB 99–17.

Section C.2. (c)

Change:

A bill of lading identifying the Insured and the Buyer and evidencing the export of the products shipped; and

To:

A bill of lading (or other shipping documents) identifying the Insured and the Buyer and evidencing the export of the products shipped: and

Section D 2

Change:

If in Ex-Im Bank's sole discretion, it determines that the Insured has complied with the terms of the Policy and the Agreements of the Insured contained herein, amounts payable under the Policy will be made jointly to the Assignee and the Insured; otherwise payable under the Policy and this Agreement will be made solely to the Assignee.

To:

If in Ex-Im Bank's sole discretion, it determines that the Insured has complied with the terms of the Policy and the Agreements of the Insured contained herein, amounts payable under the Policy will be made solely to the Assignee by wire transfer

Section F

Add a new sub-section 4 as follows:

4. that represents exclusively invoices for services, unless prior approval is obtained from Ex-Im Bank.

Sections G.3, G.4, G.5, G.6 and G.8

Change:

The numbering sequence of these sections

To:

Sections G.4, G.5, G.6, G.7, G8

And insert as a new Section G.3.

To:

G.3. Ex-Im Bank has the right to amend or cancel this Agreement upon written notice to both the Assignee and the Insured. Such notice shall be effective seven (7) business days after the date of the notice and apply to shipments after the effective date of the notice. Neither the Assignee nor the Insured may amend or cancel this Agreement without the written consent of all parties to this Agreement, including Ex-Im Bank.

DATES: Comments should be received on or before (30 days after publication) to be assured of consideration.

ADDRESSES: Comments maybe submitted through *http://www.regulations.gov* or mailed to: Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20038.

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers

Notification by Insured of Amounts Payable Under Multi-Buyer Export Credit Insurance Policy (Standard Assignment) EIB 92–31.

Notification by Insured of Amounts Payable Under Single Buyer Export Credit Insurance Policy (Standard Assignment) EIB 92–32.

Small Business Multi-Buyer Export Credit Insurance Policy Enhanced Assignment of Policy Proceeds EIB 92–53.

Small Business Single Buyer Export Credit Insurance Policy Enhanced Assignment of Policy Proceeds EIB 99–17.

OMB Number: 3048–0020.

Type of Review: Regular.

Need and Use: The information collected will be used to make a determination of eligibility under the Ex-Im Bank's short-term insurance program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 400.

Estimated Time per Respondent: 1 hour.

Government Annual Burden Hours: 400.

Frequency of Reporting or Use: Annual for an enhanced assignment. Once for the life of a policy for the standard Assignment.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–360 Filed 1–11–10; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 140]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: Competitiveness Report Survey EIB 00–02. OMB 3048–003.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Our customers will be able to submit this form on paper or electronically.

The purpose of this survey is to fulfill the statutory mandate (Export-Import Act of 1945, as amended, 12 U.S.C. 635) which directs the Export-Import Bank to report annually to Congress any action taken toward providing export credit programs that are competitive with those offered by official foreign export credit agencies.

The following changes have been made to the survey:

1. Added question—Years in Business in Part 1, Question 1.

2. Removed "Medium-term Loan" as an option in Part 1, Question 4.

3. Added question—How many applications did your organization file with Ex-Im Bank in CY 2009 in Part 1, Question 2.

4. Changed the option "Never" to "N/A" in Part 2, Questions 1 and 2.

5. Removed the option "N/A" in "Other" in Part 2, Questions 1 and 2.

6. Added "Services" category to Part 3, Question 3.

7. Added "Local Costs" to Part 3, Question 5.

We received one comment from the public on our sixty day **Federal Register** Notice. The comment requested that we re-evaluate the length of time it takes to complete the form. We have adjusted our estimates to address this comment.

DATES: Comments should be received on or before February 11, 2010 to be assured of consideration.

ADDRESSES: Comments maybe submitted through *http://www.regulations.gov* or mailed to Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20038.

OMB Number 3048–0004.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 00–02 Competitiveness Report Survey.

OMB Number: 3048–003.

Type of Review: Regular.

Need and Use: This information will be used to report annually to Congress any action taken toward providing export credit programs that are competitive with those offered by official foreign export credit agencies.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 125.

Estimated Time per Respondent: 0.25 hours.

Government Annual Burden Hours: 6.25.

Frequency of Reporting or Use: Yearly.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–365 Filed 1–11–10; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: COVENANT NETWORK, Station NEW, Facility ID 171236, BMPED–20091118AGS, From ELDON, MO, To ST. THOMAS, MO; COX RADIO, INC., Station WALR–FM, Facility ID 48728, BPH–20091124ABA, From GREENVILLE, GA, To PALMETTO, GA; DARBY ADVERTISING, INC., Station WGRL, Facility ID 170939, BMPH–20091202ACC, From FREDERIC, MI, To WOLVERINE, MI; FEATHERS, JESSE R, Station NEW, Facility ID 183346, BNPH–20091019AAS, From MCCALL, ID, To HUNTINGTON, OR; FIFTH ESTATE COMMUNICATIONS, LLC, Station WHAN, Facility ID 8438, BMP–20091125ABD, From ASHLAND, VA, To POWHATAN, VA; HAMPTONS COMMUNITY RADIO CORPORATION, Station WEER, Facility ID 173471, BMPED–20091029ABL, From EASTHAMPTON VILLAGE, NY, To MONTAUK, NY; HOLY FAMILY COMMUNICATIONS, INC., Station WJTA, Facility ID 175969, BMPED–20091125ADA, From LEIPSIC, OH, To GLANDORF, OH; KING, BRYAN A, Station NEW, Facility ID 183324, BNPH–20091019AFZ, From LA PRYOR, TX, To UVALDE ESTATES, TX; M. KENT FRANDSON, Station KZHK, Facility ID 40519, BPH–20090813ABE, From BUNKERVILLE, NV, To ST GEORGE, UT; MLB–RICHMOND IV, LLC, Station WBBT–FM, Facility ID 31859, BPH–20091125ABI, From POWHATAN, VA, To CHESTERFIELD COURTHO, VA; NM LICENSING LLC, Station WIIL, Facility ID 28473, BPH–20091209AAC, From KENOSHA, WI, To UNION GROVE, WI; PROVIDENT BROADCASTING COMPANY, INC, Station WVFJ–FM, Facility ID 53679, BPH–20091124ACR, From MANCHESTER, GA, To GREENVILLE, GA; SUSQUEHANNA RADIO CORP., Station KIKT, Facility ID 21597, BPH–20091207ABH, From GREENVILLE, TX, To COOPER, TX; SUTTON RADIOCASTING CORPORATION, Station WNCC–FM, Facility ID 14551, BPH–20091125AEJ, From FRANKLIN, NC, To SYLVA, NC.

DATES: Comments may be filed through March 15, 2010.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau, Federal Communications Commission.

[FR Doc. 2010–330 Filed 1–11–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 27, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. John E. Helgerson, Ottumwa, Iowa; to acquire additional shares of Hedrick Bancorp, Inc., Hedrick, Iowa, and thereby indirectly acquire additional voting shares of Hedrick Savings Bank, Ottumwa, Iowa.

Board of Governors of the Federal Reserve System, January 7, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–363 Filed 1–11–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 2010.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Florida Shores Bancorp, Inc., Smith Associates Bank Fund Management LLC, and Smith Associates Florida Banking Fund LLC, all of Pompano Beach, Florida; to collectively acquire at least 60 percent of the voting shares of Coastal Bancorporation, Inc., and thereby indirectly acquire voting shares of Coastal Bank, both of Merritt Island, Florida, and engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received by February 8, 2010.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. American Bank Holding Corporation, Corpus Christi, Texas; to engage *de novo* through its subsidiary, American Capital Solutions Group, Inc., Corpus Christi, Texas, in financial and investment advisory activities, pursuant to section 225.28(b)(6)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 7, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–362 Filed 1–11–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time), January 19, 2010.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED: Parts Open to the Public

1. Approval of the minutes of the November 16, 2009 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Monthly Investment Performance Report.
   c. Legislative Report.
3. Website Re-Design Update.
4. IT Modernization Plan Update.
5. Quarterly Vendor Financial Report.
6. Review of Gross and Net Expense Ratios.

Parts Closed to the Public

7. Confidential Financial Information.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 7, 2010.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2010–441 Filed 1–8–10; 11:15 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees for the General Electric Company, Evendale, OH, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees for the General Electric Company, Evendale, Ohio, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: General Electric Company.

Location: Evendale, Ohio.

Job Titles and/or Job Duties: All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors.

Period of Employment: January 1, 1961 through June 30, 1970.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–332 Filed 1–11–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposal to continue collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White Treatment and Modernization Act Part A Minority AIDS Initiative Report (the *Part A MAI Report*) (OMB No. 0915–0304): Extension

HRSA's HIV/AIDS Bureau (HAB) administers Part A of Title XXVI of the Public Health Service Act as amended by Congress in October 2009 (Ryan White HIV/AIDS Treatment Extension Act of 2009). Part A provides emergency relief for areas with substantial need for HIV/AIDS care and support services that are most severely affected by the HIV/AIDS epidemic, including eligible metropolitan areas (EMA) and

Transitional Grant Areas (TGAs). As a component of Part A (previously Title I), the purpose of the Minority AIDS Initiative (MAI) Supplement is to improve access to high quality HIV care services and health outcomes for individuals in disproportionately impacted communities of color who are living with HIV disease, including African-Americans, Latinos, Native Americans, Alaska Natives, Asian Americans, Native Hawaiians and Pacific Islanders (Section 2693(b)(2)(A) of the Public Health Service (PHS) Act). Since the purpose of the Part A MAI is to expand access to medical, health, and social support services for disproportionately impacted racial/ethnic minority populations living with HIV/AIDS, who are not yet in care, it is important that HRSA is able to report on minorities served by the Part A MAI.

The Part A MAI Report is a data collection instrument in which grantees report on the number and characteristics of clients served and services provided. The *Part A MAI Report,* first approved for use in March 2006, is designed to collect performance data from Part A Grantees that will not change, and it has two parts: (1) A Web-based data entry application that collects standardized quantitative and qualitative information, and (2) an accompanying narrative report.

Grantees submit two *Part A MAI Reports* annually: *Part A MAI Plan* (*Plan*) and the *Part A MAI Year-End Annual Report* (*Annual Report*). The *Plan* and *Annual Report* components of the report are linked to minimize the reporting burden, and include drop-down menu responses, fields for reporting budget, expenditure and aggregated client level data, and open-ended responses for describing client or service-level outcomes. Together the *Plan* and *Annual Report* components collect information from grantees on MAI-funded services, expenditure patterns, the number and demographics of clients served, and client-level outcomes.

The MAI *Plan* Narrative that accompanies the *Plan* Web-forms provides (1) an explanation of the data submitted in the *Plan* Web forms; (2) a summary of the *Plan,* including the plan and timeline for disbursing funds, monitoring service delivery, and implementing any service-related capacity development or technical assistance activities; and (3) the plan and timeline for documenting client-level outcome measures. In addition, if the EMA/TGA revised any planned services, allocation amounts or target communities after their grant application was submitted, the changes must be highlighted and explained. The accompanying MAI *Annual Report* Narrative describes (1) progress towards achieving specific goals and objectives identified in the Grantee's approved *MAI Plan* for that fiscal year and in linking MAI services/activities to Part A and other Ryan White HIV/AIDS Program services; (2) achievements in relation to client-level health outcomes; (3) summary of challenges or barriers at the provider or grantee levels, the strategies and/or action steps implemented to address them, and lessons learned; and (4) discussion of MAI technical assistance needs identified by the EMA/TGA.

This information is needed to monitor and assess: (1) Changes in the type and amount of HIV/AIDS health care and related services being provided to each disproportionately impacted community of color; (2) the aggregate number of persons receiving HIV/AIDS services within each racial and ethnic community; and (3) the impact of Part A MAI-funded services in terms of client-level and service-level health outcomes. The information also is used to plan new technical assistance and capacity development activities and inform the HRSA policy and program management functions. The data provided to HRSA does not contain individual or personally identifiable information.

The annual estimated response burden for grantees is as follows:

Form	Estimated number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Part A MAI Report	56	2	112	5 hrs	560

Note: Data collection system enhancements have resulted in a shortened response burden (from 6 to 5 total hours per response) for respondents since the previous OMB approval request.

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: January 6, 2010.

Sahira Rafiullah,

Deputy Director, Division of Policy Review and Coordination.

[FR Doc. 2010–364 Filed 1–11–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0305]

Jason Vale; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying Jason Vale's request for a hearing and is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. Vale from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Vale was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Vale has failed to file with the agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: The order is effective January 12, 2010.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: G. Matthew Warren, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–4613.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2003, a Federal jury found Mr. Vale, formerly the president of Christian Brother's Inc., guilty of three counts of criminal contempt in violation of 18 U.S.C. 401(3). On June 18, 2004, the U.S. District Court for the Eastern District of New York sentenced Mr. Vale to 63 months in prison on each of the three counts, to be served concurrently. On January 26, 2006, on remand from the Court of Appeals for the Second Circuit, the district court reduced the sentence to 60 months.

Mr. Vale is subject to permanent debarment based on a finding, under section 306(a)(2) of the act (21 U.S.C. 335a(a)(2)), that he was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Mr. Vale's convictions for contempt stemmed from his violation of consent decrees of preliminary and permanent injunction prohibiting him from distributing unapproved or misbranded drugs, including any drugs or other products, containing or purporting to contain, Laetrile, "Vitamin B–17," amygdalin, or apricot seeds. The evidence introduced at Mr. Vale's criminal contempt trial showed that, in violation of the two injunctions, he continued to promote and sell amygdalin-based products and apricot seeds under a different business name. Mr. Vale acquired a post office box in Arizona under the name "Praise Distributing" (Praise), began referring former and incoming customers of Christian Brothers to a Praise phone number for purchase of those products, and continued to sell those products to his customers through Praise, with the assistance of others employed by Christian Brothers. Mr. Vale's convictions for criminal contempt under 18 U.S.C. 401(3) related directly to the regulation of drug products under the act. By continuing to market amygdalin-based products and apricot seeds, Mr. Vale ignored two injunctions, which were intended to prevent him from violating the requirements for drug products in the act.

By letter dated June 26, 2008, FDA served Mr. Vale a notice proposing to permanently debar him from providing services in any capacity to a person having an approved or pending drug product application. In a letter dated August 13, 2008, Mr. Vale requested a hearing on the proposal. In his request for a hearing, Mr. Vale acknowledges his convictions under Federal law, as alleged by FDA. However, he argues that his convictions for criminal contempt under 18 U.S.C. 401(3) are not felony convictions subjecting him to permanent debarment under section 306(a)(2) of the act.

We reviewed Mr. Vale's request for a hearing and find that Mr. Vale has not created a basis for a hearing because hearings will be granted only if there is a genuine and substantial issue of fact. Hearings will not be granted on issues of policy or law, on mere allegations, denials, or general descriptions of positions and contentions, or on data and information insufficient to justify the factual determination urged (see 21 CFR 12.24(b)).

The Acting Chief Scientist and Deputy Commissioner has considered Mr. Vale's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing.

II. Argument

Mr. Vale raises a single legal argument in support of his hearing request. Citing *Frank* v. *United States*, 395 U.S. 147, 149–52 (1969), he contends that his convictions for criminal contempt under 18 U.S.C. 401(3) may not be characterized as felony convictions for purposes of section 306(a)(2) of the act because criminal contempt is not a felony under Federal law. An offense is typically a felony if the maximum term authorized is more than 1 year. (*See* 18 U.S.C. 3559(a)(1)–(5) (categorizing offenses as felonies if maximum terms of imprisonment are greater than 1 year); *United States* v. *Wildes*, 120 F.3d 468, 470 (4th Cir. 1997) (relying on 18 U.S.C. 3559 to conclude that a felony is any offense punishable by more than one year in prison)). Under 18 U.S.C. 401, however, there is no specific term of imprisonment authorized; a Federal court has the power to punish criminal contempt by imprisonment "at its discretion."

In *Frank*, the U.S. Supreme Court addressed whether a particular offense under 18 U.S.C. 401 was "petty" or "serious" for purposes of the criminal contemnor's right to a jury trial under the Sixth Amendment. (395 U.S. at 148–52.) The Supreme Court acknowledged that criminal contempt is a *sui generis* offense (id. at n.5, citing *Cheff* v. *Schnackenberg*, 384 U.S. 373, 379–80 (1966)) in that "a person may be found in contempt for a great many different types of offenses, ranging from disrespect for the court to acts otherwise criminal." (*Frank*, 395 U.S. at 149.) But the Court found that "in prosecutions for criminal contempt where no maximum penalty is authorized, the severity of the penalty actually imposed is the best indication of the seriousness of the particular offense." (Id.) The Court concluded that the particular offense at issue was "petty" because the contemnor received less than 6 months in prison. (Id. at 152)

In short, the Supreme Court held in *Frank* that, when sentence has been imposed, the length of that sentence is an appropriate measure for determining whether a criminal contempt conviction is a petty offense, misdemeanor, or felony.[1] FDA will therefore look to the sentence imposed on Mr. Vale upon his conviction to evaluate whether his offense under 18 U.S.C. 401(3) was a felony. At 5 years for each conviction, Mr. Vale's sentences far exceeded 1 year, and thus his convictions were clearly for felony offenses. Accordingly, FDA concludes that all three of his convictions of criminal contempt subject him to mandatory debarment under section 306(a)(2) of the act.

III. Findings and Order

Therefore, the Acting Chief Scientist and Deputy Commissioner, under section 306(a)(2)(B) of the act and under authority delegated to him, finds that Mr. Vale has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act.

As a result of the foregoing findings, Mr. Vale is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), (see **DATES**) (see section 306(c)(1)(B) and (c)(2)(A)(ii) and section 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Vale, in any capacity during his period of debarment, will be subject to civil money penalties. If Mr. Vale, during his period of debarment, provides services in any capacity to a person with an

[1] There is, however, a split among the Federal Circuits with respect to whether a conviction for criminal contempt may be treated as a felony. The Court of Appeals for the Fifth Circuit has read the Supreme Court's decisions in *Frank* and *Cheff* to mean that criminal contempt can never be a felony. (*United States* v. *Holmes*, 822 F.2d 481, 493–94 (5th Cir. 1987) (citing those cases for the proposition that criminal contempt is neither a misdemeanor nor a felony)). The Court of Appeals for the Ninth Circuit, however, has relied on the decision in *Frank* to conclude that a conviction of criminal contempt may be treated as a felony based on the defendant's sentencing range. (*United States* v. *Carpenter*, 91 F.3d 1282, 1283–86 (9th Cir. 1996) (holding that courts should look to the appropriate sentencing guideline range to determine whether a particular offense under 18 U.S.C. 401 is a felony); see also In re *Cohn*, 525 F.Supp.2d 1316, 1321 (S.D.Fla. 2007) (holding that criminal contempt is always a Class A felony under 18 U.S.C. 3559(a) because the maximum sentence is life in prison)).

approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any ANDAs submitted by or with the assistance of Mr. Vale during his period of debarment.

Any application by Mr. Vale for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. FDA–2008–N–0305 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 4, 2010.

Jesse L. Goodman,

Acting Chief Scientist and Deputy Commissioner for Science and Public Health.

[FR Doc. 2010–289 Filed 1–11–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Privacy Act of 1974; Report of Amended or Altered System; Medical, Health and Billing Records System

AGENCY: Indian Health Service (IHS), HHS.

ACTION: Amendment of One Altered Privacy Act System of Records (PASOR), 09–17–0001.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4), the IHS has amended and is publishing the proposed alteration of a system of records, System No. 09–17–0001, "Medical, Health and Billing Records." The amended and altered system of records is to reflect revisions in the Purpose and Routine Uses sections, the Notification Procedures section and updates to Appendix 1 of the PASOR.

In the Purpose section of the PASOR, IHS is altering number seven to allow the disclosure of controlled substance prescription data and/or protected health information (PHI) and personally identifiable information (PII) to its business associate contractor(s) for stated healthcare operations prior to transferring to various State Health Monitoring Programs and Registries; and to disclose data transmission of PHI to various health data exchange, regional health information and e-prescribing networks.

In the Routine Uses section, routine use number thirteen is altered to include language that will allow the disclosure to various stated healthcare operations and health data exchange, regional health information and e-prescribing networks.

In the Notification Procedure section under Record Access and Contesting Record procedures, IHS is referencing its various IHS forms with its stated purposes to be utilized by the requester(s).

DATES: *Effective Dates:* IHS filed an altered system report with the Chair of the House Committee on Oversight and Government Reform, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 12, 2010. To ensure that all parties have adequate time in which to comment, the altered PASOR will become effective 40 days from the publication of the notice, or from the date the SOR was submitted to OMB and the Congress, whichever is later, unless IHS receives comments on all portions of this notice.

ADDRESSES: The public should address comments to: Mr. William Tibbitts, IHS Privacy Act Officer, Division of Regulatory Affairs, Office of Management Services, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852–1627; call non-toll free (301) 443–1116; send via facsimile to (301) 443–9879, or send your e-mail requests, comments, and return address to: *William.Tibbitts@ihs.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Gowan, IHS Lead Health Information Management (HIM) Consultant and Area HIM Consultants, Office of Health Programs, Phoenix Area Office, Two Renaissance Square, Suite 606, 40 North Central Avenue, Phoenix, AZ 85004–4450, Telephone (602) 364–5172 or via the Internet at *Patricia.Gowan@ihs.gov.*

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4), this document sets forth the amendment of the proposed alteration of a system of records maintained by the IHS. IHS is altering System No. 09–17–0001, "Health, Medical and Billing Records," for the stated reasons. First, a change to the Purpose section number seven will further enable IHS to disclose controlled substance prescription data to a business associate contractor(s) for stated healthcare operations prior to transferring to various State Health Monitoring Programs and Registries; as well as to enable IHS to disclose data transmission of PHI to various health data exchange and/or regional health information contractors. Second, a change to the Routine Uses section number thirteen will enable IHS to allow the disclosure of information from the record for the various stated healthcare operations and Health Data Exchange; Regional Health Information; and e-prescribing networks.

Dated: December 29, 2009.

Yvette Roubideaux,

Director, Indian Health Service.

Department of Health and Human Services

Indian Health Service

System Number: 09–17–0001

SYSTEM NAME:

Medical, Health, and Billing Records Systems, Health and Human Services/Indian Health Service/Office of Clinical and Preventive Services (HHS/IHS/OCPS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

IHS hospitals, health centers, school health centers, health stations, field clinics, Service Units, IHS Area Offices (Appendix 1), and Federal Archives and Records Centers (Appendix 2). Automated, electronic health and computerized records, including but not limited to clinical information and Patient Care Component (PCC) records, are stored in the Resource and Patient Management System (RPMS) at the National Programs/Office of Information Technology (NP/OIT), IHS, located in Albuquerque, New Mexico. Records may also be located at contractor sites. A current list of contractor sites is available by writing to the appropriate System Manager (Area or Service Unit Director/Chief Executive Officer) at the address shown in Appendix 1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including both IHS beneficiaries and non-beneficiaries, who are examined/treated on an inpatient and/or outpatient basis by IHS staff and/or contract health care providers (including Tribal contractors).

CATEGORIES OF RECORDS IN THE SYSTEM:

Note: Records relating to claims by and against the HHS are maintained in the Privacy Act System of Records (PASOR)

Notice, Administrative Claims System, 09–90–0062, HHS/Office of the Secretary/Office of the General Counsel (HHS/OS/OGC). Such claims include those arising under the Federal Torts Claims Act, Military Personnel and Civilian Employees Claims Act, Federal Claims Collection Act, Federal Medical Care Recovery Act, and the Act for Waiver of Overpayment of Pay.

1. Health and medical records containing examination, diagnostic and treatment data, proof of IHS eligibility, social data (such as name, address, date of birth, Social Security Number (SSN), Tribe), laboratory test results, and dental, social service, domestic violence, sexual abuse and/or assault, mental health, and nursing information.

2. Follow-up registers of individuals with a specific health condition or a particular health status such as cancer, diabetes, communicable diseases, suspected and confirmed abuse and neglect, immunizations, suicidal behavior, or disabilities.

3. Logs of individuals provided health care by staff of specific hospital or clinic departments such as surgery, emergency, obstetric delivery, medical imaging, and laboratory.

4. Surgery and/or disease indices for individual facilities that list each relevant individual by the surgery or disease.

5. Monitoring strips and tapes such as fetal monitoring strips and Electroencephalogram (EEG) and Electrocardiogram (EKG) tapes.

6. Third-party reimbursement and billing records containing name, address, date of birth, dates of service, third party insurer claim numbers, SSN, health plan name, insurance number, employment status, and other relevant claim information necessary to process and validate third-party reimbursement claims.

7. Contract Health Service (CHS) records containing name, address, date of birth, dates of care, Medicare or Medicaid claim numbers, SSN, health plan name, insurance number, employment status, and other relevant claim information necessary to determine CHS eligibility and to process CHS claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Departmental Regulations (5 U.S.C. 301); Privacy Act of 1974 (5 U.S.C. 552a); Federal Records Act (44 U.S.C. 2901); Section 321 of the Public Health Service Act, as amended (42 U.S.C. 248); Section 327A of the Public Health Service Act, as amended (42 U.S.C. 254a); Snyder Act (25 U.S.C. 13); Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*); and the Transfer Act of 1954 (42 U.S.C. 2001–2004).

PURPOSES:

The purposes of this system are:

1. To provide a description of an individual's diagnosis, treatment and outcome, and to plan for immediate and future care of the individual.

2. To collect and provide information to IHS officials and epidemiology centers established and funded under 25 U.S.C. 1621m in order to evaluate health care programs and to plan for future needs.

3. To serve as a means of communication among members of the health care team who contribute to the individual's care; *e.g.,* to integrate information from field visits with records of treatment in IHS facilities and with non-IHS health care providers.

4. To serve as the official documentation of an individual's health care.

5. To contribute to continuing education of IHS staff to improve the delivery of health care services.

6. For disease surveillance purposes. For example:

(a) The Centers for Disease Control and Prevention may use these records to monitor various communicable diseases;

(b) The National Institutes of Health may use these records to review the prevalence of particular diseases (*e.g.,* malignant neoplasms, diabetes mellitus, arthritis, metabolism, and digestive diseases) for various ethnic groups of the United States; or

(c) Those public health authorities that are authorized by law and epidemiology centers established and funded under 25 U.S.C. 1621m may use these records to collect or receive such information for purposes of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death and the conduct of public health surveillance, investigations, and interventions.

7. To compile and provide aggregated program statistics. Upon request of other components of HHS, IHS will provide statistical information, from which individual/personal identifiers have been removed, such as:

(a) To the National Committee on Vital and Health Statistics for its dissemination of aggregated health statistics on various ethnic groups;

(b) To the Assistant Secretary for Planning and Evaluation, Health Policy to keep a record of the number of sterilizations provided by Federal funding;

(c) To the Centers for Medicare & Medicaid Services (CMS) to document IHS health care covered by the Medicare and Medicaid programs for third-party reimbursement; or

(d) To the Office of Clinical Standards and Quality, CMS to determine the prevalence of end-stage renal disease among the American Indian and Alaska Native (AI/AN) population and to coordinate individual care.

8. To process and collect third-party claims and facilitate fiscal intermediary functions and to process debt collection activities.

9. To improve the IHS national patient care database by means of obtaining and verifying an individual's SSN with the Social Security Administration (SSA).

10. To provide information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of organs to facilitate organ, eye, or tissue donation and transplant.

11. To provide information to individuals about treatment alternatives or other types of health-related benefits and services.

12. To provide information to the Food and Drug Administration (FDA) in connection with an FDA-regulated product or activity.

13. To provide information to correctional institutions as necessary for health and safety purposes.

14. To provide information to governmental authorities (*e.g.,* social services or protective services agencies) on victims of abuse, neglect, sexual assault or domestic violence.

15. To provide information to the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2901 *et seq.*

16. To provide relevant health care information to funeral directors or representatives of funeral homes to allow necessary arrangements prior to and in anticipation of an individual's impending death.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system of records contains individually identifiable health information. The HHS Privacy Act Regulations (45 CFR Part 5b) and the Privacy Rule (45 CFR Parts 160 and 164) issued pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996 apply to most health information maintained by IHS. Those regulations may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice. An accounting of all

disclosures of a record made pursuant to the following routine uses will be made and maintained by IHS for five years or for the life of the records, whichever is longer.

Note: Special requirements for alcohol and drug abuse patients: If an individual receives treatment or a referral for treatment for alcohol or drug abuse, then the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR Part 2, may apply. In general, under these regulations, the only disclosures of the alcohol or drug abuse record that may be made without patient consent are: (1) To meet medical emergencies (42 CFR 2.51), (2) for research, audit, evaluation and examination (42 CFR 2.52–2.53), (3) pursuant to a court order (42 CFR 2.61–2.67), and (4) pursuant to a qualified service organization agreement, as defined in 42 CFR 2.11.

In all other situations, written consent of the individual is usually required prior to disclosure of alcohol or drug abuse information under the routine uses listed below.

1. Records may be disclosed to Federal and non-Federal (public or private) health care providers that provide health care services to IHS individuals for purposes of planning for or providing such services, or reporting results of medical examination and treatment.

2. Records may be disclosed to Federal, State, local or other authorized organizations that provide third-party reimbursement or fiscal intermediary functions for the purposes of billing or collecting third-party reimbursements. Relevant records may be disclosed to debt collection agencies under a business associate agreement arrangement directly or through a third party.

3. Records may be disclosed to State agencies or other entities acting pursuant to a contract with CMS, for fraud and abuse control efforts, to the extent required by law or under an agreement between IHS and respective State Medicaid agency or other entities.

4. Records may be disclosed to school health care programs that serve AI/AN for the purpose of student health maintenance.

5. Records may be disclosed to the Bureau of Indian Affairs (BIA) or its contractors under an agreement between IHS and the BIA relating to disabled AI/AN children for the purposes of carrying out its functions under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400, *et seq*.

6. Records may be disclosed to organizations deemed qualified by the Secretary of HHS and under a business associate agreement to carry out quality assessment/improvement, medical audits, utilization review or to provide accreditation or certification of health care facilities or programs.

7. Records may be disclosed under a business associate agreement to individuals or authorized organizations sponsored by IHS, such as the National Indian Women's Resource Center, to conduct analytical and evaluation studies.

8. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. An IHS–810 form, Authorization for Use or Disclosure of Protected Health Information, is required for the disclosure of sensitive PHI (*e.g.,* alcohol/drug abuse patient information, Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS), Sexually Transmitted Diseases (STDs), or mental health) that is maintained in the medical record.

9. Records may be disclosed for research purposes to the extent permitted by:

(a) Determining that the use(s) or disclosure(s) are met under 45 CFR 164.512(i), or

(b) Determining that the use(s) or disclosure(s) are met under 45 CFR 164.514(a) through (c) for de-identified PHI, and 5 U.S.C. 552a(b)(5), or

(c) Determining that the requirements of 45 CFR 164.514(e) for limited data sets, and 5 U.S.C. 552a(b)(5) are met.

10. Information from records, including but not limited to information concerning the commission of crimes, suspected cases of abuse (including child, elder and sexual abuse), the reporting of neglect, sexual assault or domestic violence, births, deaths, alcohol or drug abuse, immunization, cancer, or the occurrence of communicable diseases, may be disclosed to public health authorities, epidemiology centers established and funded under 25 U.S.C. 1621m, and other appropriate government authorities which are authorized by applicable Federal, State, Tribal or local law or regulations to receive such information.

Note: In Federally conducted or assisted alcohol or drug abuse programs, under 42 CFR Part 2, disclosure of patient information for purposes of criminal investigations must be authorized by court order issued under 42 CFR 2.65, except that reports of suspected child abuse may be made to the appropriate State or local authorities under State law.

11. Information may be disclosed from these records regarding suspected cases of child abuse to:

(a) Federal, State or Tribal agencies that need to know the information in the performance of their duties, and

(b) Members of community child protection teams for the purposes of investigating reports of suspected child abuse, establishing a diagnosis, formulating or monitoring a treatment plan, and making recommendations to the appropriate court. Community child protection teams are comprised of representatives of Tribes, the BIA, child protection service agencies, the judicial system, law enforcement agencies and IHS.

12. IHS may disclose information from these records in litigations and/or proceedings related to an administrative claim when:

(a) IHS has determined that the use of such records is relevant and necessary to the litigation and/or proceedings related to an administrative claim and would help in the effective representation of the affected party listed in subsections (i) through (iv) below, and that such disclosure is compatible with the purpose for which the records were collected. Such disclosure may be made to the HHS/OGC and/or Department of Justice (DOJ), pursuant to an agreement between IHS and OGC, when any of the following is a party to litigation and/or proceedings related to an administrative claim or has an interest in the litigation and/or proceedings related to an administrative claim:

(i) HHS or any component thereof; or

(ii) Any HHS employee in his or her official capacity; or

(iii) Any HHS employee in his or her individual capacity where the DOJ (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(iv) The United States or any agency thereof (other than HHS) where HHS/OGC has determined that the litigation and/or proceedings related to an administrative claim is likely to affect HHS or any of its components.

(b) In the litigation and/or proceedings related to an administrative claim described in subsection (a) above, information from these records may be disclosed to a court or other tribunal, or to another party before such tribunal in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the information expressly authorized by such order.

13. Records may be disclosed under a business associate agreement to an IHS contractor (including a Health Information Exchange, Regional Health Information Organization, or E-prescribing Gateway) for the purpose of computerized data entry, medical

transcription, duplication services, maintenance of records, data formatting services or for any other agency function or activity involving the use or disclosure of records contained in this system.

14. Records may be disclosed under a personal services contract or other agreement to student volunteers, individuals working for IHS, and other individuals performing functions for IHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

15. Records regarding specific medical services provided to a unemancipated minor individual may be disclosed to the unemancipated minor's parent or legal guardian who previously consented to those specific medical services, to the extent permitted under 45 CFR 164.502(g).

16. Records may be disclosed to an individual having authority to act on behalf of an incompetent individual concerning health care decisions, to the extent permitted under 45 CFR 164.502(g).

17. Information may be used or disclosed from an IHS facility directory in response to an inquiry about a named individual from a member of the general public to establish the individual's presence (and location when needed for visitation purposes) or to report the individual's condition while hospitalized (*e.g.*, satisfactory or stable), unless the individual objects to disclosure of this information. IHS may provide the religious affiliation only to members of the clergy.

18. Information may be disclosed to a relative, a close personal friend, or any other person identified by the individual that is directly relevant to that person's involvement with the individual's care or payment for health care.

Information may also be used or disclosed in order to notify a family member, personal representative, or other person responsible for the individual's care, of the individual's location, general condition or death.

If the individual is present for, or otherwise available prior to, a use or disclosure, and is competent to make health care decisions;

(a) May use or disclose after the facility obtains the individual's consent,

(b) Provides the individual with the opportunity to object and the individual does not object, or

(c) It could reasonably infer, based on professional judgment, that the individual does not object. If the individual is not present, or the opportunity to agree or object cannot practicably be provided due to incapacity or emergent circumstances, an IHS health care provider may determine, based on professional judgment, whether disclosure is in the individual's best interest, and if so, may disclose only what is directly relevant to the individual's health care.

19. Information concerning exposure to the HIV/AIDS may be disclosed, to the extent authorized by Federal, State or Tribal law, to the sexual and/or needle-sharing partner(s) of a subject individual who is infected with HIV/AIDS under the following circumstances:

(a) The information has been obtained in the course of clinical activities at IHS facilities;

(b) IHS has made reasonable efforts to counsel and encourage the subject individual to provide information to the individual's sexual or needle-sharing partner(s);

(c) IHS determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified;

(d) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices; and

(e) IHS has advised the partner(s) to whom information is disclosed that they shall not re-disclose or use such information for a purpose other than that for which the disclosure was made.

20. Records may be disclosed to Federal and non-Federal protection and advocacy organizations that serve AI/AN for the purpose of investigating incidents of abuse and neglect of individuals with developmental disabilities (including mental disabilities), as defined in 42 U.S.C. 10801–10805(a)(4) and 42 CFR 51.41–46, to the extent that such disclosure is authorized by law and the conditions of 45 CFR 1386.22(a)(2) are met.

21. Records of an individual may be disclosed to a correctional institution or law enforcement official, during the period of time the individual is either an inmate or is otherwise in lawful custody, for the provision of health care to the individual or for health and safety purposes. Disclosure may be made upon the representation of either the institution or a law enforcement official that disclosure is necessary for the provision of health care to the individual, for the health and safety of the individual and others (*e.g.*, other inmates, employees of the correctional facility, transport officers), and for facility administration and operations. This routine use applies only for as long as the individual remains in lawful custody, and does not apply once the individual is released on parole or placed on either probation or on supervised release, or is otherwise no longer in lawful custody.

22. Records including patient name, date of birth, SSN, gender and other identifying information may be disclosed to the SSA as is reasonably necessary for the purpose of conducting an electronic validation of the SSN(s) maintained in the record to the extent required under an agreement between IHS and SSA.

23. Disclosure of relevant health care information may be made to funeral directors or representatives of funeral homes in order to allow them to make necessary arrangements prior to and in anticipation of an individual's impending death.

24. Records may be disclosed to a public or private covered entity that is authorized by law or charter to assist in disaster relief efforts (*e.g.*, the Red Cross and the Federal Emergency Management Administration), for purposes of coordinating information with other similar entities concerning an individual's health care, payment for health care, notification of the individual's whereabouts and his or her health status or death.

25. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, ledgers, card files, microfiche, microfilm, computer tapes, disk packs, digital photo discs, and automated, computer-based or electronic files.

RETRIEVABILITY:

Indexed by name, record number, and SSN and cross-indexed.

SAFEGUARDS:

Safeguards apply to records stored on-site and off-site.

1. *Authorized Users:* Access is limited to authorized IHS personnel, volunteers, IHS contractors, subcontractors, and other business associates in the performance of their duties. Examples of

authorized personnel include: medical records personnel, business office personnel, contract health staff, health care providers, authorized researchers, medical audit personnel, health care team members, and legal and administrative personnel on a need to know basis.

2. *Physical Safeguards:* Records are kept in locked metal filing cabinets or in a secured room or in other monitored areas accessible to authorized users at all times when not actually in use during working hours and at all times during non-working hours. Magnetic tapes, disks, other computer equipment (*e.g.*, pc workstations) and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced. Telecommunication equipment (*e.g.*, computer terminal, servers, modems and disks) of the Resource and Patient Management System (RPMS) are maintained in locked rooms during non-working hours. Network (Internet or Intranet) access of authorized individual(s) to various automated and/or electronic programs or computers (*e.g.*, desktop, laptop, handheld or other computer types) containing protected personal identifiers or PHI is reviewed periodically and controlled for authorizations, accessibility levels, expirations or denials, including passwords, encryptions or other devices to gain access. Combinations and/or electronic passcards on door locks are changed periodically and whenever an IHS employee resigns, retires or is reassigned.

3. *Procedural Safeguards:* Within each facility a list of personnel or categories of personnel having a demonstrable need for the records in the performance of their duties has been developed and is maintained. Procedures have been developed and implemented to review one-time requests for disclosure to personnel who may not be on the authorized user list. Proper charge-out procedures are followed for the removal of all records from the area in which they are maintained. Records may not be removed from the facility except in certain circumstances, such as compliance with a valid court order or shipment to the Federal Records Center(s) (FRC). Persons who have a need to know are entrusted with records from this system of records and are instructed to safeguard the confidentiality of these records. These individuals are to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act and the HIPAA Privacy Rule as adopted, and to destroy all copies or to return such records when the need to know has expired. Procedural instructions include the statutory penalties for noncompliance.

The following automated information systems (AIS) security procedural safeguards are in place for automated medical, health and billing records maintained in the RPMS. A profile of automated systems security is maintained. Security clearance procedures for screening individuals, both Government and contractor personnel, prior to their participation in the design, operation, use or maintenance of IHS AIS are implemented. The use of current passwords and log-on codes are required to protect sensitive automated data from unauthorized access. Such passwords and codes are changed periodically. An automated or electronic audit trail is maintained and reviewed periodically. Only authorized IHS Division of Information Resources staff may modify automated files in batch mode. Personnel at remote terminal sites may only retrieve automated or electronic data. Such retrievals are password protected. Privacy Act requirements, HIPAA Privacy and Security Rule requirements and specified AIS security provisions are specifically included in contracts and agreements and the system manager or his/her designee oversee compliance with these contract requirements.

4. *Implementing Guidelines:* HHS Chapter 45–10 and supplementary Chapter PHS.hf: 45–10 of the General Administration Manual; HHS, "Automated Information Systems Security Program Handbook," as amended; HHS IRM Policy HHS–IRM–2000–0005, "IRM Policy for IT Security for Remote Access"; OMB Circular A–130 "Management of Federal Information Resources"; HIPAA Security Standards for the Protection of Electronic Protected Health Information, 45 CFR 164.302 through 164.318; and E-Government Act of 2002 (Pub. L. 107–347, 44 U.S.C. Ch 36).

RETENTION AND DISPOSAL:

Patient listings which may identify individuals are maintained in IHS Area and Program Offices permanently. Inactive records are held at the facility that provided medical, health and billing services from three to seven years and then are transferred to the appropriate FRC. Monitoring strips and tapes (*e.g.,* fetal monitoring strips, EEG and EKG tapes) that are not stored in the individual's official medical record are stored at the health facility for one year and are then transferred to the appropriate FRC. (*See* Appendix 2 for FRC addresses). In accordance with the records disposition authority approved by the Archivist of the United States, paper records are maintained for 75 years after the last episode of individual care except for billing records. The retention and disposal methods for billing records will be in accordance with the approved IHS Records Schedule. The disposal methods of paper medical and health records will be in accordance with the approved IHS Records Schedule and National Archives and Records Administration (NARA). The electronic data consisting of the individual personal identifiers and PHI maintained in the RPMS or any subsequent revised IHS database system should be inactivated once the paper record is forwarded to the appropriate FRC.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Coordinating Official: Director, OCPS, IHS, Reyes Building, 801 Thompson Avenue, Suite 300, Rockville, Maryland 20852–1627. *See* Appendix 1. The IHS Area Office Directors, Service Unit Directors/Chief Executive Officers and Facility Directors listed in Appendix 1 are System Managers.

NOTIFICATION PROCEDURES:

General Procedure: Requests must be made to the appropriate System Manager (IHS Area, Program Office Director or Service Unit Director/Chief Executive Officer). A subject individual who requests a copy of, or access to, his or her medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents. Such a representative may be an IHS health professional. When a subject individual is seeking to obtain information about himself/herself that may be retrieved by a different name or identifier than his/her current name or identifier, he/she shall be required to produce evidence to verify that he/she is the person whose record he/she seeks. No verification of identity shall be required where the record is one that is required to be disclosed under the Freedom of Information Act. Where applicable, fees for copying records will be charged in accordance with the schedule set forth in 45 CFR Part 5b.

Requests in Person: Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to the designated agency employee, such employee shall make a written record verifying the

subject individual's identity. If the subject individual has no identification papers, the responsible system manager or designated agency official shall require that the subject individual certify in writing that he/she is the individual whom he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. If an individual is unable to sign his/her name when required, he/she shall make his/her mark and have the mark verified in writing by two additional persons.

Requests by Mail: Written requests must contain the name and address of the requester, his/her date of birth and at least one other piece of information that is also contained in the subject record, and his/her signature for comparison purposes. If the written request does not contain sufficient information, the System Manager shall inform the requester in writing that additional, specified information is required to process the request.

Requests by Telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

Parents, Legal Guardians and Personal Representatives: Parents of minor children and legal guardians or personal representatives of legally incompetent individuals shall verify their own identification in the manner described above, as well as their relationship to the individual whose record is sought. A copy of the child's birth certificate or court order establishing legal guardianship may be required if there is any doubt regarding the relationship of the individual to the patient.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures: Requesters may write, call or visit the last IHS facility where medical care was provided. Requesters should also provide a reasonable description of the record being sought. Requesters may be required to fill out an IHS–810 form, Authorization for Use or Disclosure of Protected Health Information, for this purpose. Requesters may be required to fill out the following forms for the purposes stated:

a. IHS–912–1 form, Request for Restriction(s). (The requester may restrict the use of their PHI with some exceptions);

b. IHS–912–2 form, Request for Revocation of Restriction(s). (The requester or the IHS may revoke a previous restriction(s));

c. IHS–913 form, Request for An Accounting of Disclosures. (The requester and/or personal representative may request an accounting where IHS has disclosed during the calendar year without their consent); or,

d. IHS–963 form, Request for Confidential Communication By Alternative Means or Alternate Location. (The requester and/or personal representative may request their PHI be communicated by an alternative means such as regular mail, telephone, or facsimile; or communicated to an alternate location).

Contesting Record Procedures: Requesters may write, call or visit the appropriate IHS Area/Program Office Director or Service Unit Director/Chief Executive Officer at his/her address specified in Appendix 1, and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. The requestor shall use the IHS–917 form, Request for Correction/Amendment of Protected Health Information, for this purpose.

Record source categories: Individual and/or family members, IHS health care personnel, contract health care providers, State and local health care provider organizations, Medicare and Medicaid funding agencies, and the SSA.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1—System Managers and IHS Locations Under Their Jurisdiction Where Records Are Maintained

Director, Aberdeen Area Indian Health Service, Room 309, Federal Building, 115 Fourth Avenue, SE., Aberdeen, South Dakota 57401.
Director, Cheyenne River Service Unit, Eagle Butte Indian Hospital, P.O. Box 1012, Eagle Butte, South Dakota 57625.
Director, Crow Creek Service Unit, Ft. Thompson Indian Health Center, P.O. Box 200, Ft. Thompson, South Dakota 57339.
Director, Fort Berthold Service Unit, Fort Berthold Indian Health Center, P.O. Box 400, New Town, North Dakota 58763.
Director, Carl T. Curtis Health Center, P.O. Box 250, Macy, Nebraska 68039.
Director, Fort Totten Service Unit, Fort Totten Indian Health Center, P.O. Box 200, Fort Totten, North Dakota 58335.
Director, Kyle Indian Health Center, P.O. Box 540, Kyle, South Dakota 57752.
Director, Lower Brule Indian Health Center, P.O. Box 191, Lower Brule, South Dakota 57548.
Director, McLaughlin Indian Health Center, P.O. Box 879, McLaughlin, South Dakota 57642.
Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071.
Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770.
Director, Rapid City Service Unit, Rapid City Indian Hospital, 3200 Canyon Lake Drive, Rapid City, South Dakota 57701.
Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570.
Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, P.O. Box 189, Sisseton, South Dakota 57262.
Director, Standing Rock Service Unit, Fort Yates Indian Hospital, P.O. Box J, Fort Yates, North Dakota 58538.
Director, Trenton-Williston Indian Health Center, P.O. Box 210, Trenton, North Dakota 58853.
Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, P.O. Box 160, Belcourt, North Dakota 58316.
Director, Wanblee Indian Health Center, 100 Clinic Drive, Wanblee, South Dakota 57577.
Director, Yankton-Wagner Service Unit, Wagner Indian Hospital, 110 Washington Street, Wagner, South Dakota 57380.
Director, Youth Regional Treatment Center, P.O. Box 68, Mobridge, South Dakota 57601.
Director, Sac & Fox Health Center, 307 Meskwaki Road, Tama, Iowa 52339.
Director, Santee Health Center, 425 Frazier Avenue, N ST Street #2, Niobrara, Nebraska 68760.
Director, Alaska Area Native Indian Health Service, 4141 Ambassador Drive, Suite 300, Anchorage, Alaska 99508–5928.
Director, Albuquerque Area Health Service, 5300 Homestead Road, NE, Albuquerque, New Mexico 87110.
Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049.
Director, To'Hajille Health Center, P.O. Box 3528, Canoncito, New Mexico 87026.
Director, New Sunrise Treatment Center, P.O. Box 219, San Fidel, New Mexico 87049.
Director, Albuquerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive, NE., Albuquerque, New Mexico 87106.
Director, Albuquerque Indian Dental Clinic, P.O. Box 67830, Albuquerque, New Mexico 87193.
Director, Santa Fe Service Unit, Santa Fe Indian Hospital, 1700 Cerrillos Road, Santa Fe, New Mexico 87505.
Director, Santa Clara Health Center, RR5, Box 446, Espanola, New Mexico 87532.
Director, San Felipe Health Center, P.O. Box 4344, San Felipe, New Mexico 87001.
Director, Cochiti Health Center, P.O. Box 105, 255 Cochiti Street, Cochiti, New Mexico 87072.
Director, Santo Domingo Health Center, P.O. Box 340, Santo Domingo, New Mexico 87052.

Director, Southern Colorado-Ute Service Unit, P.O. Box 778, Ignacio, Colorado 81137.
Director, Ignacio Indian Health Center, P.O. Box 889, Ignacio, Colorado 81137.
Director, Ute Mountain Ute Health Center, Towaoc, Colorado 81334.
Director, Jicarilla Indian Health Center, P.O. Box 187, Dulce, New Mexico 87528.
Director, Mescalero Service Unit, Mescalero Indian Hospital, P.O. Box 210, Mescalero, New Mexico 88340.
Director, Taos/Picuris Indian Health Center, P.O. Box 1956, 1090 Goat Springs Road, Taos, New Mexico 87571.
Director, Zuni Service Unit, Zuni Indian Hospital, P.O. Box 467, Zuni, New Mexico 87327.
Director, Pine Hill Health Center, P.O. Box 310, Pine Hill, New Mexico 87357.
Director, Bemidji Area Indian Health Service, 522 Minnesota Avenue, NW., Bemidji, Minnesota 56601.
Director, Red Lake Service Unit, PHS Indian Hospital, Highway 1, Red Lake, Minnesota 56671.
Director, Leech Lake Service Unit, PHS Indian Hospital, 425 7th Street, NW., Cass Lake, Minnesota 56633.
Director, White Earth Service Unit, PHS Indian Hospital, P.O. Box 358, White Earth, Minnesota 56591.
Director, Billings Area Indian Health Service, P.O. Box 36600, 2900 4th Avenue North, Billings, Montana 59107.
Director, Blackfeet Service Unit, Browning Indian Hospital, P.O. Box 760, Browning, Montana 59417.
Director, Heart Butte PHS Indian Health Clinic, Heart Butte, Montana 59448.
Director, Crow Service Unit, Crow Indian Hospital, Crow Agency, Montana 59022.
Director, Lodge Grass PHS Indian Health Center, Lodge Grass, Montana 59090.
Director, Pryor PHS Indian Health Clinic, P.O. Box 9, Pryor, Montana 59066.
Director, Fort Peck Service Unit, Poplar Indian Hospital, Poplar, Montana 59255.
Director, Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526.
Director, Hays PHS Indian Health Clinic, Hays, Montana 59526.
Director, Northern Cheyenne Service Unit, Lame Dear Indian Health Center, Lame Deer, Montana 59043.
Director, Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514.
Director, Arapahoe Indian Health Center, Arapahoe, Wyoming 82510.
Director, Chief Redstone Indian Health Center, Wolf Point, Montana 59201.
Director, California Area Indian Health Service, John E. Moss Federal Building, 650 Capitol Mall, Suite 7–100, Sacramento, California 95814.
Director, Nashville Area Indian Health Service, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214–2634.
Director, Catawba PHS Indian Nation of South Carolina, P.O. Box 188, Catawba, South Carolina 29704.
Director, Unity Regional Youth Treatment Center, P.O. Box C–201, Cherokee, North Carolina 28719.
Director, Navajo Area Indian Health Service, P.O. Box 9020, Highway 264, Window Rock, Arizona 86515–9020.
Director, Chinle Service Unit, Chinle Comprehensive Health Care Facility, Hwy 191 & Hospital Road, P.O. Drawer PH, Chinle, Arizona 86503.
Director, Tsaile Health Center, P.O. Box 467, Navajo Routes 64 and 12, Tsaile, Arizona 86556.
Director, Rock Point Field Clinic, c/o Tsaile Health Center, P.O. Box 647, Tsaile, Arizona 86557.
Director, Pinon Health Center, Navajo Route 4, P.O. Box 10, Pinon, Arizona 86510.
Director, Crownpoint Service Unit, Crownpoint Comprehensive Health Care Facility, P.O. Box 358, Crownpoint, New Mexico 87313.
Director, Pueblo Pintado Health Station, c/o Crownpoint Comprehensive Health Care Facility, P.O. Box 358, Crownpoint, New Mexico 87313.
Director, Fort Defiance Service Unit, Fort Defiance Indian Hospital, P.O. Box 649, Intersection of Navajo Routes N12 and N7, Fort Defiance, Arizona 86515.
Director, Nahata Dziil Health Center, P.O. Box 125, Sanders, Arizona 86512.
Director, Gallup Service Unit, Gallup Indian Medical Center, P.O. Box 1337, Nizhoni Boulevard, Gallup, New Mexico 87305.
Director, Tohatchi Indian Health Center, P.O. Box 142, Tohatchi, New Mexico 87325.
Director, Ft. Wingate Health Station, c/o Gallup Indian Medical Center, P.O. Box 1337, Gallup, New Mexico 87305.
Director, Kayenta Service Unit, Kayenta Indian Health Center, P.O. Box 368, Kayenta, Arizona 86033.
Director, Inscription House Health Center, P.O. Box 7397, Shonto, Arizona 86054.
Director, Dennehotso Clinic, c/o Kayenta Health Center, P.O. Box 368, Kayenta, Arizona 86033.
Director, Shiprock Service Unit, Northern Navajo Medical Center, P.O. Box 160, U.S. Hwy 491 North, Shiprock, New Mexico 87420.
Director, Dzilth-Na-O–Dith-Hle Indian Health Center, 6 Road 7586, Bloomfield, New Mexico 87413.
Director, Four Corners Regional Health Center, U.S. Hwy 160, Navajo Route 35–Red Mesa, HRC 6100, Box 30, Teec Nos Pos, Arizona 86514.
Director, Sanostee Health Station, c/o Northern Navajo Medical Center, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Toadlena Health Station, c/o Northern Navajo Medical Center, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Teen Life Center, c/o Northern Navajo Medical Center, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Oklahoma City Area Indian Health Service, Five Corporation Plaza, 3625 NW 56th Street, Oklahoma City, Oklahoma 73112.
Director, Claremore Service Unit, Claremore Comprehensive Indian Health Facility, West Will Rogers Boulevard and Moore, Claremore, Oklahoma 74017.
Director, Clinton Service Unit, Clinton Indian Hospital, Route 1, P.O. Box 3060, Clinton, Oklahoma 73601–9303.
Director, El Reno PHS Indian Health Clinic, 1631A E. Highway 66, El Reno, Oklahoma 73036.
Director, Watonga Indian Health Center, Route 1, Box 34–A, Watonga, Oklahoma 73772.
Director, Haskell Service Unit, PHS Indian Health Center, 2415 Massachusetts Avenue, Lawrence, Kansas 66044.
Director, Lawton Service Unit, Lawton Indian Hospital, 1515 Lawrie Tatum Road, Lawton, Oklahoma 73501.
Director, Anadarko Indian Health Center, P.O. Box 828, Anadarko, Oklahoma 73005.
Director, Carnegie Indian Health Center, P.O. Box 1120, Carnegie, Oklahoma 73150.
Director, Holton Service Unit, PHS Indian Health Center, 100 West 6th Street, Holton, Kansas 66436.
Director, Pawnee Service Unit, Pawnee Indian Service Center, RR2, Box 1, Pawnee, Oklahoma 74058–9247.
Director, Pawhuska Indian Health Center, 715 Grandview, Pawhuska, Oklahoma 74056.
Director, Tahlequah Service Unit, W. W. Hastings Indian Hospital, 100 S. Bliss, Tahlequah, Oklahoma 74464.
Director, Wewoka Indian Health Center, P.O. Box 1475, Wewoka, Oklahoma 74884.
Director, Phoenix Area Indian Health Service, Two Renaissance Square, 40 North Central Avenue, Phoenix, Arizona 85004.
Director, Colorado River Service Unit, Chemehuevi Indian Health Clinic, P.O. Box 1858, Havasu Landing, California 92363.
Director, Colorado River Service Unit, Havasupai Indian Health Station, P.O. Box 129, Supai, Arizona 86435.
Director, Colorado River Service Unit, Parker Indian Health Center, 12033 Agency Road, Parker, Arizona 85344.
Director, Colorado River Service Unit, Peach Springs Indian Health Center, P.O. Box 190, Peach Springs, Arizona 86434.
Director, Colorado River Service Unit, Sherman Indian High School, 9010 Magnolia Avenue, Riverside, California 92503.
Director, Elko Service Unit, Newe Medical Clinic, 400 "A" Newe View, Ely, Nevada 89301.
Director, Elko Service Unit, Southern Bands Health Center, 515 Shoshone Circle, Elko, Nevada 89801.
Director, Fort Yuma Service Unit, Fort Yuma Indian Hospital, P.O. Box 1368, Fort Yuma, Arizona 85366.
Director, Keams Canyon Service Unit, Hopi Health Care Center, P.O. Box 4000, Polacca, Arizona 86042.
Director, Schurz Service Unit, Schurz Service Unit Administration, Drawer A, Schurz, Nevada 89427.
Director, Fort McDermitt Clinic, P.O. Box 315, McDermitt, Nevada 89421.
Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016.

Director, Phoenix Service Unit, Salt River Health Center, 10005 East Osborn Road, Scottsdale, Arizona 85256.
Director, San Carlos Service Unit, Bylas Indian Health Center, P.O. Box 208, Bylas, Arizona 85550.
Director, San Carlos Service Unit, San Carlos Indian Hospital, P.O. Box 208, San Carlos, Arizona 85550.
Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Ft. Duchesne, Utah 84026.
Director, Whiteriver Service Unit, Cibecue Health Center, P.O. Box 37, Cibecue, Arizona 85941.
Director, Whiteriver Service Unit, Whiteriver Indian Hospital, P.O. Box 860, Whiteriver, Arizona 85941.
Director, Desert Vision Youth Wellness Center, P.O. Box 458, Sacaton, Arizona 85247.
Director, Nevada Skies Youth Wellness Center, 104 Big Bend Ranch Road, P.O. Box 280, Wadsworth, Nevada 89442.
Director, Portland Area Indian Health Service, Room 476, Federal Building, 1220 Southwest Third Avenue, Portland, Oregon 97204–2829.
Director, Colville Service Unit, Colville Indian Health Center, P.O. Box 71–Agency Campus, Nespelem, Washington 99155.
Director, Fort Hall Service Unit, Not-Tsoo Gah-Nee Health Center, P.O. Box 717, Fort Hall, Idaho 83203.
Director, Warm Springs Service Unit, Warm Springs Indian Health Center, P.O. Box 1209, Warm Springs, Oregon 97761.
Director, Wellpinit Service Unit, David C. Wynecoop Memorial Clinic, P.O. Box 357, Wellpinit, Washington 99040.
Director, Western Oregon Service Unit, Chemawa Indian Health Center, 3750 Chemawa Road, NE, Salem, Oregon 97305–1198.
Director, Yakama Service Unit, Yakama Indian Health Center, 401 Buster Road, Toppenish, Washington 98948.
Director, Tucson Area Indian Health Service, 7900 South "J" Stock Road, Tucson, Arizona 85746–9352.
Chief Medical Officer, Pascua Yaqui Service Unit, Division of Public Health, 7900 South "J" Stock Road, Tucson, Arizona 85746.
Facility Director, San Xavier Indian Health Center, 7900 South "J" Stock Road, Tucson, Arizona 85746.
Director, Sells Service Unit, Santa Rosa Indian Health Center, HCO1, P.O. Box 8700, Sells, Arizona 85634.
Director, Sells Service Unit, Sells Indian Hospital, P.O. Box 548, Sells, Arizona 85634.
Director, Sells Service Unit, San Simon Health Center, HC01 Box 8150, Sells, Arizona 85634.

Appendix 2—Federal Archives and Records Centers

District of Columbia, Maryland Except U.S. Court Records for Maryland, Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20746–8001.
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, Federal Archives and Records Center, Frederick C. Murphy Federal Center, 380 Trapelo Road, Waltham, Massachusetts 02452–6399.
Northeast Region, Federal Archives and Records Center, 10 Conte Drive, Pittsfield, Massachusetts 01201–8230.
Mid-Atlantic Region and Pennsylvania, Federal Archives and Records Center, 14700 Townsend Road, Philadelphia, Pennsylvania 19154–1096.
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, Federal Archives and Records Center, 1557 St. Joseph Avenue, East Point, Georgia 30344–2593.
Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin and U.S. Court Records for the mentioned States, Federal Archives and Records Center, 7358 South Pulaski Road, Chicago, Illinois 60629–5898.
Michigan, Except U.S. Court Records, Federal Records Center, 3150 Springboro Road, Dayton, Ohio 45439–1883.
Kansas, Iowa, Missouri and Nebraska, and U.S. Court Records for the mentioned States, Federal Archives and Records Center, 2312 East Bannister Road, Kansas City, Missouri 64131–3011.
New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands, and U.S. Court Records for the mentioned States and territories, 200 Space Center Drive, Lee's Summit, Missouri 64064–1182.
Arkansas, Louisiana, Oklahoma and Texas, and U.S. Courts Records for the mentioned States, Federal Archives and Records Center, P.O. Box 6216, Ft. Worth, Texas 76115–0216.
Colorado, Wyoming, Utah, Montana, New Mexico, North Dakota, and South Dakota, and U.S. Courts Records for the mentioned States, Federal Archives and Records Center, P.O. Box 25307, Denver, Colorado 80225–0307.
Northern California Except Southern California, Hawaii, and Nevada Except Clark County, the Pacific Trust Territories, and American Samoa, and U.S. Courts Records for the mentioned States and territories, Federal Archives and Records Center, 1000 Commodore Drive, San Bruno, California 94066–2350.
Arizona, Southern California, and Clark County, Nevada, and U.S. Courts Records for the mentioned States, Federal Archives and Records Center, 23123 Cajalco Road, Perris, California 93570–7298.
Washington, Oregon, Idaho and Alaska, and U.S. Courts Records for the mentioned States, Federal Archives and Records Center, 6125 Sand Point Way NE, Seattle, Washington 98115–7999.

[FR Doc. 2010–285 Filed 1–11–10; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5322–N–01]

Public Housing Assessment System (PHAS): Asset Management Transition Year 2 Information

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides new information related to scoring and submission requirements for public housing agencies (PHAs) under the Public Housing Assessment System (PHAS) for PHA fiscal years ending June 30, 2009, September 30, 2009, December 31, 2009, and March 31, 2010. These fiscal years coincide with the second year of project-based budgeting and accounting under asset management, also known as "Transition Year 2."

FOR FURTHER INFORMATION CONTACT: The Office of Public and Indian Housing, Real Estate Assessment Center (REAC), Attention: Wanda Funk, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410; telephone number (REAC Technical Assistance Center) 888–245–4860 (this is a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Background on PHAS

PHAS was established by a final rule published on September 1, 1998 (63 FR 46596). Prior to 1998, PHAs were evaluated by HUD under the Public Housing Management Assessment Program (PHMAP), the regulations for which are found at 24 CFR part 901. PHAS expanded assessment of a PHA to four key areas of a PHA's operations: (1) The physical condition of the PHA's properties; (2) the PHA's financial condition; (3) the PHA's management operations submitted as a self-certification; and (4) the resident service and satisfaction assessment (through a resident survey).

Under the current PHAS, and on the basis of these four indicators, a PHA receives a composite score that represents a single score for a PHA's entire operation and a corresponding performance designation. PHAs that are designated high performers receive public recognition and relief from specific HUD requirements. PHAs that are designated standard and

substandard performers shall be required to take corrective action to remedy identified deficiencies. PHAs that are designated troubled performers are subject to remedial action.

By final rule published on January 11, 2000 (65 FR 1712), HUD amended the PHAS regulations and implemented certain statutory changes resulting from enactment of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, October 21, 1998).

B. Public Housing Operating Fund Program

The regulations governing the Public Housing Operating Fund program are of key relevance to the proper operation of PHAs and, consequently, to PHAS. Operating funds are made available to a PHA for the operation and management of public housing, and therefore the regulations applicable to a PHA's operation and management of public housing must be considered in any changes proposed to PHAS. The regulations for the Public Housing Operating Fund Program are found at 24 CFR part 990, were published on September 19, 2005 (70 FR 54983), followed by a correction published on October 24, 2005 (70 FR 61366), and became effective on November 18, 2005.

Subpart H of the part 990 regulations (§§ 990.255 to 990.290), as revised by the September 2005 rule, establishes the requirements regarding asset management. Under § 990.260(a), PHAs that own and operate 250 or more dwelling rental units must operate using an asset management model consistent with the subpart H regulations. PHAs with fewer than 250 dwelling rental units may elect to transition to asset management, but are not required to do so. In addition, § 223 of Title II of Division A of the 2010 Consolidated Appropriations Act, Pub. L. 111–117 (Approved December 16, 2009), states that PHAs that own and operate 400 or fewer public housing units may elect to be exempt from any asset management requirement for the remainder of Fiscal Year (FY) 2010, with the exception of PHAs that are seeking a discontinuance of a reduction of operating subsidy, *i.e.*, a stop-loss. This provision may remain in effect for future years, depending on the language in that year's appropriations act.

PHAs with more than 400 public housing units in CY 2009 and for the remainder of FY 2010, PHAs with 250 or more public housing units thereafter, and PHAs that elect to transition to asset management are required to implement project-based management, project-based budgeting, and project-based accounting. All project-based components are defined in the regulations at 24 CFR part 990, subpart H, and are essential components of asset management.

C. PHAS Scoring During Transition Year 1

On August 21, 2008, HUD published **Federal Register** notice FR–5227–N–01, Public Housing Assessment System (PHAS): Asset Management Transition Year Information and Uniform Financial Reporting Standards (UFRS) Information (73 FR 49588). In that notice, HUD indicated that, for PHAs with fiscal years ending June 30, 2008, through March 31, 2009, HUD would not issue a new overall PHAS score. Further, PHAs were not required to submit their management operations information and were not subject to resident satisfaction surveys (other than PHAs with fiscal years ending June 30, 2008, for whom the survey results were informational only). PHAs still were required to submit their annual financial statements (not scored) and were subject to the same physical inspection frequencies, the scores from which also were for information purposes only.

II. PHAS Scoring During Transition Year 2

Transition Year 2 includes those PHAs with fiscal years ending June 30, 2009, September 30, 2009, December 31, 2009, and March 31, 2010. This notice also applies to Moving-to-Work PHAs that are not specifically exempted from a PHAS assessment in their grant agreements.

Under the current PHAS rule, small PHAs (fewer than 250 public housing units) generally are assessed every other year. During Transition Year 2, small PHAs will be assessed pursuant to 24 CFR 902.9. All other PHAs will be issued a new overall PHAS score under the current PHAS rule.

The following are specific instructions for submissions and scoring:

Physical Condition Inspections. Physical condition inspections will be conducted for PHAs during Transition Year 2 in accordance with existing protocols. Physical condition inspection scores for projects on both the 100-point scale and the 30-point scale will be available in Secure Systems, through the Integrated Assessment Subsystem (NASS). HUD also will give inspected projects credit for the physical condition and neighborhood environment factor. The performance incentive for PHAs that score 24 points or more on the 30-point scale that provides for physical condition inspections every other year will apply after the adjustment for the physical condition and neighborhood environment factor. Physical condition inspections of projects will be conducted on the same schedule as past inspections, and conducted, if applicable, in the quarter prior to a PHA's fiscal year end. Because of scheduling logistics, HUD may need to have physical condition inspections conducted sooner than one year from the last physical condition inspection. However, no physical condition inspections for the purposes of PHAS scoring will occur any sooner than 6 months from the last physical condition inspection for PHAS scoring, but HUD is not prevented from conducting a physical condition inspection of projects for purposes other than PHAS scoring. PHAs will continue to be able to request a technical review or database adjustment for their physical condition inspections during Transition Year 2, in accordance with the current PHAS regulations.

Financial Condition Indicator. PHAs will be required to submit their unaudited financial condition information and audited financial condition information, if applicable, in accordance with 24 CFR part 5, subpart H, and 24 CFR part 902, subpart C. The financial condition then will be assessed pursuant to the current PHAS rule.

Management Operations Indicator. PHAs will be required to submit their management operations certification, pursuant to 24 CFR 902, subpart D. Small PHAs that are not being assessed in Transition Year 2 (see above) are not required to submit a management operations certification.

PHAs that are converting to asset management and for which the submission of the current management operations certification would impose an administrative hardship should request a waiver for their management operations certification, pursuant to 24 CFR 5.110, within 30 days from the date of this notice. Upon a determination of good cause, HUD may waive the requirement for a PHA to submit its management operations certification. Please send all waiver requests to your local field office pursuant to PIH Notice 2009–41.

If a PHA's waiver request is approved, the most recent management operations score of record will be carried over to the fiscal year being assessed. If a PHA's waiver request is not approved, it shall have 60 days from the date of its notification of denial to submit its management operations certification.

For PHAs with fiscal years ending June 30, 2009, or September 30, 2009, their management operations certification is due 2 months after the date of this notice.

Resident Assessment Indicator. HUD will not administer the resident service and satisfaction survey during Transition Year 2. A PHA has a choice regarding its resident service and satisfaction assessment score:

(1) The most recent resident service and satisfaction assessment score will be carried over for PHAs with fiscal years ending June 30, 2009, September 30, 2009, December 31, 2009, and March 31, 2010; or

(2) If a PHA believes it would have received a higher resident service and satisfaction assessment score if a new resident survey had been conducted, it may appeal its resident service and satisfaction assessment score pursuant to 24 CFR 902.69 and must include the PHA's supporting documentation and reasons for the appeal. Please send all appeal requests to the Deputy Assistant Secretary, Real Estate Assessment Center, at the following address:

U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Attention: Deputy Assistant Secretary, Departmental Real Estate Assessment Center, 550 12th Street, SW., Suite 100, Washington, DC 20410.

HUD will determine if an adjustment is warranted. All other aspects of the current PHAS rule will remain in effect during Transition Year 2.

III. Environmental Review

This notice provides operating instructions and procedures in connection with activities under a **Federal Register** document that has previously been subject to a required environmental review. Accordingly, under 24 CFR 50.19(c)(4), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: January 4, 2010.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–267 Filed 1–11–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2009–OMM–0012]

MMS Information Collection Activity: 1010–0176, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf, Extension of a Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of an information collection (1010–0176).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 285, "Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf," and related forms. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by February 11, 2010.

ADDRESSES: Submit comments by either fax (202) 395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0176). Please also submit a copy of your comments to MMS by any of the means below.

- Electronically: Go to *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter docket ID MMS–2009–OMM–0012, then click search. Under the tab "View by Relevance" you can submit public comments and view supporting and related materials available for this collection of information. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference Information Collection 1010–0176 in your subject line and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 285, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.

Forms: MMS–0002, MMS–0003, MMS–0004, MMS–0005, and MMS–0006.

OMB Control Number: 1010–0176.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to issue leases, easements, or rights-of-way on the OCS for activities that produce or support production, transportation, or transmission of energy from sources other than oil and gas (renewable energy). Specifically, subsection 8(p) of the OCS Lands Act, as amended by section 388 of the Energy Policy Act of 2005 (Pub. L. 109–58), directs the Secretary of the Interior to issue any necessary regulations to carry out the OCS renewable energy program. The Secretary delegated the authority to issue such regulations and implement an OCS renewable energy program to the Minerals Management Service (MMS). The MMS has issued regulations for OCS renewable energy activities at 30 CFR part 285.

Subsequent to the approval of the information collection requirements in the final 30 CFR part 285 regulations, MMS developed five new forms that respondents must use to submit certain information collection requirements in Subpart D, Lease and Grant Administration, and Subpart E, Payments and Financial Assurance Requirements. These forms entail no additional burden as they only clarify and facilitate the submission of the currently approved information collection requirements to which the forms pertain. This resubmitted ICR is revised to: Correct citation numbering, fine tune words to better match requirements in the final rule, and reflect the inclusion of the new Forms MMS–0002, MMS–0003, MMS–0004, MMS–0005, and MMS–0006. No burden hours have been changed from the OMB currently approved collection.

Regulations implementing these responsibilities are under 30 CFR part 285. Responses are mandatory or required to obtain or retain a benefit. No questions of a sensitive nature are asked. The MMS protects information considered proprietary according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR 285.113, addressing disclosure of data and information to be made available to the public and others.

Respondents will operate commercial and noncommercial technology projects

that include installation, construction, operation and maintenance, and decommissioning of offshore facilities, as well as possible onshore support facilities. The MMS must ensure that these activities and operations on the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the protection and development of OCS resources. To do this, MMS needs information concerning the proposed activities, facilities, safety equipment, inspections and tests, and natural and manmade hazards near the site, as well as assurance of fiscal responsibility. Specifically, MMS will use the information collected under part 285 to:

- Determine if applicants and assignees are qualified to hold leases on the OCS. Information is used to track ownership of leases as to record title, operating rights, and right-of-way (ROW) or right of use and easement (RUE), as well as to approve requests to designate an operator to act on the lessee's behalf. Information is necessary to approve assignment, relinquishment, or cancellation requests. Information is used to document that a lease, ROW, or RUE has been surrendered by the record title holder and to ensure that all legal obligations are met and facilities are properly decommissioned.
- Determine if an application for a ROW or RUE serves the purpose specified in the grant.
- Review and approve SAPs, COPs, and GAPs prior to allowing activities to commence on a lease to ensure that the activities will protect human, marine, and coastal environments of the OCS; to review plans for taking safety equipment out of service to ensure alternate measures are used that will properly provide for the safety of the facilities. The MMS inspectors monitor the records concerning facility inspections and tests to ensure safety of operations and protection of the environment and to schedule their workload to permit witnessing and inspecting operations. The information provides lessees greater flexibility to comply with regulatory requirements through approval of alternative equipment or procedures and departures to regulations if they demonstrate equal or better compliance with the appropriate performance standards.
- Ensure that, if granted, proposed routes of an ROW or RUE do not conflict with any State requirements or unduly interfere with other OCS activities.
- Determine if all facilities, project easements, cables, pipelines, and obstructions, when they are no longer needed, are properly removed or decommissioned, and that the seafloor is cleared of all obstructions created by operations on the lease, project easement, RUE or ROW.
- Improve safety and environmental protection on the OCS through collection and analysis of accident reports to ascertain the cause of the accidents and to determine ways to prevent recurrences.

In addition to the above, forms will be submitted to MMS. The MMS needs the information on the forms for proper and efficient administration of OCS renewable energy leases and grants and to document the financial responsibility of lessees and grantees. Forms MMS–0002, MMS–0003, MMS–0004, and MMS–0006 are needed by renewable energy entities on the OCS to designate an operator and to assign or relinquish a lease or grant. Form MMS–0005 is needed to procure and submit a bond for the purpose of meeting financial assurance requirements as set forth in the regulations. The MMS will maintain the forms that are submitted as official lease and grant records pertaining to operating responsibilities, ownership, and financial responsibility.

Respondents submit the following forms to MMS under 30 CFR part 285, subpart D. The forms and their purposes are:

OCS Renewable Energy Assignment of Grant, Form MMS–0002

The MMS uses this form as the official record as to the assignment of record title interest in a renewable energy grant (Right-of-Way or Right-of-Use and Easement). The MMS uses the information to identify the assigned grant interest and any new grant resulting from the assignment. The information on Form MMS–0002 will be filed and maintained in the applicable MMS regional office.

OCS Renewable Energy Assignment of Interest in Lease, Form MMS–0003

The MMS uses this form as the official record as to the assignment of record title interest in a renewable energy lease. The MMS uses the information to identify the assigned lease interest and any new lease resulting from the assignment. The information on Form MMS–0003 will be filed and maintained in the applicable MMS regional office.

OCS Renewable Energy Lease or Grant Relinquishment Application, Form MMS–0004

The MMS uses this form as the official record as to the relinquishment of a renewable energy lease or grant. Although relinquishment may be required by MMS under 30 CFR 285.658(c), in most cases relinquishments will be filed voluntarily. Form MMS–0004 is required for any relinquishment and will be filed and maintained in the applicable MMS regional office.

OCS Renewable Energy Lessee's, Grantee's, and Operator's Bond, Form MMS–0005

The MMS uses this form as the official instrument for filing and maintaining a surety bond for financial assurance relating to a lease or grant in compliance with the requirements of 30 CFR 285, subpart E. Form MMS–0005 is required for all bonds and other forms of financial assurance and will be filed and maintained in the applicable MMS regional office.

OCS Renewable Energy Lease or Grant Designation of Operator, Form MMS–0006

The MMS uses the information in this form as the official record as to designation of the individual, corporation, or association having control or management of activities on a renewable energy lease or grant. Form MMS–0006 is required to designate an operator or to notify MMS of a change in the designated operator.

Frequency: Varies depending upon the requirement, but is generally on occasion or annual.

Description of Respondents: Primary respondents comprise Federal OCS companies that submit unsolicited proposals or responses to **Federal Register** notices; or are lessees, designated operators, and ROW or RUE grant holders. Other potential respondents are companies or state and local governments that submit information or comments relative to alternative energy-related uses of the OCS; certified verification agents (CVAs); and surety or third-party guarantors.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 31,124 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
Subpart A—General Provisions				
102; 105; 110	These sections contain general references to submitting comments, requests, applications, plans, notices, reports, and/or supplemental information for MMS approval—burdens covered under specific requirements.			0
102(e)	State and local governments enter into task force or joint planning or coordination agreement with MMS.	1	6 agreements	6
103; 904	Request general departures not specifically covered elsewhere in part 285.	2	6 requests	12
105(c)	Make oral requests or notifications and submit written follow up within 3 business days not specifically covered elsewhere in part 285.	1	8 requests	8
106; 107; 213(e); 230(f); 302(a); 408(b)(7); 409(c); 1005(c); 1007(c); 1013(b)(7).	Submit evidence of qualifications to hold a lease or grant, required information and supporting information.	2	20 evidence submissions	40
106(b)(1)	Request exception from exclusion or disqualification from participating in transactions covered by Federal non-procurement debarment and suspension system.	1	1 exception	1
106(b)(2), (3); 225; 527(c); 705(c)(2); 1016.	Request reconsideration and/or hearing ..	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
108; 530(b)	Notify MMS within 3 business days after learning of any action filed alleging respondent is insolvent or bankrupt.	1	1 notice	1
109	Notify MMS in writing of merger, name change, or change of business form no later than 120 days after earliest of either the effective date or filing date.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
111	Within 30 days of receiving bill, submit processing fee payments for MMS document or study preparation to process applications and requests.	.5	4 fee submissions	2
		4 MMS payments x $4,000 = $16,000		
111(b)(2), (3)	Submit comments on proposed processing fee or request approval to perform or directly pay contractor for all or part of any document, study, or other activity, to reduce MMS processing costs.	2	4 processing fee comments or reduction requests.	8
111(b)(3)	Perform, conduct, develop, etc., all or part of any document, study, or other activity; and provide results to MMS to reduce MMS processing fee.	19,000	1 submission	19,000
111(b)(3)	Pay contractor for all or part of any document, study, or other activity, and provide results to MMS to reduce MMS processing costs.	3 contractor payments x $950,000 = $2,850,000		
111(b)(7); 118(a); 436(c)	Appeal MMS estimated processing costs, decisions, or orders pursuant to 30 CFR 290.	Exempt under 5 CFR 1320.4(a)(2), (c)		0
113(b)	Respond to the Freedom of Information Act release schedule.	4	1 agreement	4

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
115(c)	Request approval to use later edition of a document incorporated by reference or alternative compliance.	1	1 request	1
116	The Director may occasionally request information to administer and carry out the offshore alternative energy program via **Federal Register** Notices.	4	25	100
118(c); 225(b)	Within 15 days of bid rejection, request reconsideration of bid decision or rejection.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
			78 responses	19,183 hours
Subtotal			$2,866,000 non-hour costs	
Subpart B—Issuance of OCS Alternative Energy Leases				
200; 224; 231; 235; 236; 238	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285			0
210; 211(a), (b); 213 thru 216	Submit comments in response to **Federal Register** notices on Request for Interest in OCS Leasing, Call for Information and Nominations (Call), Area Identification, and the Proposed Sale Notice.	4	16 comments	64
211(d); 216; 220 thru 223; 231(c)(2).	Submit bid, payments, and required information in response to **Federal Register** Final Sale Notice.	5	12 bids	60
224	Within 10 business days, execute 3 copies of lease form and return to MMS with required payments, including evidence that agent is authorized to act for bidder; if applicable, submit information to support delay in execution.	1	5 lease executions	5
230; 231(a)	Submit unsolicited request and acquisition fee for a commercial or limited lease.	5	5 unsolicited requests	25
231(b)	Submit comments in response to **Federal Register** notice re interest of unsolicited request for a lease.	4	4 unsolicited requests	16
231(g)	Within 10 business days of receiving lease documents, execute lease; file financial assurance and supporting documentation.	2	4 leases	8
231(g)	Within 45 days of receiving lease copies, submit rent and rent information.	Burdens covered by information collections approved for 30 CFR Subchapter A.		0
235(b); 236(b)	Request additional time to extend preliminary or site assessment term of commercial or limited lease, including revised schedule for SAP, COP, or GAP submission.	1	2 requests	2
237(b)	Request lease be dated and effective 1st day of month in which signed.	1	1 request	1
Subtotal			49 responses	181 hours
Subpart C—ROW Grants and RUE Grants for Alternative Energy Activities				
306; 309; 315; 316	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.			0

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
302(a); 305; 306	Submit 1 paper copy and 1 electronic version of a request for a new or modified ROW or RUE and required information, including qualifications to hold a grant.	5	1 ROW/RUE request	5
307; 308(a)(1)	Submit comments on competitive interest in response to **Federal Register** notice of proposed ROW or RUE grant area or comments on notice of grant auction.	4	2 comments	8
308(a)(2), (b); 315; 316	Submit bid and payments in response to **Federal Register** notice of auction for a ROW or RUE grant.	5	1 bid	5
309	Submit decision to accept or reject terms and conditions of noncompetitive ROW or RUE grant.	2	1 grant decision	2
Subtotal			5 responses	20 hours
Subpart D—Lease and Grant Administration				
400; 401; 402; 405; 409; 416, 433.	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.			0
401(b)	Take measures directed by MMS in cessation order and submit reports in order to resume activities.	100	1 cessation measures report	100
405(d)	Submit written notice of change of address.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
405(e); Form MMS–0006	If designated operator (DO) changes, notify MMS and identify new DO for MMS approval.	1	1 new DO notice	1
408 thru 411; Forms MMS–0002 and MMS–0003.	Within 90 days after last party executes a transfer agreement, submit 1 paper copy and 1 electronic version of a lease or grant assignment application, including originals of each instrument creating or transferring ownership of record title, eligibility and other qualifications; and evidence that agent is authorized to execute assignment.	1 (30 minutes per form × 2 forms = 1 hour)	2 assignment requests/instruments submissions.	2
415(a)(1); 416; 420(a), (b); 428(b).	Submit request for suspension and required information no later than 90 days prior to lease or grant expiration.	10	2 suspension requests	20
417(b)	Conduct, and if required pay for, site-specific study to evaluate cause of harm or damage; and submit 1 paper copy and 1 electronic version of study and results.	100	1 study/submission	100
		1 study × $950,000 = $950,000		
425 thru 428; 652(a)	Request lease or grant renewal no later than 180 days before termination date of your limited lease or grant, or no later than 2 years before termination date of operations term of commercial lease.	6	2 renewal requests	12
435; 658(c)(2); Form MMS–0004.	Submit 1 paper copy and 1 electronic version of application to relinquish lease or grant.	1	2 relinquishments	2

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
436; 437	Provide information for reconsideration of MMS decision to contract or cancel lease or grant area.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
			11 responses	237 hours
Subtotal			$950,000	
Subpart E—Payments and Financial Assurance Requirements				
An * indicates the primary cites for providing bonds or other financial assurance, and the burdens include any previous or subsequent references throughout part 285 to furnish, replace, or provide additional bonds, securities, or financial assurance. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				0
500 thru 509; 1011	Submit payor information, payments and payment information, and maintain auditable records according to subchapter A regulations or guidance.	Burdens covered by information collections approved for 30 CFR Subchapter A.		0
506(c)(4)	Submit documentation of the gross annual generation of electricity produced by the generating facility on the lease—use same form as authorized by the EIA. (Burden covered under DOE/EIA OMB Control Number 1905–0129 to gather info and fill out form. MMS's burden is for submitting a copy).	10 min	6 forms	1
510	Submit application and required information for waiver or reduction of rental or other payment.	1	1 waiver or rental reduction	1
*515; 516(a)(1), (b); 525(a) thru (f).	Execute and provide $100,000 minimum lease-specific bond or other approved security; or increase bond level if required.	1	6 base-level lease bonds or other security.	6
*516(a)(2), (3), (b), (c); 517; 525(a) thru (f).	Execute and provide commercial lease supplemental bonds in amounts determined by MMS.	1	5 SAP and COP bonds	5
516(a)(4); 521(c)	Execute and provide decommissioning bond or other financial assurance; schedule for providing the appropriate amount.	1	3 decommissioning bonds	3
517(c)(1)	Submit comments on proposed adjustment to bond amounts.	1	3 adjustment comments	3
517(c)(2)	Request bond reduction and submit evidence to justify.	5	2 reduction requests	10
*520; 521; 525(a) thru (f); Form MMS–0005.	Execute and provide $300,000 minimum limited lease or grant-specific bond or increase financial assurance if required.	1	1 base-level ROW/RUE bond	1
525(g)	Surety notice to lessee or ROW/RUE grant holder and MMS within 5 business days after initiating insolvency or bankruptcy proceeding, or Treasury decertifies surety.	1	1 surety notice	1
*526	In lieu of surety bond, pledge other types of securities, including authority for MMS to sell and use proceeds.	2	1 other security pledge	2

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
526(c)	Provide annual certified statements describing the nature and market value, including brokerage firm statements/reports.	1	1 statement	1
*527; 531	Demonstrate financial worth/ability to carry out present and future financial obligations, annual updates, and related or subsequent actions/records/reports, etc.	10	1	10
528	Provide third-party indemnity; financial information/statements; additional bond info; executed guarantor agreement and supporting information/documentation.	10	1	10
528(c)(6); 532(b)	Guarantor/Surety requests MMS terminate period of liability and notifies lessee or ROW/RUE grant holder, etc.	1	1 request	1
*529	In lieu of surety bond, request authorization to establish decommissioning account, including written authorizations and approvals associated with account.	2	1 decommissioning account	2
530	Notify MMS promptly of lapse in bond or other security/action filed alleging lessee, surety or guarantor et al. is insolvent or bankrupt.	1	1 notice	1
533(a)(2)(ii), (iii)	Provide agreement from surety issuing new bond to assume all or portion of outstanding liabilities.	3	1 surety agreement	3
536(b)	Within 10 business days following MMS notice, lessee, grant holder, or surety agrees to and demonstrates to MMS that lease will be brought into compliance.	16	1 agreement demonstration	16
Subtotal			37 responses	77 hours
Subpart F—Plans and Information Requirements				
Two ** indicate the primary cites for Site Assessment Plans (SAPs), Construction and Operations Plans (COPs), and General Activities Plans (GAPs); and the burdens include any previous or subsequent references throughout part 285 to submission and approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				0
**600(a); 601(a), (b); 605 thru 613.	Within 6 months after issuance of a competitive lease or grant, or within 60 days after determination of no competitive interest, submit 1 paper copy and 1 electronic version of a SAP, including information to assist MMS to comply with NEPA such as hazard info, air quality, and all required information, certifications, etc.	240	6 SAPs	1,440

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
** 600(b); 601(c), (d)(1); 606(b); 618; 620 thru 629; 633.	If requesting an operations term for commercial lease, at least 6 months before the end of site assessment term, submit 1 paper copy and 1 electronic version of a COP, or FERC license application, including information to assist MMS to comply with NEPA such as hazard info, air quality, and all required information, surveys and/or their results, reports, certifications, project easements, supporting data and information, etc.	1,000	3 COPs	3,000
** 600(c); 601(a), (b); 640 thru 648.	Within 6 months after issuance of a competitive lease or grant, or within 60 days after determination of no competitive interest, submit 1 paper copy and 1 electronic version of a GAP, including information to assist MMS to comply with NEPA such as hazard info, air quality, and all required information, surveys and reports, certifications, project easements, etc.	240	1 GAP	240
** 601(d)(2); 622; 628(f); 632; 634; 658(c)(3).	Submit revised or modified COPs, including project easements, and all required additional information.	50	1 revised or modified COP	50
602 [1]	Until MMS releases financial assurance, respondents must maintain, and provide to MMS if requested, all data and information related to compliance with required terms and conditions of SAP, COP, or GAP.	2	9 records maintenance/submissions.	18
** 613(d), (e)	Submit revised or modified SAPs and required additional information.	50	1 revised or modified SAP	50
612(b); 647(b)	Noncompetitive leases must submit copy of SAP or GAP consistency certification and supporting documentation.	1	4 leases	4
615(a)	Notify MMS in writing within 30 days of completion of construction and installation activities under SAP.	1	5 completion construction notices.	5
615(b)	Submit annual report summarizing findings from site assessment activities.	30	8 annual reports	240
615(c)	Submit annual, or at other time periods as MMS determines, SAP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	40	8 compliance certifications	320
617(a)	Notify MMS in writing before conducting any activities not approved, or provided for, in SAP; provide additional information if requested.	10	1 notice before activity	10
627(c)	Include oil spill response plan as required by part 254.	Burden covered 30 CFR part 254, 1010–0091.		0
631	Request deviation from approved COP schedule.	2	1 deviation request	2

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
633(b)	Submit annual, or at other time periods as MMS determines, COP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	80	9 compliance certifications	720
634(a)	Notify MMS in writing before conducting any activities not approved or provided for in COP, and provide additional information if requested.	10	1 notice before activity	10
635	Notify MMS any time commercial operations cease without an approved suspension.	1	1 termination notice	1
636(a)	Notify MMS in writing no later than 30 days after commencing activities associated with placement of facilities on lease area.	1	3 commence notices	3
636(b)	Notify MMS in writing no later than 30 days after completion of construction and installation activities.	1	3 completion notices	3
636(c)	Notify MMS in writing at least 7 days before commencing commercial operations.	1	3 initial ops notices	3
** 642(b); 648(e); 655; 658(c)(3)	Submit revised or modified GAPs and required additional information.	50	1 revised or modified GAP	50
651	Before beginning construction of OCS facility described in GAP, complete survey activities identified in GAP and submit initial findings. This only includes the time involved in submitting the findings; it does not include the survey time as these surveys would be conducted as good business practice.	30	5 surveys/reports	150
653(a)	Notify MMS in writing within 30 days of completing installation activities under the GAP.	1	5 completion notices	5
653(b)	Submit annual report summarizing findings from activities conducted under approved GAP.	30	8 annual reports	240
653(c)	Submit annual, or at other time periods as MMS determines, GAP compliance certification, recommendations, reports, etc.	40	8 compliance certifications	320
655(a)	Notify MMS in writing before conducting any activities not approved or provided for in GAP, and provide additional information if requested.	10	1 notice before activity	10
656	Notify MMS if at any time approved GAP activities cease without an approved suspension.	1	1 termination notice	1
658(c)(1)	If after construction, cable or pipeline deviate from approved COP or GAP, notify affected lease operators and ROW/RUE grant holders of deviation and provide MMS evidence of such notices.	3	1 deviation notice/MMS evidence.	3

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
659	Determine appropriate air quality modeling protocol, conduct air quality modeling, and submit 3 copies of air quality modeling report and 3 sets of digital files as supporting information to plans.	70	10 air quality modeling reports/ information.	700
Subtotal			108 responses	7,598
Subpart G—Facility Design, Fabrication, and Installation				
Three *** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				0
*** 700(a)(1), (b), (c); 701	Submit Facility Design Report, including 1 paper copy and 1 electronic copy of the cover letter, certification statement, and all required information (1–3 paper or electronic copies as specified).	200	3 Facility Design Reports	600
***700(a)(2); (b), (c); 702	Submit 1 paper copy and 1 electronic copy of a Fabrication and Installation Report, certification statement and all required information.	160	3 Fabrication & Installation Reports.	480
705(a)(3); 707; 712	Certified Verification Agent (CVA) conducts independent assessment of the facility design and submits reports to lessee or grant holder and MMS—interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	100	3 CVA design interim reports	300
		100	3 CVA final reports	300
705(a)(3); 708; 709; 710; 712	CVA conducts independent assessments on the fabrication and installation activities, informs lessee or grant holder if procedures are changed or design specifications are modified; and submits reports to lessee or grant holder and MMS—interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	100	3 CVA interim reports	300
		100	3 CVA final reports	300
703 ***; 705(a)(3); 711; 712	CVA/project engineer monitors major project modifications and repairs and submits reports to lessee or grant holder and MMS—interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	20	1 interim report	20
		15	1 final report	15
705(c)	Request waiver of CVA requirement in writing; lessee must demonstrate standard design and best practices.	40	1 waiver	40
706	Submit for approval with SAP, COP, or GAP, initial nominations for a CVA or new replacement CVA nomination, and required information.	16	13 new CVA nominations	208
708(b)(2)	Lessee or grant holder notify MMS if modifications identified by CVA/project engineer are accepted.	1	1 notice	1

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
709(a)(14); 710(a)(2), (e) [1]	Make fabrication quality control, installation towing, and other records available to CVA/project engineer for review (retention required by § 285.714).	1	3 records retention	3
713	Notify MMS within 10 business days after commencing commercial operations.	1	2 commence notices	2
714; [1]	Until MMS releases financial assurance, compile, retain, and make available to MMS and/or CVA the as-built drawings, design assumptions/analyses, summary of fabrication and installation examination records, inspection results, and records of repairs not covered in inspection report. Record original and relevant material test results of all primary structural materials; retain records during all stages of construction.	100	3 lessees	300
Subtotal			43 responses	2,869
Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPs				
801(c), (d)	Notify MMS if endangered or threatened species, or their designated critical habitat, may be in the vicinity of the lease or grant or may be affected by lease or grant activities.	1	2 notices	2
801(e), (f)	Submit information to ensure proposed activities will be conducted in compliance with the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA); including, agreements and mitigating measures designed to avoid or minimize adverse effects and incidental take of endangered species or critical habitat.	6	2 ESA/MMPA submissions	12
802; 902(e)	Notify MMS of archaeological resource within 72 hours of discovery.	3	1 archaeological notice	3
802(b); 802(c)	If requested, conduct further archaeological investigations and submit report.	10	1 archaeological report	10
802(d)	If applicable, submit payment for MMS costs in carrying out National Historic Preservation Act responsibilities.	.5	1 payment	.5
803(b)	If required, conduct additional surveys to define boundaries and avoidance distances and submit report.	15	2 survey/report	30
810***; 632(b)	Submit safety management system description with the SAP, COP, or GAP.	35	10 safety management systems.	350
813(b)(1)	Report within 24 hours when any required equipment taken out of service for more than 12 hours; provide written confirmation if reported orally.	.5	3 equipment reports	1.5
		1	1 written confirmation	1
813(b)(3)	Notify MMS when equipment returned to service; provide written confirmation if oral notice.	.5	3 return to service notices	1.5

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
815(c)	When required, analyze cable, P/L, or facility damage or failures to determine cause and as soon as available submit comprehensive written report.	1.5	1 analysis report	1.5
816	Submit plan of corrective action report on observed detrimental effects on cable, P/L, or facility within 30 days of discovery; take remedial action and submit report of remedial action within 30 days after completion.	2	1 corrective action plan and report.	2
822(a)(2)(iii), (b)	Until MMS releases financial assurance, maintain records of design, construction, operation, maintenance, repairs, and investigation on or related to lease or ROW/RUE area; make available to MMS for inspection.	1	4 records retention	4
823	Request reimbursement within 90 days for food, quarters, and transportation provided to MMS reps during inspection.	2	1 reimbursement request	2
824(a) [1]	Develop annual self inspection plan covering all facilities; retain with records, and make available to MMS upon request.	24	4 self assessment plans	96
824(b)	Conduct annual self inspection and submit report by November 1.	36	4 annual reports	144
825	Based on API RP 2A–WSD, perform assessment of structures, initiate mitigation actions for structures that do not pass assessment process, retain information, and make available to MMS upon request.	60	4 assessments and mitigation actions.	240
830(a), (c); 831 thru 833	Immediately report incidents to MMS via oral communications, submit written follow-up report within 15 business days after the incident, and submit any required additional information.	Oral .5	6 incidents	3
		Written 4	1 incident	4
830(d)	Report oil spills as required by part 254 ..	Burden covered by 1010–0091, 30 CFR part 254		0
Subtotal			52 responses	908

Subpart I—Decommissioning

Four **** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
**** 902(b), (c), (d), (f); 905, 906; 907; 908(c); 909.	Submit for approval 1 paper copy and 1 electronic copy of the SAP, COP, or GAP decommissioning application and site clearance plan at least 2 years before decommissioning activities begin, 90 days after completion of activities, or 90 days after cancellation, relinquishment, or other termination of lease or grant. Include documentation of coordination efforts w/States, local or tribal governments, requests that certain facilities remain in place for other activities, be converted to an artificial reef, or be toppled in place. Submit additional information requested or modify and resubmit application.	20	1 decommissioning application	20
902(d); 908;	Notify MMS at least 60 days before commencing decommissioning activities.	1	1 decommissioning notice	1
910	Within 60 days after removing a facility, verify to MMS that site is cleared.	1	1 removal verification	1
912	Within 60 days after removing a facility, cable, or pipeline, submit a written report.	8	1 removal report	8
MMS does not anticipate decommissioning activities for at least 5 years so the requirements have been given a minimal burden				
Subtotal			4 responses	30
Subpart J—RUEs for Energy and Marine-Related Activities Using Existing OCS Facilities				
1004, 1005, 1006	Contact owner of existing facility and/or lessee of the area to reach preliminary agreement to use facility and obtain concurring signatures; submit request to MMS for an alternative use RUE, including all required information/modifications.	1	1 request for RUE to use existing facility.	1
1007(a), (b), (c)	Submit indication of competitive interest in response to *Federal Register* notice.	4	1 response	4
1007(c)	Submit description of proposed activities and required information in response to *Federal Register* notice of competitive offering.	5	1 submission	5
1007(f)	Lessee or owner of facility submits decision to accept or reject proposals deemed acceptable by MMS.	1	1 decision	1
1010(c)	Request renewal of Alternate Use RUE	6	1 renewal request	6
1012; 1016(b)	Provide financial assurance as MMS determines in approving RUE for an existing facility, including additional security if required.	1	1 bond or other security	1
1013	Submit request for assignment of an alternative use RUE for an existing facility, including all required information.	1	1 RUE assignment request	1
1015	Request relinquishment of RUE for an existing facility.	1	1 RUE relinquish	1

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
Subtotal			8 responses	20
30 CFR Parts 250 & 290 Proposed Revisions				
250.1730	Request departure from requirement to remove a platform or other facility.	No change to burden covered by 1010–0142, 30 CFR 250, subpart Q		0
250.1731(c)	Request deferral of facility removal subject to RUE issued under this subpart.	1	1 deferral request	1
250.290.2	Request reconsideration of an MMS decision concerning a lease bid.	Requirement not considered IC under 5 CFR 1320.3(h)(9)		0
Subtotal			1 response	1
			396 Responses	31,124
Total Burden			$3,816,000 Non-Hour Cost Burdens	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified three non-hour cost burdens to industry. We estimate the total of those at $3,816,000 for the following:

Section 285.111–$16,000: This section requires respondents to pay a processing fee for MMS document or study preparation when necessary for MMS processing of applications and requests. The processing fee is $4,000 and we anticipate approximately 4 fees.

Section 285.111(b)(3)–$2,850,000: This section allows respondents to pay a contractor instead of MMS for all or part of any document, study, or other activity, and provide the results to MMS to reduce MMS processing costs. We estimate the non-hour cost burden of this payment could range from $100,000 to $2,000,000; therefore, we are estimating the cost at $950,000. We anticipate no more than 3 payments.

Section 285.417(b)–$950,000: This section requires respondents to pay for a site-specific study to evaluate the cause of harm or damage to natural resources, and submit a report to MMS. We estimate the non-hour cost burden of this study could range from $100,000 to $2,000,000, depending on the nature of the study; therefore, we are estimating the cost at $950,000. We anticipate no more than one study.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on September 23, 2009, we published a **Federal Register** notice (74 FR 48588) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 285.114 provides the OMB control number for the information collection requirements imposed by the 30 CFR 285 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by February 11, 2010.

Public Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment–including your personal identifying information–may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: November 25, 2009.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2010–356 Filed 1–11–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L10300000 EG0000 LLWO270000]

Extension of Approved Information Collection, OMB Control Number 1004–0001

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request that the Office of Management and Budget (OMB) extend approval for the

paperwork requirements in 43 CFR parts 3620 and 5510, which pertain to free use of, respectively, petrified wood, timber, et al. The Office of Management and Budget (OMB) previously approved this information collection activity under the control number 1004–0001.

DATES: You must submit your comments to the BLM at the address below on or before March 15, 2010. The BLM is not obligated to consider any comments postmarked or received after the above date.

ADDRESSES: You may mail comments to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401–LS, 1849 C St., NW., Washington, DC 20240, Attention: 1004–0001. You may also comment by e-mail at: *Jean_Sonneman@blm.gov.*

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: You may contact James Bowmer, Forester—Stewardship Coordinator, Bureau of Land Management, Division of Forests and Woodlands, (202) 912–7247 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, 24 hours a day, seven days a week, to contact Mr. Bowmer. You may also contact Mr. Bowmer to obtain a copy, at no cost, of the regulations and forms that require this collection of information.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), require that interested members of the public and affected agencies be provided an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies information collections that are contained in 43 CFR parts 3830 through 3838 and part 5511. The BLM will request that the OMB approve this information collection activity for a 3-year term.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany the BLM's submission of the information collection requests to OMB.

The following information is provided for the information collection:

Title: Form 5510–1, Free Use Application and Permit (43 CFR Part 3620 and 5510).

Forms:

• Form 5510, Free Use Application and Permit.

OMB Control Number: 1004–0001.

Abstract: This notice pertains to information collections that are necessary in order to manage the collection of limited quantities of petrified wood and timber for noncommercial purposes. The information collections covered by this notice are found at 43 CFR parts 3620 and 5510, and in the form listed above.

Frequency: On occasion.

Estimated Number and Description of Respondents: 476.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 952 hours.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: There is no currently approved non-hour cost burden for Control Number 1004–0001.

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2010–399 Filed 1–11–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket no. MMS–2010–OMM–0001]

MMS Information Collection Activity: 1010–NEW Study of Sharing To Assess Community Resilience; Notice of a New Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an information collection (1010–NEW).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a new collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) pertains to conducting a survey, Study of Sharing to Assess Community Resilience.

DATES: Submit written comments by March 15, 2010.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607, to obtain a copy, at no cost, of the survey that requires the subject collection of information. For more information on the survey itself, contact Chris Campbell in the MMS Alaska Regional Office at (907) 334–5264.

ADDRESSES: You may submit comments by either of the following methods listed below.

• *Electronically:* Go to *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter docket ID MMS–2010–OMM–0001 then click search. Under the tab "View By Relevance" you can submit public comments and view supporting and related materials available for this collection of information. The MMS will post all comments.

• Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference "Information Collection 1010–NEW" in your subject line and include your name and return address.

SUPPLEMENTARY INFORMATION:

Title: Study of Sharing to Assess Community Resiliency.

OMB Control Number: 1010–NEW.

Abstract: The United States Congress, through the 1953 Outer Continental Shelf (OCS) Lands Act (OCSLA) [Pub. L. 95–372, Section 20] and its subsequent amendments, requires the Secretary of the Department of the Interior to monitor and assess the impacts of

resource development activities in Federal waters on human, marine, and coastal environments. The OCSLA amendments authorize the Secretary of the Interior to conduct studies in areas or regions of sales to ascertain the "environmental impacts on the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas or other mineral development" (43 U.S.C. 1346).

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347) requires that all Federal Agencies use a systematic, interdisciplinary approach to ensure the integrated use of the natural and social sciences in any planning and decision making that may have an effect on the human environment. The Council on Environmental Quality's Regulations for Implementing Procedural Provisions of NEPA (40 CFR 1500–1508) state that the "human environment" is to be "interpreted comprehensively" to include "the natural and physical environment and the relationship of people with that environment" (40 CFR 1508.14). An action's "aesthetic, historic, cultural, economic, social or health" effects must be assessed, "whether direct, indirect, or cumulative" (40 CFR 1508.8).

The U.S. Department of the Interior/Minerals Management Service (DOI/MMS) is the Federal administrative agency created both to conduct OCS lease sales and to monitor and mitigate adverse impacts that might be associated with offshore resource development. Within the MMS, the Environmental Studies Program functions to implement and manage the responsibilities of research. This study will facilitate the meeting of DOI/MMS information needs on subsistence food harvest and sharing activities in coastal Alaska, with specific focus on the Beaufort-Chukchi Planning Area.

The North Slope Planning Area includes more than 94,763 square miles—a large geographic area with diverse, abundant, and environmentally sensitive resources. Within that area, the DOI/MMS's Proposed OCS Oil and Gas Leasing Program 2007–2012 considers two oil and gas lease exploration plans for 2010, one in the Chukchi Sea and one in the Beaufort Sea. The areas slated for exploration and adjacent areas support major productive subsistence fisheries, provide habitat to numerous marine mammals, including bowhead whales, and are a significant migration and staging area for internationally important waterfowl. More than eight communities in the North Slope area rely heavily on subsistence.

This information collection (IC) request involves a 36-month study that will assess the vulnerabilities of two North Slope coastal communities and one control community to the potential effects of offshore oil and gas development on subsistence food harvest and sharing activities. It will investigate the resilience of local sharing networks that structure contemporary subsistence-cash economies using survey research methods that involves residents of two communities most proximate to the proposed exploration areas, Wainwright and Kaktovik, and one control community, Venetie. Future collections will involve other area communities.

The MMS will use the information collected to gain knowledge about local social systems in a way that may shape development strategies and serve as an interim baseline for impact monitoring to compare against future research in these areas. Without this data, MMS will not have sufficient information to make informed leasing and development decisions for these areas.

Survey Instrument: The research will be collected from a survey, given to each head of household, in the three communities, that will collect information about the subsistence (harvest data) and sharing networks of the communities. The information under this proposed collection will be obtained through personal interviews that are voluntary.

Interview methods: The interviews for each survey will be done face to face in a setting that is most comfortable for the respondents. This personal method is more expensive and time consuming for the researchers, but these drawbacks are outweighed by improvements in the quality of information obtained and the rapport established between the surveyor and the person interviewed. Telephone interviews have not been successful on the North Slope. Each respondent will be paid an honorarium for taking part in the survey.

Responses are voluntary.

Frequency: One-time event for each survey.

Estimated Number and Description of Respondents: Approximately 349 respondents from the communities involved.

Estimated Reporting and Recordkeeping "Hour" Burden: The MMS estimates the total annual burden hours to be 524 (rounded) (349 × 1.5 for each study = 523.5 total burden hours).

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no non-hour cost burdens for this collection.

Protections of Respondent Confidentiality: The survey is voluntary. The questionnaires will be administered under the guidelines of 45 CFR 46. The introduction that will be covered with each participant stresses that participation is voluntary and confidentiality will be maintained. No names will appear on the survey form, no photographs will be taken of any informant, and no videotaping will be conducted. Minor children will not be interviewed. Procedures designed to protect the confidentiality of the information provided will include the use of coded selection and identification number to protect the identities of respondents.

This survey will ask five potentially sensitive but routine questions on annual household income, unemployment, subsistence expenses, and household finances. One question asks the views of the respondent about future potential oil and gas development. Questions such as these have been used in past studies in rural Alaska with few, if any, complaints. During the interviews, the respondents will be warned that sensitive questions are coming up and that they may refuse to answer any query they object to. Respondents will also be reminded that they are assured anonymity through the survey design and process.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". *Agencies must specifically solicit comments to:* (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if

you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. *You should not include estimates for equipment or services purchased:* (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: January 5, 2010

William S. Hauser,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2010–354 Filed 1–11–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES930000.L14300000.PN0000]

Notice of Application for Recordable Disclaimer of Interest, Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Farmland Reserve, Inc. filed an application for a Recordable Disclaimer of Interest pursuant to Section 315 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1745), and the regulations in 43 CFR subpart 1864. A Recordable Disclaimer of Interest, if issued, will confirm the United States has no valid interest in the subject land. This notice is intended to inform the public of the pending application.

DATES: The Bureau of Land Management (BLM), Eastern States, will accept comments on this application at the address below until April 12, 2010. During this 90-day comment period, interested parties may submit comments on this Recordable Disclaimer of Interest application. Please reference case file FLES–55708 in your comment.

ADDRESSES: Mail comments to: Steven R. Wells, Deputy State Director, Division of Natural Resources, BLM-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153.

FOR FURTHER INFORMATION CONTACT: A. Nate Felton, Supervisory Land Law Examiner, Branch of Lands and Realty, at the above address or by phone at (703) 440–1511.

SUPPLEMENTARY INFORMATION: On June 15, 2009, Farmland Reserve, Inc. filed an application for a Recordable Disclaimer of Interest for the land described as follows:

Tallahassee Meridian

T. 25 S., R. 31 E.,
Fractional sec. 12, W½, NE¼, and unsurveyed part of the SE¼;
Fractional sec. 13, unsurveyed;
Fractional sec. 24, W½, and unsurveyed part of the E½;
Fractional sec. 25, W¼, SE¼, and unsurveyed part of the NE¼.
T. 25 S., R. 32 E.,
Fractional secs. 7, and 8, secs. 17 to 20, inclusive, and sec. 30.

The areas described aggregate approximately 4,747.73 acres in Osceola County, Florida.

This land has been patented into private ownership. It is the opinion of this office that the Federal government no longer has an interest in this 4,747.73-acre parcel.

Comments will be available for public review at the BLM-Eastern States Office (see address above) during regular business hours, Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If no valid objection is received, a Disclaimer of Interest may be approved stating the United States does not have a valid interest in this tract of land.

Juan Palma,

State Director.

[FR Doc. 2010–309 Filed 1–11–10; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP02000 L71220000.EX0000 LVTFGX9G4200]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed HB Potash, LLC—"In-Situ" Solution Mine Project, Eddy County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, (NEPA) and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Carlsbad Field Office, Carlsbad, New Mexico, intends to prepare an Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and to identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until February 11, 2010. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through the local media, including newspapers and the BLM Web site at: *http://www.blm.gov/nm/st/en/fo/Carlsbad_Field_Office.html.* In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the HB Potash, LLC—"In-Situ" Solution Mine Project by any of the following methods:

- *E-mail: Rebecca_Hunt@blm.gov.*
- *Fax:* (575) 885–9264.
- *Mail:* Bureau of Land Management, Carlsbad Field Office, Attention:

Rebecca Hunt, 620 E. Greene St., Carlsbad, NM 88220.

Documents pertinent to this proposal may be examined at the Carlsbad Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Rebecca Hunt, Planning and Environmental Coordinator, telephone (575) 234–5995; address: Carlsbad Field Office, Attention: Rebecca Hunt, 620 E. Greene St., Carlsbad, NM 88220; e-mail *Rebecca_Hunt@blm.gov.*

SUPPLEMENTARY INFORMATION: HB Potash, LLC, (Intrepid) is proposing to construct and operate an "in-situ" solution mining project that would involve injecting saline water into previously mined, existing potash mine workings, dissolving the potash and creating a mineral-rich solution, and pumping that solution back to the surface. This solution, called "pregnant" solution, would be routed to a solar evaporation pond system where the potassium-bearing salts would be separated out. The solid potassium-bearing salts would be harvested from the ponds and routed to a flotation plant for ore refinement. This solution mining operation would occur on or within Federal, State, and private surface lands and mineral leases. The proposed action consists of the following:

- Extracting and conditioning groundwater from four wells that draw from the Rustler Formation to create the saline water injectate;
- Injecting this saline water via six injection wells and a surface piping system into the topographically lower portion of the former underground workings;
- Extracting the pregnant brine from five extraction wells;
- Pumping the brine via a surface piping system to solar evaporation ponds;
- Harvesting precipitated potash at the solar evaporation ponds and transporting it to a new flotation mill;
- Refining the ore into a marketable product;
- Recycling the leftover sodium chloride to condition the injection source groundwater; and
- Reclaiming all project components when the ore is depleted and the infrastructure and equipment are no longer needed.

The expected lifespan of the proposed HB "In-Situ" Solution Mine Project is approximately 28 years. HB Potash, LLC, estimates the project will consume approximately 1,774 acre-feet of saline, non-potable water each year. The proposed HB "In-Situ" Solution Mine Project is located in Eddy County, New Mexico. The area includes portions of Township 19 South, Range 30 and 31 East, Township 20 South, Ranges 29, 30 and 31 East and Township 21 South, Ranges 29 and 30 East, New Mexico Principal Meridian. The project area is located within the Carlsbad Potash Mining District and is part of the Secretary's Potash Area, designated under the 1986 Secretarial Order. The Secretarial Order was issued by the Secretary of the Interior and is titled Oil, Gas, and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico, 51 FR 39425 (October 28, 1986), as corrected at 52 FR 32171 (August 26, 1987).

The proposed HB "In-Situ" Solution Mine Project area encompasses approximately 38,453 acres (60.08 square miles). The surface ownership of these lands is approximately as follows:

- *Federal Lands:* 31,439 acres.
- *State Lands:* 4,954 acres.
- *Private Lands:* 2,060 acres.

Of the 38,453-acre proposed project area, the actual extent of the open mine workings and proposed flood zone is only a small portion of the project area as follows:

- *Project Area:* 38,453 acres.
- *Targeted Open Mine Workings:* 11,100 acres.
- *Flood Zone within the Open Mine Workings:* 4,330 acres.

A number of alternatives in addition to the proposed action, including the no action alternative, will be evaluated in the EIS in accordance with NEPA. Alternatives may include consideration of conventional underground mining of remaining reserves; more extensive in-situ mining; smaller in-situ flood extent; and alternatives of the project components (*e.g.,* pipeline burial, alternative pipeline routes, alternative water supplies, using existing facilities for ore processing, and alternative solar pond locations). The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: Oil and gas resources, land subsidence, hydrology, air quality, water quality and quantity, underground mine workings, socioeconomics, migratory birds, rangeland resources, recreation and cultural resources.

You may submit comments on issues, the project as proposed, other feasible alternatives, possible mitigation measures, and any other information relevant to the proposed action by writing to the BLM, or attending a public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. Comments, including the names and addresses of the commenter, will be available for public inspection at the BLM's Carlsbad Field Office during business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays. The minutes and list of attendees for each scoping meeting will also be available to the public after each meeting and to any participant who wishes to clarify the views he or she expressed. The BLM will utilize and coordinate the NEPA commenting process to satisfy the public involvement process required for Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) as provided for in 36 CFR § 800.2(d)(3). Native American Tribal consultations also will be conducted and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with other stakeholders that may be interested in or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7.

Jesse Juen,

Acting State Director.

[FR Doc. 2010–306 Filed 1–11–10; 8:45 am]

BILLING CODE 4310–OX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2009–N232; 91400–5110–0000–7B; 91400–9410–0000–7B]

Multistate Conservation Grant Program; Priority List for Conservation Projects

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of receipt of priority list.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), announce the FY 2010 priority list of wildlife and sport fish conservation projects from the Association of Fish and Wildlife Agencies (AFWA). As required by the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, AFWA submits a list of projects to us each year to consider for funding under the Multistate Conservation Grant program. We then review and award grants from this list.

ADDRESSES: John C. Stremple, Multistate Conservation Grants Program Coordinator, Division of Federal Assistance, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4020, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: John C. Stremple, (703) 358–2156 (phone) or *John_Stremple@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Improvement Act, Pub. L. 106–408) amended the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 *et seq.*) and established the Multistate Conservation Grant Program. The Improvement Act authorizes us to award grants of up to $3 million annually from funds available under each of the Restoration Acts, for a total of up to $6 million annually. We may award grants from a list of priority projects recommended to us by AFWA. The FWS Director, exercising the authority of the Secretary of the Interior, need not fund all projects on the list, but all projects funded must be on the list.

Grantees under this program may use funds for sport fisheries and wildlife management and research projects, boating access development, hunter safety and education, aquatic education, fish and wildlife habitat improvements, and other purposes consistent with the enabling legislation.

To be eligible for funding, a project must benefit fish and/or wildlife conservation in at least 26 States, or in a majority of the States in any one FWS Region, or it must benefit a regional association of State fish and wildlife agencies. We may award grants to a State, a group of States, or one or more nongovernmental organizations. For the purpose of carrying out the National Survey of Fishing, Hunting and Wildlife-Associated Recreation, we may award grants to the FWS, if requested by AFWA, or to a State or a group of States. Also, AFWA requires all project proposals to address its National Conservation Needs, which are announced annually by AFWA at the same time as its request for proposals. Further, applicants must provide certification that no activities conducted under a Multistate Conservation grant will promote or encourage opposition to regulated hunting or trapping of wildlife or to regulated angling or taking of fish.

Eligible project proposals are reviewed and ranked by AFWA Committees and interested nongovernmental organizations that represent conservation organizations, sportsmen's organizations, and industries that support or promote fishing, hunting, trapping, recreational shooting, bowhunting, or archery. AFWA's Committee on National Grants recommends a final list of priority projects to the directors of State fish and wildlife agencies for their approval by majority vote. By statute, AFWA then must transmit the final approved list to the FWS for funding under the Multistate Conservation Grant program by October 1.

This year, we received a list of 13 recommended projects. We recommend them for funding in 2010. AFWA's recommended list follows:

MSCGP 2010 Cycle Recommended Projects

ID	Title	Submitter	WR request	SFR request	Total 2009 grant request
10–007	State Fish and Wildlife Agency Director Travel Administration and Coordination.	AFWA	$82,500.00	$82,500.00	$165,000.00
10–008	State Fish and Wildlife Agency Coordination and Administration.	AFWA	318,920.71	318,920.71	637,841.42
10–009	Why Do Some Anglers Not Fish Every Year, and Others Do?.	AFWA	0.00	289,536.00	289,536.00
10–011	Protect State Wildlife Agencies Authority to Sustainably Manage Wildlife Resources in Concert with Federal Actions Required by International Treaties and Conventions.	AFWA	70,125.00	70,125.00	140,250.00
10–014	Identifying and Implementing Climate Change Adaptation Strategies for Natural Resources: A Series of Regional Climate Change Workshops for State Fish and Wildlife Agencies.	AFWA	60,000.00	60,000.00	120,000.00
10–016	Establishment of a National United States Department of Agriculture Farm Service Agency Liaison Biologist Position.	University of Tennessee and WMI.	405,000.00	0.00	337,500.00
10–026	Implementation of the Hunting Heritage Action Plan.	WMI	296,560.00	0.00	296,560.00
10–027	Midwest Fish Habitat Partnerships: Meeting National Fish Habitat Action Plan Goals through Development of a Coordinated Scientific Network.	MAFWA	0.00	398,000.00	398,000.00
10–025	Explore Bowhunting Education Program	ATA	266,217.30	0.00	266,217.30
10–032	Coordination of the Industry and Federal and State Agency Coalition.	AFWA	90,600.00	90,600.00	181,200.00
10–055	Formulating a Vision for Fish Health Management in Fishery Conservation: Bridging Knowledge Gaps.	MSU	0.00	480,932.00	480,932.00
10–057	Hunting Heritage Conservation Challenge Badge Initiative.	NWTF	173,300.00	0.00	173,300.00

MSCGP 2010 CYCLE RECOMMENDED PROJECTS—Continued

ID	Title	Submitter	WR request	SFR request	Total 2009 grant request
10–063	Coordination 10–063 of Farm Bill Program Implementation to Optimize Fish and Wildlife Benefits to the States.	AFWA	79,320.00	79,320.00	158,640.00
Total	.....	.....	1,870,433.71	1,816,825.71	3,645,476.72

Dated: November 17, 2009.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–355 Filed 1–11–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDB0100L14300000.ES0000 24 1A.0; 4500007763; IDI–36028]

Notice of Realty Action: Recreation and Public Purposes Act Classification, Lease and Conveyance of Public Land, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The City of Caldwell filed an application to purchase a 29.57-acre tract of public land under the Recreation and Public Purposes (R&PP) Act, as amended, to be used as a public park. The Bureau of Land Management (BLM) has examined the land and found it suitable to be classified for lease and/or conveyance under the provisions of the R&PP Act, as amended.

DATES: Interested parties may submit written comments regarding this proposed classification and lease or sale of this public land until February 26, 2010.

ADDRESSES: Mail written comments to Michael O'Donnell, Acting Four Rivers Field Manager, Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Effie Schultsmeier, Four Rivers Realty Specialist, at the above address, via e-mail at *effie_schultsmeier@blm.gov,* or phone (208) 384–3357.

SUPPLEMENTARY INFORMATION: The BLM has examined and found suitable to be classified for lease and subsequent conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*), the following public land described below.

Boise Meridian

T. 3 N., R. 3 W.,

Sec. 15, lots 2 and 3.

The area described contains 29.57 acres, more or less, in Canyon County.

In accordance with the R&PP Act, the City of Caldwell filed an application to purchase the above-described property to develop as a public park. Additional detailed information pertaining to this application, plan of development, and site plans are in case file IDI 36028, located in the BLM Four Rivers Field Office at the address above. The land is not needed for any Federal purpose. Lease and subsequent sale of this land is consistent with the BLM Cascade Resource Management Plan dated July 1, 1988, as amended, and would be in the public interest. The City of Caldwell has not applied for more than 6,400 acres for recreation uses in a year, the limit set in 43 CFR 2741.7(a)(3), and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b). Any lease and subsequent sale will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior. Any lease or patent of this land will also contain the following reservations to the United States:

1. Provisions of the R&PP Act, including, but not limited to, the terms required by 43 CFR 2741.9.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

3. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

Any lease or sale will also be subject to valid existing rights; will contain any terms or conditions required by law or regulation, including, but not limited to, any terms or conditions required by 43 CFR 2741.9; and will contain an appropriate indemnification clause protecting the United States from claims arising out of the lessee's or patentee's use, occupancy, or operations on the leased or patented lands. It will also contain any other terms or conditions deemed necessary or appropriate by the authorized officer. As of January 12, 2010, the above-described land is segregated from appropriation under the public land laws, including the United States mining laws, except for lease and sale under the R&PP Act.

Public Comments: Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize future uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs. Interested parties may also submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching its decision, or any other factor not directly related to the suitability of the land for R&PP use.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments on the proposed classification, lease and sale will be reviewed by the BLM Idaho State Director, who may sustain, vacate, or modify this realty action and classification and issue a final determination. In the absence of any objections, the classification of the land described in this notice will become effective on March 15, 2010. The lands will not be available for lease and conveyance until after the classification becomes effective.

Michael O'Donnell,

Acting Four Rivers Field Manager.

[FR Doc. 2010–310 Filed 1–11–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2009–MRM–0017]

States' Decisions on Participating in Accounting and Auditing Relief for Federal Oil and Gas Marginal Properties

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of States' decisions to participate or not participate in accounting and auditing relief for Federal oil and gas marginal properties located within the States' boundaries for calendar year 2010.

SUMMARY: The Minerals Management Service (MMS) published final regulations on September 13, 2004 (69 FR 55076), codified at sections 204.200 through 204.215 of title 30 of the *Code of Federal Regulations* (CFR), to provide two types of accounting and auditing relief for Federal onshore or Outer Continental Shelf lease production from marginal properties. These regulations require MMS to publish in the **Federal Register** the decisions of the States concerned to allow or not allow one or both forms of relief allowed by the regulations. As required by the regulations, MMS provided States receiving a portion of the Federal royalties with a list of qualifying marginal Federal oil and gas properties located in the States so that each affected State could decide whether to participate in one or both relief options. For calendar year 2010, this notice provides the decisions by the States concerned to allow one or both types of relief.

DATE: Effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Williams, Manager, Western Audit & Compliance Management, telephone (303) 231–3403, FAX (303) 231–3744, e-mail to *mary.williams@mms.gov,* or mail to P.O. Box 25165, MS 62200B, Denver Federal Center, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION:

The regulations implement certain provisions of section 7 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (30 U.S.C. 1726) and provide two options for relief: (1) Notification-based relief for annual reporting, and (2) other requested relief, as proposed by industry and approved by MMS and the State concerned. The regulations require that MMS publish a list of the States and their decisions regarding marginal property relief by December 1 of each year.

To qualify for the first relief option (notification-based relief) for calendar year 2010, properties must have produced less than 1,000 barrels-of-oil-equivalent (BOE) per year for the base period (July 1, 2008, through June 30, 2009). Annual reporting relief will begin January 1, 2010, with the annual report and payment due February 28, 2011; or March 31, 2011, if you have an estimated payment on file. To qualify for the second relief option (other requested relief), the combined equivalent production of the marginal properties during the base period must equal an average daily well production of less than 15 BOE per well per day calculated under 30 CFR 204.4(c).

The following table shows the States that have marginal properties, where a portion of the royalties are shared between the State and MMS, and the States' decisions to allow one or both forms of relief.

State	Notification-based relief (less than 1,000 BOE per year)	Request-based relief (less than 15 BOE per well per day)
Alabama	No	No.
California	No	No.
Colorado	No	No.
Kansas	No	No.
Louisiana	Yes	Yes.
Michigan	Yes	Yes.
Mississippi	No	No.
Montana	No	No.
Nebraska	No	No.
Nevada	Yes	Yes.
New Mexico	No	Yes.
North Dakota	Yes	Yes.
Oklahoma	No	No.
South Dakota	Yes	No.
Texas	No	No.
Utah	No	No.
Wyoming	Yes	No.

Federal oil and gas properties located in all other States, where a portion of the royalties is not shared with the State, are eligible for relief if they qualify as marginal under this rule. The MMS believes this covers any exceptions under section 117(c) of RSFA. For information on how to obtain relief, please refer to the rule, which you can view on our MMS Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/AC30.htm.*

Unless the information received is proprietary data, all correspondence, records, or information that we receive in response to this notice may be subject to disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) (FOIA). If applicable, please highlight the proprietary portions, including any supporting documentation, or mark the page(s) that contain proprietary data. Proprietary information is protected by the Trade Secrets Act (18 U.S.C. 1905); FOIA, Exemption 4; and Department regulations (43 CFR, part 2).

Dated: December 17, 2009.

Gregory J. Gould,

Associate Director for Minerals Revenue Management.

[FR Doc. 2010–321 Filed 1–11–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Ventilation Plans, Tests, and Examinations in Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance 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 Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 75.310, 312, 342, 351, 360, 361, 362, 363, 364, 370, 371, and 382.

DATES: Submit comments on or before March 15, 2010.

ADDRESSES: Send comments to John Rowlett, Management Services Division, 1100 Wilson Boulevard, Room 2141, Arlington, VA 22209–3939. Commenters are encouraged to send their comments via E-mail to *Rowlett.John@DOL.GOV.* Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile). Because of potential delays in receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

An underground mine is a maze of tunnels that must be adequately ventilated with fresh air to provide a safe environment for miners. Methane is liberated from the strata, and noxious gases and dusts from blasting and other mining activities may be present. The explosive and noxious gases and dusts must be diluted, rendered harmless, and carried to the surface by the ventilating currents. Sufficient air must be provided to maintain the level of respirable dust at or below 2 milligrams per cubic meter of air and air quality must be maintained in accordance with MSHA standards. Mechanical ventilation equipment of sufficient capacity must operate at all times while miners are in the mine. Ground conditions are subject to frequent changes, thus sufficient tests and examinations are necessary to ensure the integrity of the ventilation system and to detect any changes that may require adjustments in the system. Records of tests and examinations are necessary to ensure that the ventilation system is being maintained and that changes which could adversely affect the integrity of the system or the safety of the miners are not occurring. These examination requirements of §§ 75.310, 75.312, 75.342, 75.351, 75.360 through 75.364, 75.370, 75.371, and 75.382 also incorporate examinations of other critical aspects of the underground work environment such as roof conditions and electrical equipment which have historically cased numerous fatalities if not properly maintained and operated.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection that:

- 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the "For Further Information Contact" section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting "Rules & Regs", and then selecting "FedReg. Docs". On the next screen, select "Paperwork Reduction Act Supporting Statement" to view documents supporting the **Federal Register** Notice.

III. Current Actions

Records of tests and examinations are necessary to ensure that the ventilation system is being maintained and that changes which could adversely affect the integrity of the system or the safety of the miners are not occurring.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Ventilation Plans, Tests, and Examinations in Underground Coal Mines.

OMB Number: 1219–0088.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 457.

Responses: 1,022,636.

Total Burden Hours: 1,363,130.

Total Burden Cost (operating/maintaining): $176,213.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 6th day of January, 2010.

John Rowlett,

Director of Management Services Division.

[FR Doc. 2010–333 Filed 1–11–10; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0001]

Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant

hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 17, 2009, to December 30, 2009. The last biweekly notice was published on December 29, 2009 (74 FR 68867).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible 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*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: August 5, 2009.

Brief description of amendment: Current Technical Specification (TS) 5.5.8, "Inservice Testing Program," contains references to the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI as the source of requirements for the inservice testing (IST) of ASME Code Class 1, 2, and 3 pumps and valves. The amendment deleted the references to Section XI of the Code and incorporated references to the ASME Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code). The amendment utilized some nonstandard frequencies in the IST Program in which the provisions of Surveillance Requirement 3.0.2 are applicable. The changes are consistent with Technical Specification Task Force (TSTF) change travelers TSTF–479–A, "Changes to Reflect Revision to 10 CFR 50.55a," and TSTF–497–A, "Limit Inservice Testing Program SR 3.0.2 Application to Frequencies of 2 Years or Less."

Date of issuance: December 23, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 240.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications/license.

Date of initial notice in ***Federal Register:*** October 6, 2009 (74 FR 51330).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 10, 2009.

Brief description of amendment: The amendment deleted the minimum pressurizer water level requirement in Technical Specification 3.4.9, "Pressurizer," and eliminated the verification of the minimum level requirement in Surveillance Requirement 3.4.9.1. This change is consistent with NUREG–1430, Revision 3, "Standard Technical Specifications, Babcock and Wilcox Plants."

Date of issuance: December 23, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 241.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications/license.

Date of initial notice in ***Federal Register:*** April 21, 2009 (74 FR 18254).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 2009.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 30th day of December 2009.

For The Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–226 Filed 1–11–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0485]

Draft Safety Culture Policy Statement: Request for Public Comments; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Issuance of draft safety culture policy statement and notice of opportunity for public comment; Extension of comment period.

SUMMARY: On November 6, 2009, (74 FR 57525) (ML093030375), the Nuclear Regulatory Commission (NRC) published for public comment a draft policy statement on safety culture to include the unique aspects of nuclear safety and security, and to note the Commission's expectations that all NRC licensees and certificate holders establish and maintain a positive safety culture that protects public health and safety and the common defense and security when carrying out licensed activities. The comment period was scheduled to expire on February 4, 2010, which coincides with the final day of the first of three public workshops the NRC is conducting to solicit input relating to the development of the safety culture policy statement, including: (1) development of a common safety culture definition; and (2) development of high-level

description/traits of areas important to safety culture. Based on comments from licensees that these workshops may stimulate additional comments on the final draft policy statement, the NRC has decided to extend the comment period on the draft policy statement from February 4, 2010, to March 1, 2010.

DATES: The comment period has been extended and now expires on March 1, 2010. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0485 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0485. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The Draft Safety Culture Policy Statement is available electronically under ADAMS Accession Number ML093030375.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0485.

FOR FURTHER INFORMATION CONTACT: Alexander Sapountzis, Office of Enforcement, Mail Stop O–4 A15A, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by e-mail to *Alexander.Sapountzis@nrc.gov* or Maria E. Schwartz, Office of Enforcement, Mail Stop O–4 A15A, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by e-mail to *Maria.Schwartz@nrc.gov.*

For the Nuclear Regulatory Commission:

Dated at Rockville, Maryland, this 5th day of January 2010.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2010–335 Filed 1–11–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of January 11, 18, 25, and February 1, 8, 15, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of January 11, 2010

Tuesday, January 12, 2010

9:30 a.m. Briefing on Office of Nuclear Security and Incident Response—Programs, Performance, and Future Plans (Public Meeting). (Contact: Marshall Kohen, 301–415–5436.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Briefing on Threat Environment Assessment (Closed—Ex. 1).

Week of January 18, 2010—Tentative

Tuesday, January 19, 2010

9:30 a.m. Briefing on the NRC Enforcement and Allegations Programs (Public Meeting). (Contact: Shahram Ghasemian, 301–415–3591.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of January 25, 2010—Tentative

Tuesday, January 26, 2010

9:30 a.m. Briefing on Office of Nuclear Reactor Regulation—Programs, Performance, and Future Plans (Public Meeting). (Contact: Quynh Nguyen, 301–415–5844.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 1, 2010—Tentative

There are no meetings scheduled for the week of February 1, 2010.

Week of February 8, 2010—Tentative

Tuesday, February 9, 2010

9:30 a.m. Briefing on Regional Programs—Programs, Performance, and Future Plans (Public Meeting). (Contact: Richard Barkley, 610–337–5065.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 15, 2010—Tentative

Thursday, February 18, 2010

9:30 a.m. Briefing on Office of Nuclear Regulatory Research—Programs, Performance, and Future Plans (Public Meeting). (Contact: Patricia Santiago, 301–251–7982.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the

public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: January 7, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010–466 Filed 1–8–10; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0008]

Withdrawal of Regulatory Guide 7.5

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of Regulatory Guide 7.5, "Administrative Guide for Obtaining Exemptions From Certain NRC Requirements Over Radioactive Material Shipments."

FOR FURTHER INFORMATION CONTACT: Thomas J. Herrity, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7447 or e-mail *Thomas.Herrity@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 7.5, "Administrative Guide for Obtaining Exemptions From Certain NRC Requirements Over Radioactive Material Shipments."

Prior to expansion of the Department of Transportation (DOT) regulations in 1998 to include hazardous material transported while in intrastate commerce, most intrastate shipments of NRC-licensed material were not subject to DOT regulations. Recognizing this, in 10 CFR 71.5, "Transportation of Licensed Material," the NRC imposed the same DOT requirements on these shipments (through 10 CFR 71.5(b)) that were already imposed on shipments in interstate commerce. Additionally, in 10 CFR 71.5(b), NRC provided licensees a method to request a modification, waiver, or exemption from the DOT regulations imposed in § 71.5(a). RG 7.5, originally published in May 1977, provided guidance on obtaining a modification, waiver, or exemption from the NRC-imposed DOT regulations via 10 CFR 71.5(b).

The number of shipments currently not subject to DOT regulations is markedly lower than in 1997. Shipments of licensed material that would not be subject to DOT regulations are those shipments that are not in commerce, *e.g.,* Federal, State, or local government radioactive material shipments transported by government employees in government vehicles. In the almost 11 years after the DOT final rule became effective on October 1, 1998, NRC has not approved any requests for exemption, waiver, or modification of DOT requirements under 10 CFR 71.5(b).

II. Further Information

The withdrawal of RG 7.5 does not alter any prior or existing licensing commitments based on its use. The guidance provided in this RG is neither necessary nor current. RGs may be withdrawn when their guidance is superseded by congressional action or no longer provides useful information.

Regulatory guides are available for inspection or downloading through the NRC's public Web site under "Regulatory Guides" in the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections.* Regulatory guides are also available for inspection at the NRC's Public Document Room (PDR), Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. You can reach the PDR staff by telephone at 301–415–4737 or 800–397–4209, by fax at 301–415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of January 2010.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–336 Filed 1–11–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2009; Order No. 380]

FY 2009 Annual Compliance Report; Comment Request

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Postal Service has filed an Annual Compliance Report on the costs, revenues, rates, and quality of service associated with its products in fiscal year 2009. Within 90 days, the Commission must evaluate that information and issue its determination as to whether rates were in compliance with title 39, chapter 36 and whether service standards in effect were met. To assist in this, the Commission seeks public comments on the Postal Service's Annual Compliance Report.

DATES: Comments are due: February 1, 2010. Reply comments are due: February 16, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in "FOR FURTHER INFORMATION CONTACT" by telephone for advice on alternatives to electronic filing.

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

SUPPLEMENTARY INFORMATION: Section 3652 of title 39 of the United States Code requires the Postal Service to file several reports with the Postal Regulatory Commission. Section 3652(a)(1) requires a report on the costs, revenues, rates, and quality of service associated with its products within 90 days after the close of each fiscal year. That section requires that the Postal Service's annual report be sufficiently detailed to allow the Commission and the public to determine whether the rates charged and the service provided comply with all of the requirements of title 39.

The Postal Service filed annual reports to the Commission in compliance with 39 U.S.C. 3652 on December 29, 2009, referred to comprehensively as the Annual Compliance Report (ACR) FY 2009. Appended to it are four basic data reports: (1) The Cost and Revenue Analysis (CRA); (2) the International Cost and Revenue Analysis (ICRA); (3) the models of costs avoided by worksharing; and (4) billing determinant information.[1] A full list of materials supporting the FY 2009 ACR

[1] United States Postal Service FY 2009 Annual Compliance Report, December 29, 2009 (FY 2009 ACR). Public portions of the Postal Service's filing are available at the Commission's Web site, *http://www.prc.gov.*

accompanies the report as Attachment One.

The Postal Service observes that all four basic data reports (CRA, ICRA, avoided cost studies, and billing determinants) have traditionally been filed with the Commission on an annual basis, and therefore are familiar to the Commission, both from prior rate cases and the previous two ACRs. It notes that there has been a significant change in the format of some of these materials. Where the CRA formerly presented financial data for competitive products as a single line item, it now presents data for five competitive product groups, consistent with the new format in which the Postal Service presents the public version of the Revenue, Pieces, and Weight report. In addition, the non-public annex filed by the Postal Service for the first time presents detailed financial data for competitive product NSAs. The supporting documentation for this new level of detail in these areas also remains in its non-public annex. *Id.* at 83–85. Finally, the Postal Service has filed a public and a non-public version of its Cost Segments and Components Reconciliation to Financial Statements and Account Reallocations report. Financial accounts relating to competitive products have been redacted from the public version. In the FY 2008 ACR, this was filed as an unredacted public document.

Section 3652(g) of title 39 requires that the Comprehensive Statement of Postal Operations mandated by 39 U.S.C. 2401(e) and performance and program plans mandated by sections 2803 and 2804 be included as a part of the Postal Service's annual compliance report. The Postal Service's Comprehensive Statement is filed as USPS-FY09–17 and is also available on its Web site: *http://www.usps.com/strategicplanning/cs09/CSPO_09.pdf.*

After receiving the FY 2009 ACR, the Commission is required under 39 U.S.C. 3653 to provide interested persons with an opportunity to comment on these reports and to appoint a Public Representative to represent the interests of the general public. Kenneth E. Richardson serves as the Public Representative in this docket.[2]

The Commission hereby solicits public comment on these reports, and on whether any rates or fees in effect during FY 2009 (for products individually or collectively) were not in compliance with applicable provisions of chapter 36 of title 39 (or regulations promulgated thereunder). Commenters addressing market dominant products are referred in particular to applicable requirements (39 U.S.C. 3622(d), (e) and 3626); objectives (39 U.S.C. 3622(b)); and factors (39 U.S.C. 3622(c)). Commenters addressing competitive products are referred to 39 U.S.C. 3633.

The Commission also solicits public comment on whether any service standards in effect during FY 2009 were not met. Commenters addressing the achievement of service standards for products within the market dominant classes of mail or special services are referred to 39 CFR parts 121 and 122, adopted 72 FR 72216 *et seq.*, December 19, 2007.

Additionally, the Commission solicits public comment on whether the Postal Service has met the goals established in the annual Comprehensive Statement and program and performance plans included in the Comprehensive Statement, which will assist the Commission in developing appropriate recommendations to the Postal Service related to the protection or promotion of the public policy objectives of title 39.

Comments by interested persons are due on or before February 1, 2010. Reply comments are due on or before February 16, 2010. After completing its review of the FY 2009 ACR, public comments, and any other information submitted in this proceeding, the Commission will issue an Annual Compliance Determination (ACD).

This is the third compliance report filed by the Postal Service since passage of the Postal Accountability and Enhancement Act (PAEA). Some of the issues raised by transitioning from the Postal Reorganization Act to the PAEA were resolved in FY 2009, easing the task of the Postal Service in preparing its report, and the task of the Commission and the public in evaluating it. The Commission has adopted rules prescribing the form and content of the Postal Service's periodic reports, including its annual compliance report.[3] In its FY 2009 ACR, the Postal Service presents costs and revenues aligned (for the most part) with the market dominant and competitive product lists in the Mail Classification Schedule.

In FY 2009, the Commission also adopted rules governing the treatment of commercially sensitive information. Those rules require the Postal Service to apply for non-public treatment of information required in periodic reports. Its application must specify its reasons for concluding the particular information is commercially sensitive and in need of non-public treatment, and describe with particularity the nature of the competitive harm that public disclosure is likely to cause.[4] Accordingly, the Postal Service has accompanied its FY 2009 ACR with an application for non-public treatment of certain competitive product information, including its supporting rationale in Attachment Two. There, the Postal Service argues that costs at the level of individual competitive products and below are generally commercially sensitive, and that volume and revenue at the level of billing determinants are commercially sensitive. In its domestic CRA, the Postal Service has aggregated competitive products into five groups that it views as appropriate for public disclosure—Total Express Mail, Total Priority Mail, Total Ground, Total International Competitive, and Competitive Services. In its FY 2008 domestic CRA, it had presented comparable data in a single competitive products line item.

Among the materials submitted by the Postal Service as part of its filing is a document identified as USPS-FY09–9, which serves as a roadmap summarizing other materials submitted as part of the FY 2009 ACR and discussing changes in methodologies from those used in the FY 2008 ACD. The Postal Service explains that methodological changes are discussed in general terms in a separate section of the roadmap document (USPS-FY09–9), and in more detail in the narrative preface accompanying each of the appended materials. The Postal Service explains that to the extent feasible it has adhered to the methodologies used in the FY 2008 ACD or approved by the Commission in informal rulemakings subsequent to the FY 2008 ACD. On pages 5 and 6 of the FY 2009 ACR, the Postal Service provides a list of dockets in which it has proposed changes to analytical principles used in periodic reporting, and identifies those rulemakings that have been completed and those that are still pending. With respect to those that are still pending, the Postal Service observes that in some instances, use of a changed analytical principle was necessary to reflect changed circumstances. In all other instances, the Postal Service explains that it has provided "toggle switches" in the documentation to allow the impact of the proposed change to be separately identified and reversed, if necessary. FY 2009 ACR at 6.

[2] *See* Notice of Appointment of Public Representative, October 28, 2009.

[3] *See* Docket No. RM2008–4, Notice of Final Rule Prescribing Form and Content of Periodic Reports, April 16, 2009.

[4] *See* Docket No. RM2008–1, Final Rule Establishing Appropriate Confidentiality Procedures, June 19, 2009.

The Postal Service's FY 2009 ACR discusses the evolution of its measurement of service standards to meet the mandate of 39 U.S.C. 3652(a)(2)(B)(i). The Postal Service reports that its hybrid IMb-based system for obtaining service performance results for bulk market dominant products is still under development. The Postal Service intends to use data from this system to measure service performance of its bulk mail products in the future. *Id.* at 9–10. Also of interest is the expansion of the coverage of the Postal Service's EXFC system for measuring the service performance of single-piece First-Class Mail from 463 3–digit ZIP Code areas to 892 3–digit ZIP Code areas. It notes that on-time performance in the expansion ZIP Codes initially lagged the on-time performance of the legacy ZIP Codes by 13.5 percent, but that management initiatives reduced that gap to less than 1 percent by the end of FY 2009. *Id.* at 12–13.

In its most recent compliance determination, the Commission raised concerns about the customer satisfaction measurement survey used by the Postal Service in its FY 2008 ACR. The Postal Service describes new modifications it made to improve that system, *id.* at 16–17, and customer satisfaction measurement instruments it has developed and is implementing for use in its FY 2010 ACR. *Id.* at 19.

Generally, market dominant products that were flat shaped or parcel shaped failed to cover their attributable costs in FY 2009. For example, Periodicals lost $642 million, earning revenues that were only 76 percent of attributable costs. *Id.* at 40, Table 3. Standard Regular flats, and Standard Regular parcels and NFMs together lost $830 million. Flats were roughly 82 percent of attributable costs, and revenues for parcels and NFMs were roughly 75 percent of attributable costs. *Id.* at 26, Table 2. Package Services, as a class, lost $53 million. Among package services products, only Bound Printed Matter flats and Inbound Surface Parcel Post covered their attributable costs. *Id.* at 42–43, Table 4. Four Special Services failed to recover their attributable costs—Registered Mail, Stamped Cards, International Ancillary Services, and Confirm. *Id.* at 52–53, Table 5. Finally, International Inbound Single-Piece First-Class Mail failed to cover its costs, earning revenues that were approximately 60 percent of attributable costs. *Id.* at 22. Additionally, the Postal Service provides a discussion of the competing policy considerations that impact workshare discounts and the reasons a substantial number of workshare discounts may have exceeded avoided costs in FY 2009. *Id.* at 58–73.

With respect to competitive products, seven international products failed to recover their attributable costs—Inbound International Expedited Services 1 and 2; Inbound Surface Parcel Post at Non-UPU Rates; International Money Transfer Service; Competitive Registered Mail; Competitive Insurance; Competitive Return Receipt; and Competitive International Business Reply Service negotiated service agreement contracts. *Id.* at 77–79.

The Postal Service estimates that competitive products as a whole covered their incremental costs, calculated two alternative ways, and therefore pass the test for identifying cross-subsidy of competitive products by market dominant products. It, therefore, concludes competitive products were in compliance with 39 U.S.C. 3633(a)(1).

It is ordered:

1. The Commission establishes Docket No. ACR2009 to consider matters raised by the Postal Service's FY 2009 Annual Compliance Report.

2. Comments on the United States Postal Service FY 2009 Annual Compliance Report to the Commission, including the Comprehensive Statement of Postal Operations and other reports, are due on or before February 1, 2010.

3. Reply comments are due on or before February 16, 2010.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–295 Filed 1–11–10; 8:45 am]

BILLING CODE 7710–FW–S

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 15, 2010.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cynthia Pitts, Director, Disaster Administrative Services, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, *mailto:* Director, 202–205–7570 *cynthia.pitts@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*

SUPPLEMENTARY INFORMATION: Per OMB Circular A–123, Appendix B. Agencies must perform credit score inquiries and analysis prior to issuing travel credit cards. When credit score inquiry results in no score, this form will be used as an alternative means to asses credit history as required by the Circular.

Title: "Alternatives Creditworthiness Assessment."

Description of Respondents: Applicants applying for Disaster Loans.

Form Number: 2294.

Annual Responses: 1,849.

Annual Burden: 8.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, *mail to:* System Accountant, Office of Investment 202–205–7559, *carol.fendler@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA Forms 2181, 2182 and 2183 provide SBA with the necessary information to make properly supported decisions regarding the approval denial of an applicant for a small business investment company (SBIC) license. SBA uses this information to asses an applicants ability to successfully operate an SBIC within the scope of the Small Business Investment Act, as amended.

Title: "SBIC Management Assessment Questionnaire (MAQ) & License Application; Exhibits to SBIC License Applications/MAQ."

Description of Respondents: Small Business Owners and Farmers.

Form Number's: 2181, 2182, 2183.

Annual Responses: 255.

Annual Burden: 4,300.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2010–322 Filed 1–11–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 12006 and # 12007; New York Disaster # NY–00086

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA—1869—DR), dated 12/31/2009.

Incident: Severe Storms and Flooding Associated with Tropical Depression Ida and a Nor'easter.

Incident Period: 11/12/2009 through 11/14/2009.

Effective Date: 12/31/2009.

Physical Loan Application Deadline Date: 03/01/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 10/01/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/31/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Nassau, Suffolk.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 120066 and for economic injury is 120076.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–324 Filed 1–11–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 12008 and # 12009; Alabama Disaster # AL–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA–1870–DR), dated 12/31/2009.

Incident: Severe Storms and Flooding.

Incident Period: 12/12/2009 through 12/18/2009.

Effective Date: 12/31/2009.

Physical Loan Application Deadline Date: 03/01/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 10/01/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/31/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties

Barbour, Butler, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Escambia, Geneva, Henry, Pike.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 120086 and for economic injury is 120096.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–327 Filed 1–11–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 11964 and # 11965; Louisiana Disaster Number LA–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA–1863–DR), dated 12/10/2009.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 10/29/2009 through 11/03/2009.

Effective Date: 12/31/2009.

Physical Loan Application Deadline Date: 02/08/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 09/10/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of LOUISIANA, dated 12/10/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Catahoula, Franklin.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–326 Filed 1–11–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Compressed and Liquefied Gases.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Compressed and Liquefied Gases, Product Service Code (PSC) 6830, North American Industry Classification (NAICS) code 325120. According to a request, no small business manufacturers supply this class of product to the Federal Government. If granted, the waiver would allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned small businesses, or Participants in the SBA's 8(a) Business Development (BD) Program.

DATES: Comments and source information must be submitted January 27, 2010.

ADDRESSES: You may submit comments and source information to Amy Garcia, Program Analyst, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Amy Garcia, by telephone at (202) 205–6842; by FAX at (202) 481–1630; or by e-mail at *Amy.garcia@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or participants in the SBA's 8(a) BD Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market. In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. 13 CFR 121.1202(c). The SBA defines "class of products" based on the Office of Management and Budget's NAICS system and (PSCs) to further identify particular products within the NAICS code to which a waiver would apply. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for this class of product within 15 days after date of publication in the **Federal Register**.

Dated: January 5, 2010.

Dean Koppel,

Acting Director, Office of Government Contracting.

[FR Doc. 2010–328 Filed 1–11–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17i–8; SEC File No. 270–533; OMB Control No. 3235–0591.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [1] the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below. The Code of Federal Regulation citation to this collection of information is the following rule: 17 CFR 240.17i–8.

Section 231 of the Gramm-Leach-Bliley Act of 1999 [2] (the "GLBA") amended Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) (the "Exchange Act") to create a regulatory framework under which a holding company of a broker-dealer ("investment bank holding company" or "IBHC") may voluntarily be supervised by the Commission as a supervised investment bank holding company (or "SIBHC").[3] In 2004, the Commission promulgated rules, including Rule 17i–8, to create a framework for the Commission to supervise SIBHCs.[4] This framework includes qualification criteria for

SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor for SIBHCs and their affiliated broker-dealers.[5]

Pursuant to Section 17(i)(3)(A) of the Exchange Act, an SIBHC must make and keep records, furnish copies thereof, and make such reports as the Commission may require by rule.[6] Rule 17i–8 requires that an SIBHC to notify the Commission upon the occurrence of certain events that would indicate a decline in the financial and operational well-being of the firm.

The collections of information included in Rule 17i–8 are necessary to allow the Commission to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of Section 17 of the Act and allow the Commission to supervise the activities of these SIBHCs. Rule 17i–8 also enhances the Commission's supervision of the SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers. Without these notices, the Commission would be unable to adequately supervise an SIBHC, nor would it be able to determine whether continued supervision of an IBHC as an SIBHC were necessary and appropriate in furtherance of the purposes of Section 17 of the Act.

We estimate that three IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs. An SIBHC will require about one hour to create a notice required to be submitted to the Commission pursuant to Rule 17i–8. However, as these notices only need be filed in certain situations indicative of financial or operational difficulty, only one SIBHC may be required to file notice pursuant to the Rule every other year. Thus, we estimate that the annual burden of Rule 17i–8 for all SIBHCs would be about 30 minutes.

The reports and notices required to be filed pursuant to Rule 17i–8 must be preserved for a period of not less than three years.[7] The collection of information is mandatory and the

[1] 44 U.S.C. 3501 *et seq.*

[2] Pub. L. 106–102, 113 Stat. 1338 (1999).

[3] *See* 15 U.S.C. 78q(i).

[4] *See* Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[5] *See* H.R. Conf. Rep. No. 106–434, 165 (1999). *See also* Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

[6] 15 U.S.C. 78q(i)(3)(A).

[7] 17 CFR 240.17i–5(b)(4).

information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to Section 17(j) of the Exchange Act and Section 552(b)(3)(B) of the Freedom of Information Act,[8] notwithstanding any other provision of law. In addition, paragraph 17i–8(c) specifies that the notices and reports filed in accordance with Rule 17i–8 will be accorded confidential treatment to the extent permitted by law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC, 20503 or by sending an e-mail to: *Shagufta_Ahmed@comb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 6, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–302 Filed 1–11–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–13; SEC File No. 270–263; OMB Control No. 3235–0275.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for Rule 17Ad–13 (17 CFR 240.17Ad–13) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act").

Rule 17Ad–13 requires approximately 150 registered transfer agents to obtain an annual report on the adequacy of internal accounting controls. In addition, transfer agents must maintain copies of any reports prepared pursuant to Rule 17Ad–13 plus any documents prepared to notify the Commission and appropriate regulatory agencies in the event that the transfer agent is required to take any corrective action. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. Small transfer agents are exempt from Rule 17Ad–13.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–13 is 120 hours annually. The total burden is 18,000 hours annually for transfer agents, based upon past submissions. The staff estimates that the average cost per hour is approximately $60. Therefore, the total cost of compliance for transfer agents is $1,080,000.

The retention period for the recordkeeping requirement under Rule 17Ad–13 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under Rule 17Ad–13 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: (i) *Shagufta_Ahmed@comb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 6, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–304 Filed 1–11–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17i–5; SEC File No. 270–531; OMB Control No. 3235–0590.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [1] the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below. The Code of Federal Regulations citation to this collection of information is the following rule: 17 CFR 240.17i–5.

Section 231 of the Gramm-Leach-Bliley Act of 1999 [2] (the "GLBA") amended Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) (the "Exchange Act") to create a regulatory framework under which a holding company of a broker-dealer ("investment bank holding company" or "IBHC") may voluntarily be supervised by the Commission as a supervised investment bank holding company (or "SIBHC").[3] In 2004, the Commission promulgated rules, including Rule 17i–5, to create a framework for the Commission to supervise SIBHCs.[4] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor for SIBHCs and their affiliated broker-dealers.[5]

Pursuant to Section 17(i)(3)(A) of the Exchange Act, an SIBHC would be required to make and keep records,

[8] 5 U.S.C. 552(b)(3)(B).

[1] 44 U.S.C. 3501 *et seq.*

[2] Pub. L. 106–102, 113 Stat. 1338 (1999).

[3] *See* 15 U.S.C. 78q(i).

[4] *See* Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[5] *See* H.R. Conf. Rep. No. 106–434, 165 (1999). *See also* Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

furnish copies thereof, and make such reports as the Commission may require by rule.[6] Rule 17i–5 requires that an SIBHC make and keep current certain records relating to its business. In addition, it requires that an SIBHC preserve those and other records for at least three years.

The collections of information required pursuant to Rule 17i–5 are necessary so that the Commission can adequately supervise the activities of these SIBHCs. In addition, these collections of information are needed to allow the Commission to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of Section the Act. Rule 17i–5 also enhances the Commission's supervision of the SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers. Without this information and documentation, the Commission would be unable to adequately supervise an SIBHC, nor would it be able to determine whether continued supervision of an IBHC as an SIBHC were necessary and appropriate in furtherance of the purposes of Section 17 of the Act.

In addition to the one firm currently supervised by the Commission as a SIBHC, we estimate that 2 IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs; for a total of three firms. An SIBHC will generally require about 40 hours to create and document a contingency plan regarding funding and liquidity of the affiliate group at a cost of $9,200 per SIBHC.[7] An SIBHC will require, on average, approximately 64 hours each quarter to create a record regarding stress tests, or approximately 256 hours each year and a cost of $49,920.[8] Further, an SIBHC will establish approximately 20 new counterparty arrangements each year, and will take, on average, about 30 minutes to create a record regarding the basis for credit risk weights for each such counterparty for a cost of $1,410.[9] Finally, an SIBHC will generally require about 24 hours per year to maintain the specified records for a cost of $4,632.[10]

We believe that an IBHC likely will upgrade its information technology ("IT") systems in order to more efficiently comply with certain of the SIBHC framework rules (including Rules 17i–4, 17i–5, 17i–6 and 17i–7), and that this would be a one-time cost. Depending on the state of development of the IBHC's IT systems, it would cost an IBHC between $1 million and $10 million to upgrade its IT systems to comply with the SIBHC framework of rules. Thus, on average, it would cost each of the three IBHCs about $5.5 million to upgrade their IT systems, or approximately $16.5 million in total. It is impossible to determine what percentage of the IT systems costs would be attributable to each Rule, so we allocated the total estimated upgrade costs equally (at 25% for each of the above-mentioned Rules), with $4,125,000 attributable to Rule 17i–5.

The collection of information is mandatory and the information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to Section 17(j) of the Exchange Act and Section 552(b)(3)(B) of the Freedom of Information Act,[11] notwithstanding any other provision of law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@comb.eop.gov*; and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 6, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–303 Filed 1–11–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78q(i)(3)(A).

[7] We believe that an SIBHC would have a Senior Treasury Manager create this record. According to the Securities Industry and Financial Markets Association ("SIFMA"), the hourly cost of a Senior Treasury Manager is $230, as reflected in the SIFMA's *Report on Management and Professional Earnings for 2008* ("SIFMA's Report on Professional Earnings), and modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. ($230 × 40 hours) = $9,200.

[8] We believe that an SIBHC would have a Floor Supervisor, or equivalent, create this record with an hourly cost of $195, as reflected in SIFMA's Report on Professional Earnings"). ($195 × 256) = $49,920.

[9] On average, each firm presently maintains relationships with approximately 1,000 counterparties. Further, firms generally already maintain documentation regarding their credit decisions, including their determination of credit risk weights, for those counterparties. We believe that an SIBHC would have an Intermediate Accountant create this record, which according to SIFMA's Report on Professional Earnings receives an hourly rate of $141. ($141 × ((30 minutes × 20 counterparties)/60 minutes) = $1,410.

[10] We believe that an SIBHC would have a Programmer Analyst perform this task and according to SIFMA's Report on Professional Earnings, a Programmer Analyst receives an hourly rate of $193. ($193 × 24) = $4,632.

[11] 5 U.S.C. 552(b)(3)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61292; File No. SR–NYSEAmex-2009–93]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 452—NYSE Amex Equities and Section 723 of the NYSE Amex Company Guide Regarding Broker Discretionary Voting for Election of Directors and on Material Amendments to Investment Advisory Contracts

January 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 23, 2009, NYSE Amex LLC ("Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 452—NYSE Amex Equities and Section 723 of the NYSE Amex Company Guide (the "Company Guide"). The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* and on the Exchange's Web site at *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex is proposing to amend Rule 452—NYSE Amex Equities and corresponding Section 723 of the Company Guide,[3] both entitled "Giving Proxies by Member Organization," to eliminate broker discretionary voting for the election of directors. Rule 452—NYSE Amex Equities (and Section 723 of the Company Guide) allows brokers to vote on "routine" proposals if the beneficial owner of the stock has not provided specific voting instructions to the broker at least 10 days before a scheduled meeting. However, Rule 452.11—NYSE Amex Equities (and Commentary .11 to Section 723 of the Company Guide) lists, by way of example, eighteen (18) specific non-routine matters as to which a member organization may not give a proxy to vote without instructions from beneficial owners. The proposed rule change would amend this list to include the election of directors, except in the case of a company registered under the Investment Company Act of 1940. The Exchange is also proposing to amend this list to include material amendments to investment advisory contracts with an investment company in order to codify previously existing interpretations of the Exchange with respect to investment advisory contracts.

The proposed rule change is identical to a rule change filed by the New York Stock Exchange ("NYSE") (the "NYSE Rule Filing") that was recently approved by the Commission [4] and will be applicable to proxy voting for shareholder meetings held on or after January 1, 2010. Notwithstanding the foregoing, the proposed amendment will not apply to a meeting that was originally scheduled to be held prior to January 1, 2010 but was properly adjourned to a date on or after that date.[5]

The Exchange believes that the proposed rule change is in conformity with the view of the Commission stated in the NYSE Approval Order that "while other self-regulatory organizations currently allow discretionary voting, we would expect these markets to make changes to conform to the NYSE's new rules to eliminate any disparities involving voting depending on where shares are held." [6]

Under the current NYSE Amex and SEC proxy rules, brokers must deliver proxy materials to beneficial owners and request voting instructions in return. If voting instructions have not been received by the tenth day preceding the meeting date, Rule 452—NYSE Amex Equities provides that brokers may vote on certain matters deemed "routine" by the Exchange. One of the most important results of broker votes of uninstructed shares is their use in establishing a quorum at shareholder meetings.

Among the other matters which the current Rule 452—NYSE Amex Equities treats as routine is an "uncontested" election for a company's board of directors.[7] Such elections remain the general practice in corporate America today, with contested elections occurring relatively infrequently.

However, in recent years the definition of a "contested election" has been questioned by a number of parties and interest groups.[8] This is because of the rise of a number of new types of proxy campaigns, including "just vote no" campaigns. Because these campaigns often do not result in competing solicitations, historically these efforts have not been considered "contests" for purposes of Rule 452—NYSE Amex Equities, and thus broker votes have been counted. This has drawn the ire of some investor groups since generally brokers vote uninstructed shares in accordance with the incumbent board's recommendations.

On "non-routine" matters, which generally speaking are those involving a contest or any matter which may affect substantially the rights or privileges of stockholders, NYSE Amex rules prohibit brokers from voting without receiving instructions from the beneficial owners. At present, Rule 452.11—NYSE Amex Equities lists by way of example eighteen such "non-routine" matters, including items such as stockholder proposals opposed by management, and mergers or consolidations.

The NYSE has amended NYSE Rule 452, and corresponding NYSE Listed Company Manual Section 402.08, to eliminate broker discretionary voting for the election of directors, but to except from that amendment companies registered under the Investment Company Act of 1940. The Commission has stated in the NYSE Approval Order that it expects other markets to make changes to their comparable rules to conform to the NYSE's new rules and eliminate any disparities involving voting. Consequently, NYSE Amex proposes herein to amend Rule 452—NYSE Amex Equities, and corresponding Section 723 of the Company Guide (which closely track NYSE Rule 452 and NYSE Listed Company Manual Section 402.08, respectively, prior to their recent amendment), to eliminate broker discretionary voting for the election of directors, but to except from that amendment companies registered under the Investment Company Act of 1940.

Effective Date

The proposed amendment will be applicable to proxy voting for

[3] Section 723 of the Company Guide is identical to Rule 452—NYSE Amex Equities and the proposed rule change will apply to both.

[4] *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92) ("NYSE Approval Order").

[5] In the process of making its determination that the election of directors should no longer be deemed to be a "routine matter" and that broker discretionary voting for the election of directors should be eliminated, the NYSE in 2005 created a Proxy Working Group to review and make recommendations with respect to the NYSE rules regulating the proxy voting process. The Proxy Working Group contained representatives from a number of different constituencies, all of whom have significant experience with the proxy voting process. One of the recommendations that came from the Proxy Working Group was that the proposed changes to NYSE Rule 452 should not apply to any company registered under the Investment Company Act of 1940, and this exception was adopted by the NYSE. For a full discussion of the role of the Proxy Working Group, see the NYSE Rule Filing.

[6] NYSE Approval Order, 74 FR at 33298, n. 69.

[7] Rule 452.11(2)—NYSE Amex Equities defines a "contest" as a matter that "is the subject of a counter-solicitation, or is part of a proposal made by a stockholder which is being opposed by management."

[8] For example, in 2002, the Council of Institutional Investors publicly criticized in the media the NYSE's definition of "contests" (which is exactly identical to NYSE Amex's definition of the term) as "problematic" because it fails to classify as contests "just vote no" campaigns, it fails to recognize the use of the Internet as a means of contesting management, it puts ADP in an inappropriate and conflicted role, and it is inconsistent with securities laws which recognize the validity of exempt solicitations. In a letter to the SEC dated June 13, 2003, Institutional Shareholders Services expressed concern that because "the NYSE classifies the election of directors as a routine voting item unless a full-blown proxy contest has erupted," the efforts of shareholders to express disapproval of board actions at companies like Sprint and Tyco in the 2003 proxy season were "watered down by broker votes." Moreover, in their presentations to the Proxy Working Group, several groups recommended that the definition of a contest be expanded or changed, including the AFL–CIO and the American Business Conference.

shareholder meetings held on or after January 1, 2010. Notwithstanding the foregoing, the proposed amendment will not apply to a meeting that was originally scheduled to be held prior to January 1, 2010 but was properly adjourned to a date on or after that date.

Material Amendments to Investment Contracts

In addition to the current 18 specific actions set out in Supplementary Material .11 to NYSE Rule 452, the NYSE has long interpreted NYSE Rule 452 to preclude member organizations from voting without instructions in certain other situations, including on any material amendment to the investment advisory contract with an investment company.[9]

In addition, in 2005, the NYSE published an interpretation,[10] pursuant to a request from the SEC's Division of Investment Management, that provided that any proposal to obtain shareholder approval of an investment company's investment advisory contract with a new investment adviser, which approval is required by the Investment Company Act of 1940, as amended (the "1940 Act"), and the rules thereunder, will be deemed to be a "matter which may affect substantially the rights or privileges of such stock" for purposes of NYSE Rule 452 so that a member organization may not give a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares. As a result, for example, a member organization of the NYSE may not give a proxy to vote shares registered in its name, absent instruction from the beneficial holder of the shares, on any proposal to obtain shareholder approval required by the 1940 Act of an investment advisory contract between an investment company and a new investment adviser due to an assignment of the investment company's investment advisory contract, including an assignment caused by a change in control of the investment adviser that is party to the assigned contract.

Also in 2005, immediately following publication of the NYSE's interpretation referenced in the preceding paragraph, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), also filed a rule change with the Commission establishing the exact same interpretation with respect to investment advisory contracts.[11] Noting that "[a] proposed rule change filed by the NYSE of its interpretation of its rule governing proxies by member organizations on votes relating to changes to investment advisory contracts recently became effective," the Amex Interpretation Release stated, "Following discussions with the staff of the Commission's Division of Investment Management, the Amex has determined to adopt a comparable interpretation of [Amex] Rule 577 to conform to the NYSE interpretation."[12]

The NYSE has amended NYSE Rule 452, and corresponding NYSE Listed Company Manual Section 402.08, to specifically codify these interpretations in its rules. Consistent with the previous adoption by Amex of these NYSE interpretations with respect to investment advisory contracts, the Exchange proposes herein to amend Rule 452—NYSE Amex Equities, and corresponding Section 723 of the Company Guide (which closely track NYSE Rule 452 and NYSE Listed Company Manual Section 402.08, respectively, prior to their recent amendment), to specifically codify these interpretations in the Exchange's rules as well.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[13] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will protect investors and the public interest by ensuring better corporate governance and transparency of the election process for directors and by promoting greater uniformity with the proxy rules of other exchanges. In particular, for Exchange member firms that are also NYSE member firms, confusion might arise as to which exchange's proxy voting rules are applicable to a company listed on the Exchange if there are disparities between the rules of the Exchange and the NYSE. The proposal should further the protection of investors and the public interest by assuring that voting on matters as critical as the election of directors can no longer be determined by brokers without instructions from the beneficial owner, and thus should enhance corporate governance and accountability to shareholders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In making this request, the Exchange stated, among

[9] *See* Securities Exchange Act Release No. 30697 (May 13, 1992), 57 FR 21434 (May 20, 1992) (SR–NYSE–1992–05).

[10] *See* Securities Exchange Act Release No. 52569 (October 6, 2005), 70 FR 60118 (October 14, 2005) (SR–NYSE–2005–61).

[11] *See* Securities Exchange Act Release No. 52765 (November 10, 2005), 70 FR 69999 (November 18, 2005) (SR–Amex–2005–102) ("Amex Interpretation Release").

[12] *Id.*

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

other things, that waiver of the 30-day operative delay will allow the change to become operative on the same date as NYSE's rule change and conform to the Commission's desire to eliminate any disparities involving voting.

The Commission believes that the waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest.[20] The proposal would permit the Exchange to comply with the Commission's stated goal that other self-regulatory organizations, that currently allow member discretionary voting for director elections, conform their rules to the NYSE's new rules to eliminate any disparities involving voting depending on where the shares are held. Further, the proposal would codify previously published interpretations with respect to voting on investment advisory contracts. Finally, the Commission notes that the NYSE's recently adopted rule changes, which are identical to the Exchange's proposed changes, were subject to full notice and comment, and considered and approved by the Commission.[21] Based on the above, the Commission finds that waiving the 30-day operative delay period is consistent with the protection of investors and the public interest and the proposal is therefore deemed effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2009–93 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–93 and should be submitted on or before February 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–308 Filed 1–11–10; 8:45 am]

BILLING CODE 8011–01–P

[20] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] *See supra* note 4.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–61296; File No. SR–ISE–2009–114]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

January 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 2009, International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to increase the surcharge fee for transactions in options on the Nasdaq-100® Stock Index. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to increase the surcharge fee for transactions in options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

on the Nasdaq-100 Stock Index, both full value ("NDX") and 1/10 value ("MNX").[3] The Exchange currently charges an execution fee for most transactions in options on NDX and MNX.[4] Specifically, the amount of the execution fee for transactions in options on NDX and MNX is $0.20 per contract for all Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions in options on NDX and MNX is equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[5] Finally, the amount of the execution fee for all non-ISE Market Maker transactions is $0.45 per contract.[6] For competitive reasons, the Exchange does not charge an execution fee for transactions in options on NDX and MNX executed by Public Customer Orders.[7]

Pursuant to a license agreement between the Exchange and the NASDAQ OMX Group, Inc., ("NASDAQ"), the Exchange currently charges a surcharge fee of $0.16 per contract for trading in options on NDX and MNX. The Exchange recently renewed its license agreement with NASDAQ pursuant to which the Exchange is now being charged six (6) cents more per contract. Accordingly, to defray the increased licensing costs, the Exchange proposes to increase the surcharge fee to $0.22 per contract for trading in options on NDX and MNX, effective January 1, 2010. The Exchange believes charging the participants that trade these instruments is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to continue excluding Public Customer Orders from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (*e.g.,* Market Maker, Non-ISE Market Maker & Firm Proprietary orders).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [10] and Rule 19b–4(f)(2) [11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2009–114 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission,[12] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2009–114 and should be submitted on or before February 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–300 Filed 1–11–10; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005) (Order approving the trading of options on full and reduced values of the Nasdaq-100 Stock Index).

[4] These fees are charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2010, these fees will also be charged to Linkage Principal Orders ("Linkage P Orders") and Linkage Principal Acting as Agent Orders ("Linkage P/A Orders"). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.27 per contract side and $0.18 per contract side, respectively. *See* Securities Exchange Act Release No. 60175 (June 25, 2009), 74 FR 32026 (July 6, 2009) (SR–ISE–2009–36).

[5] The Exchange applies a sliding scale, between $0.01 and $0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

[6] The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms and for Orders entered into the Price Improvement Mechanism by the member initiating the price improvement order is $0.20 per contract.

[7] Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3).

[11] 17 CFR 240.19b-4(f)(2).

[12] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov*.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61294; File No. SR–NYSE–2009–135]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 18 To Eliminate the $500 Minimum Net Loss Requirement for a Member Organization To Seek Compensation in the Event of an Exchange System Failure

January 6, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 31, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 18 ("Compensation in Relation to Exchange System Failure") to eliminate the $500 minimum net loss requirement for a member organization to seek compensation in the event of an Exchange System failure. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, the Commission's Web site at *http://www.sec.gov,* and the Exchange's Web site at *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange proposes to amend NYSE Rule 18 ("Compensation in Relation to Exchange System Failure") to eliminate the $500 minimum net loss requirement for a member organization to seek compensation in the event of an Exchange System failure. Member organizations would therefore be permitted to submit a claim for compensations without having to meet a minimum net loss threshold as long as such claims meet the other criteria of NYSE Rule 18. [4]

NYSE Rule 18 was established to provide a mechanism for member organizations to receive compensation for losses sustained in relation to an Exchange system failure.[5] It provides that member organizations that sustain a loss in relation to an Exchange system failure [6] are eligible to submit a claim, per incident, for compensation to the Exchange if certain requirements are met. Specifically, pursuant to NYSE Rule 18(a), claim is eligible for compensation if the Exchange's Division of Floor Operations determines that: (i) A valid order was accepted by the Exchange's systems; (ii) an Exchange system failure, as defined in NYSE Rule 18(b), occurred during the execution of said order; (iii) a member organization sustained a loss related to an Exchange system failure; (iv) the net loss was at least $500; [7] and (v) the Exchange's Division of Floor Operations received from the member organizations that sustained such loss, verbal [8] notice by the market opening on the next business day following the system failure and written notice by the end of the third business day following the system failure.

The provision that the member organization sustain a minimum net total loss of $500 requires the member organization to deduct any profits received in relation to the same incident before submitting the claim amount.[9] Member organizations are not permitted to aggregate losses incurred as a result of more than one system failure in order to satisfy the $500 minimum claim requirement. As a result, certain member organizations have been precluded from submitting claims for losses sustained in relation to an Exchange system failure.

The Exchange seeks to have the rule be even more inclusive of its member organizations that may sustain a loss in the event of an Exchange system failure. Based on its experience, the Exchange has concluded that it is no longer necessary to prescribe a minimum net loss in order for its member organizations to be eligible to submit claims. Accordingly, the Exchange seeks to eliminate the minimum net loss provision of NYSE Rule 18. The Exchange believes that this will allow more member organizations opportunities to seek compensation for losses sustained in relation to an Exchange system failure.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change is in keeping with these principles in that it serves to eliminate the minimum net loss threshold requirement in relation to an Exchange system failure in order to be

[4] The Exchange notes that similar changes are proposed to the rules of its affiliate, NYSE Amex LLC. *See* SR–NYSEAmex 2009–100.

[5] *See* Securities Exchange Act Release No. 55555 (March 27, 2007), 72 FR 16841 (April 5, 2007) (SR–NYSE–2007–09) (adopting the rule and making the operation of the rule was retroactive to September 1, 2006).

[6] Pursuant to NYSE Rule 18(b), a system failure is defined as a malfunction of the Exchange's physical equipment, devices and/or programming which results in an incorrect execution of an order or no execution of an order that was received in Exchange systems. Through this filing, the Exchange further seeks to change the word "which" in this subsection of the rule to "that" in order to make it grammatically correct.

[7] As the Exchange gained experience with the administration of NYSE Rule 18, it reviewed the members that were eligible to receive compensation pursuant to the rule and made changes to allow more member organizations eligible to submit claims. *See* Securities Exchange Act Release No. 56718 (October 29, 2007), 72 FR 62506 (November 5, 2007) (SR–NYSE–2007–95) (reducing the minimum net loss from $5,000 to $500).

[8] Through this filing the Exchange further seeks to change the word "verbal" to the word "oral" to make clear that the initial notice is not required in writing.

[9] *See* Securities Exchange Release No. 59486 (March 2, 2009), 74 FR 10104 (March 9, 2009) (SR–NYSE–2009–16) (Clarifying among other things, that if members and member organizations retain profits from a system malfunction, then they are required to net such profits against any losses from the same malfunction before submitting any claims).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

more inclusive and provide more opportunities for member organizations to be compensated for losses sustained in relation to an Exchange system failure thus protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow member organizations to immediately seek compensation for losses of less than $500 sustained in relation to an Exchange system failure. For this reason, the Commission designates that the proposed rule change become immediately operative.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–135 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–135. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2009–135 and should be submitted on or before February 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–301 Filed 1–11–10; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61293; File No. SR–NYSEAmex–2009–100]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 18 To Eliminate the $500 Minimum Net Loss Requirement for a Member Organization To Seek Compensation in the Event of an Exchange System Failure

January 6, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 31, 2009, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 18 ("Compensation in Relation to Exchange System Failure") to eliminate the $500 minimum net loss requirement for a member organization to seek

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

compensation in the event of an Exchange System failure. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, the Commission's Web site at *http://www.sec.gov,* and the Exchange's Web site at *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange proposes to amend NYSE Amex Equities Rule 18 ("Compensation in Relation to Exchange System Failure") to eliminate the $500 minimum net loss requirement for a member organization to seek compensation in the event of an Exchange System failure. Member organizations would therefore be permitted to submit a claim for compensations without having to meet a minimum net loss threshold as long as such claims meet the other criteria of NYSE Amex Equities Rule 18.[4]

NYSE Amex Equities Rule 18 was established to provide a mechanism for member organizations to receive compensation for losses sustained in relation to an Exchange system failure. It provides that member organizations that sustain a loss in relation to an Exchange system failure are eligible to submit a claim, per incident, for compensation to the Exchange if certain requirements are met. Specifically, pursuant to NYSE Amex Equities Rule 18(a), claim is eligible for compensation if the Exchange determines that: (i) A valid order was accepted by the Exchange's systems; (ii) an Exchange system failure, as defined in NYSE Amex Equities Rule 18(b), occurred during the execution of said order; (iii) a member organization sustained a loss related to an Exchange system failure; (iv) the net loss was at least $500; and (v) the Exchange or its designee received from the member organizations that sustained such loss, verbal [5] notice by the market opening on the next business day following the system failure and written notice by the end of the third business day following the system failure.

The provision that the member organization sustain a minimum net total loss of $500 requires the member organization to deduct any profits received in relation to the same incident before submitting the claim amount.[6] Member organizations are not permitted to aggregate losses incurred as a result of more than one system failure in order to satisfy the $500 minimum claim requirement. As a result, certain member organizations have been precluded from submitting claims for losses sustained in relation to an Exchange system failure.

The Exchange seeks to have the rule be even more inclusive of its member organizations that may sustain a loss in the event of an Exchange system failure. Based on its experience, the Exchange has concluded that it is no longer necessary to prescribe a minimum net loss in order for its member organizations to be eligible to submit claims. Accordingly, the Exchange seeks to eliminate the minimum net loss provision of NYSE Amex Equities Rule 18. The Exchange believes that this will allow more member organizations opportunities to seek compensation for losses sustained in relation to an Exchange system failure.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change is in keeping with these principles in that it serves to eliminate the minimum net loss threshold requirement in relation to an Exchange system failure in order to be more inclusive and provide more opportunities for member organizations to be compensated for losses sustained in relation to an Exchange system failure thus protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b-4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may

[4] The Exchange notes that similar changes are proposed to the rules of its affiliate, New York Stock Exchange LLC. *See* SR–NYSE–2009–135.

[5] Through this filing the Exchange further seeks to change the word "verbal" to the word "oral" to make clear that the initial notice is not required in writing.

[6] *See* Securities Exchange Release No. 59482 (March 2, 2009), 74 FR 10114 (March 9, 2009) (SR–NYSEALTR–2009–13) (Clarifying, among other things, that if members and member organizations retain profits from a system malfunction, then they are required to net such profits against any losses from the same malfunction before submitting any claims).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow member organizations to immediately seek compensation for losses of less than $500 sustained in relation to an Exchange system failure. For this reason, the Commission designates that the proposed rule change become immediately operative.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2009–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2009–100 and should be submitted on or before February 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–299 Filed 1–11–10; 8:45 am]

BILLING CODE 8010–01–P

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61302; File No. SR–FINRA–2009–095]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 3240 (Borrowing From or Lending to Customers) in the Consolidated FINRA Rulebook

January 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2370 (Borrowing From or Lending to Customers) as FINRA Rule 3240 (Borrowing From or Lending to Customers) in the Consolidated FINRA Rulebook[3] with certain changes and to delete Incorporated NYSE Rules 352(e) (Limitations on Borrowing From or Lending to Customers), (f) (Loan Procedures) and (g). The proposed rule change also would add a Supplementary Material section regarding record retention requirements to proposed FINRA Rule 3240.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[4] FINRA is proposing to adopt NASD Rule 2370 as FINRA Rule 3240 in the Consolidated FINRA Rulebook with certain changes as described below. The proposed rule change also would delete Incorporated NYSE Rules 352(e)

[3] *See supra* note 4 and accompanying text.

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

through (g)[5] from the Transitional Rulebook.[6] Further, the proposed rule change would add a Supplementary Material section regarding record retention requirements to proposed FINRA Rule 3240.

Background

The purpose of NASD Rule 2370, which became effective in November 2003, is to give members the opportunity to evaluate the appropriateness of particular lending arrangements between their registered persons and customers, to the extent permitted by the member, and the potential for conflicts of interests between both the registered person and his or her customer and the registered person and the member with which he or she is associated.

To that end, NASD Rule 2370 prohibits registered persons from borrowing money from or lending money to their customers (collectively referred to as "lending arrangements") unless certain conditions are met. More specifically, under Rule 2370, no registered person may borrow money from or lend money to his or her customer unless the firm has written procedures allowing such lending arrangements and (1) the customer is a member of the registered person's immediate family;[7] (2) the customer is in the business of lending money; (3) the customer and the registered person are both registered persons of the same firm; (4) the lending arrangement is based on a personal relationship outside of the broker-customer relationship; or (5) the lending arrangement is based on a business relationship outside of the broker-customer relationship. In addition, with the exception of lending arrangements between immediate family members and lending arrangements between registered persons and customers in the business of lending money, FINRA members are required to pre-approve in writing the other lending arrangements described above.

With respect to lending arrangements between immediate family members, a FINRA member's written procedures may indicate that the member permits such lending arrangements and that registered persons need not notify the member or receive member approval for such lending arrangements.

With respect to lending arrangements between registered persons and customers in the business of lending money, a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval for such lending arrangements, provided that such lending arrangements have been made on commercial terms that the customer generally makes available to members of the general public who are similarly situated as to need, purpose and creditworthiness.[8] Further, the member need not investigate such lending arrangements, but may rely on the registered person's representation that the terms of the loan meet these standards.

It is important to note that members can choose to permit registered persons to borrow money from or lend money to their customers consistent with the requirements of the rule or prohibit the practice in whole or in part.

NYSE Rules 352(e) through (g) also govern lending arrangements between registered persons and their customers. These provisions are substantially similar to the provisions of NASD Rule 2370, with one exception. NYSE Rule 352(f) provides an exception from the pre-approval requirements of the rule for loans totaling $100 or less between registered persons of the same firm.

Proposal

FINRA proposes to adopt NASD Rule 2370 as FINRA Rule 3240 in the Consolidated FINRA Rulebook, subject to the following changes. FINRA proposes to amend paragraph (a) (Permissible Lending Arrangements; Conditions) of the rule to indicate more explicitly that such arrangements are subject to the procedural requirements set forth in paragraph (b) (Notification and Approval) of the rule. FINRA also proposes to amend paragraph (a)(2)(B) of the rule regarding permissible lending arrangements between registered persons and customers in the business of lending money to indicate more explicitly that such customers must be acting in the course of such business.

Further, FINRA proposes to amend paragraph (b)(1) of the rule to require expressly that registered persons notify their member firms of the lending arrangements that require member pre-approval (FINRA is proposing this change for purposes of consistency with paragraphs (b)(2) and (3) of the rule, which provide that a registered person is not required either to notify the member or receive member approval for certain specified lending arrangements) and to clarify that any modifications to such lending arrangements (including any extension of the duration of such arrangements) are also subject to notification and member pre-approval.

In addition, FINRA proposes to amend the definition of "immediate family" in paragraph (c) (Definition of Immediate Family) of the rule to replace the reference that the term "includes" the enumerated persons to reflect that the term "means" such persons. Finally, FINRA proposes to add Supplementary Material .01 (Record Retention) requiring that members preserve the written pre-approval required by the rule for at least three years after the date that the lending arrangement has terminated or for at least three years after the registered person's association with the member has terminated. FINRA proposes to delete NYSE Rules 352(e) through (g) as the provisions of the NYSE rules are substantially similar to NASD Rule 2370.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 180 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act by giving members the opportunity to evaluate the appropriateness of certain lending arrangements between their registered persons and others, to the extent permitted by a member, and the potential that these lending arrangements could create certain conflicts of interest.

[5] For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[6] NYSE Rules 352(a) through (d) were deleted as part of a prior rule change. *See* Securities Exchange Act Release No. 60701 (September 21, 2009), 74 FR 49425 (September 28, 2009) (Order Approving File No. SR–FINRA–2009–014).

[7] NASD Rule 2370 defines the term "immediate family" to include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person whom the registered person supports, directly or indirectly, to a material extent.

[8] The fact that a registered person can negotiate a better rate or terms for a loan that is not the product of the broker-customer relationship would not vitiate the idea that the loan occurred on terms generally offered to the public. *See Notice to Members* 04–14 (March 2004).

[9] 15 U.S.C. 78*o*–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–095 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–095. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–095 and should be submitted on or before February 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–359 Filed 1–11–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61289; File No. SR–ISE–2009–108]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Amending the Direct Edge ECN Fee Schedule

January 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members[3] to simplify its fee schedule by (i) eliminating the Super Tier and Ultra Tier rebates and (ii) amending its fees and rebates. All of the changes described herein are applicable to ISE Members.

All of the changes described herein are applicable to ISE Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA. On July 1, 2009,[4] the Exchange adopted a new Ultra Tier Rebate whereby ISE Members were provided a $0.0032 rebate per share for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the attributed MPID satisfies one of the following criteria on a daily basis, measured monthly: (i) Adding 100,000,000 shares or more on EDGX; or (ii) adding 50,000,000 shares or more of liquidity on EDGX, so long as added liquidity on EDGX is at least 20,000,000 shares greater than the previous calendar month. The rebate described above is referred to as an "Ultra Tier Rebate" on the DECN fee schedule.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

[4] *See* Securities and Exchange Act Release No. 60232 (July 2, 2009), 74 FR 33309 (July 10, 2009) (SR–ISE–2009–43).

On October 1, 2009,[5] the Exchange amended the criteria for meeting this tier by allowing ISE Members to receive a $0.0032 rebate per share for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the attributed MPID posts 1% of the total consolidated volume ("TCV") in average daily volume ("ADV"). TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape A, B, and C securities.

On May 1, 2009,[6] the Exchange amended the Super Tier rebate, which provides a $0.0030 rebate per share for liquidity added on EDGX if the attributed MPID satisfies any of the following three criteria on a daily basis, measured monthly: (i) Adding 40,000,000 shares or more on either EDGX, EDGA, or EDGX and EDGA combined; (ii) adding 20,000,000 shares or more on either EDGX, EDGA, or EDGX and EDGA combined and routing 20,000,000 shares or more through EDGA; or (iii) adding 10,000,000 shares or more of liquidity to EDGX, so long as added liquidity on EDGX is at least 5,000,000 shares greater than the previous calendar month.

To adjust DECN's pricing model to be more consistent with other exchanges (even though DECN is not an exchange),[7] the Exchange is now proposing to de-link the pricing structures of DECN to eliminate pricing offers that are contingent on activity across both platforms. Secondly, the Exchange is proposing to simplify its fee schedule, which will provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECN to the EDGA and EDGX Exchanges (assuming their respective Form 1 applications are approved by the Commission). Finally, the Exchange believes that the proposed rate changes will help to maintain the competitive position of DECN.

To effectuate the foregoing, the Exchange proposes to delete the Super Tier and Ultra Tier rebates discussed above and proposes the amendments, described below, to its fees and rebates.

For securities priced less than $1, the Exchange proposes to change fees for adding liquidity on EDGX from free to 0.15% of the dollar value of the transaction. For removing liquidity on EDGX, the Exchange proposes to change the removal fee from 0.20% of the dollar value of the transaction to 0.30% of the dollar value of the transaction.

DECN does not charge port charges to Members executing 200,000 shares or more of combined liquidity on EDGX and/or EDGA on a monthly basis, per port. Any port (or number of ports) in excess of this, however, is currently charged $50 per port, per month. The Exchange is proposing to eliminate this contingency and provide that all port charges are free irrespective of how much volume the Member executes.

Currently, the Exchange provides that the current removal rate on EDGA, a rebate of $0.0002 per share, is contingent on the attributed MPID adding or routing a minimum average daily share volume, measured monthly, of 50,000 shares on EDGA. The Exchange proposes to provide that hidden order executions (Flag H) also count toward this volume. As a result, any attributed MPID not meeting this minimum will be charged $0.0030 per share for removing liquidity from EDGA. In addition, the Exchange proposes to eliminate this contingency (in footnote 1 of the fee schedule) as it applies to EDGX or EDGA/EDGX combined volume. As mentioned above, the Exchange is now proposing to de-link the pricing structures of DECN (EDGA/EDGX) to eliminate pricing offers that are contingent on activity across both platforms.

For adding liquidity on EDGA, currently Members are charged $0.0002 per share to add liquidity on EDGA unless the attributed MPID adds a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. Any attributed MPID meeting this minimum will not be charged to add liquidity on EDGA. The Exchange is proposing to delete the above paragraph in footnote 1 as the current charge of $0.0002 per share to add liquidity on EDGA is no longer dependent on Members adding a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. In addition, the Exchange is proposing that any attributed MPID meeting this minimum will also be charged $0.0002 per share to add liquidity on EDGA. Therefore, the text in footnote 1 has been deleted to reflect this change.

Currently, Members can qualify for a rebate of $0.0032 per share for all liquidity posted on EDGX if they: (i) Add or route at least 10,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6); and (ii) add a minimum of 75,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre- and post-trading hours. For EDGX, the Exchange proposes to amend this as follows: For Members adding volume in securities priced $1 and over, they will receive a rebate of *$0.0031* per share for all liquidity posted on EDGX if they: (i) Add or route at least *5,000,000* shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6); and (ii) add a minimum of *50,000,000* shares of average daily volume on EDGX in total, including during both market hours and pre- and post-trading hours (emphasis added). The new thresholds allow more Members to receive this rebate and is designed to reward members who add or route significant order flow to EDGX both during market hours and pre- and post-trading hours. It is also designed to increase liquidity during pre- and post-trading hours. For all Members, including Members not meeting the above thresholds, the Exchange now proposes to rebate $0.0029 per share for adding liquidity (to EDGX) in securities on all Tapes. This replaces the Super Tier and Ultra Tier structure presently in place that is described above. Conforming amendments have been made to flags B, V, Y, 3 & 4 ("add liquidity" flags) to reflect this fee change.

For removing liquidity, the Exchange currently charges $0.0028 per share for removing liquidity on EDGX for securities on all Tapes. The Exchange now proposes to charge $0.0029 per share for removing liquidity on EDGX. The Exchange believes that this fee structure will enable it to compete effectively with other market centers. Conforming amendments have been made to the N, W, and 6 flags ("remove liquidity" flags) to reflect this fee change.

Finally, the Exchange proposes to amend the fee for EDGA orders routed to EDGX. Currently, the Exchange charges $0.0028 per share and this event yields flag "I". The Exchange is proposing to increase this fee to $0.0029 per share on the EDGA platform. The Exchange believes that this rate change will enable it to maintain a competitive position with regards to other away market centers.

[5] *See* Securities Exchange Act Release No. 60769 (October 2, 2009) 74 FR 51903 (October 8, 2009) (SR–ISE–2009–68).

[6] *See* Securities Exchange Act Release No. 59887 (May 7, 2009), 74 FR 22792 (May 14, 2009) (SR–ISE–2009–24).

[7] On May 7, 2009, each of EDGA Exchange, Inc. and EDGX Exchange, Inc. (the "EDGA and EDGX Exchanges") filed their respective Form 1 applications to register as a national securities exchange ("Form 1") pursuant to Section 6 of the Securities Exchange Act of 1934. On July 30, 2009, the Exchanges filed Amendment No. 1 to the Form 1 Application. On September 17, 2009, the Form 1 was published in the **Federal Register** for notice and comment. *See* Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 (September 17, 2009).

The changes discussed in this filing will become operative on January 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, simplifying the rate structure for Members provides pricing incentives to market participants that route orders to DECN, allowing DECN to remain competitive. ISE notes that DECN operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to DECN. ISE believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to DECN rather than competing venues. The ISE also believes that the proposed rates are equitable in that they apply uniformly to all Members. Finally, to adjust DECN's pricing model to be more consistent with other exchanges (even though DECN is not an exchange), the Exchange desires to (i) de-link the pricing structures of DECN (EDGA/EDGX) to eliminate pricing offers that are contingent on activity across both platforms; and (ii) simplify its fee schedule in order to provide Members with greater consistency and transparency during the period that the EDGA and EDGX Exchanges are preparing to launch, when volume will be transitioning from DECN to EDGA/EDGX Exchanges (assuming their respective Form 1 applications are approved by the Commission).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[10] and Rule 19b–4(f)(2)[11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2009–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–108. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–108 and should be submitted on or before February 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–296 Filed 1–11–10; 8:45 am]

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[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61291; File No. SR–NYSEAmex–2009–95]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Establish Registered Representative Fees

January 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 28, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to end its waiver of registered representative fees

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

for member organizations that acquired their memberships solely by operation of NYSE Amex Equities Rule 2 in connection with the acquisition of the American Stock Exchange by the New York Stock Exchange ("NYSE"). The waiver will end on December 31, 2009 and all member organizations will be subject to registered representative fees commencing January 1, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the acquisition of the American Stock Exchange (renamed NYSE Amex after the acquisition) by NYSE Euronext, all equities trading conducted on or through the American Stock Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, was moved on December 1, 2008, to the NYSE trading facilities and systems located at 11 Wall Street, New York, New York (the "NYSE Amex Trading Systems"), which are operated by the NYSE on behalf of NYSE Amex (the "Equities Relocation"). At the time of the Equities Relocation, by operation of NYSE Amex Equities Rule 2, all NYSE member organizations automatically became NYSE Amex member organizations. By acquiring NYSE Amex membership, the NYSE member organizations that were not previously NYSE Amex members would become subject to the NYSE Amex registration fees for all of their employees who serve as registered representatives. As these NYSE member organizations that had no NYSE Amex business prior to the Equities Relocation became NYSE Amex members without any action on their own part, NYSE Amex waived the application of its registered representative fees to those firms for the month of December.

At the time of its original adoption of the waiver, NYSE Amex stated that it expected to submit a filing to adopt a revised registered representative fee commencing January 1, 2009.[3] The waiver was extended through June 30, 2009,[4] and was subsequently extended again through September 30, 2009,[5] at which time it expired. The expiration of the waiver on September 30, 2009, resulted from an oversight on the part of Exchange staff as the Exchange had not yet reached a conclusion as to a more permanent approach to registered representative fees at that time. Consequently, the Exchange intends to submit a filing in which it seeks to re-establish the waiver with retroactive effect from October 1, 2009, ending on December 31, 2009.

NYSE Amex proposes to end the waiver on December 31, 2009, and will require all NYSE Amex member organizations to pay registered representative fees as of January 1, 2010, regardless of whether they were members of NYSE Amex prior to the Equities Relocation.[6] It has been NYSE Amex's experience that member organizations that have benefitted from the waiver have traded comparable volumes of NYSE Amex equities since the Equities Relocation to those traded by member organizations that are currently subject to the registered representative fees. Consequently, NYSE Amex believes it is equitable to charge the same registered representative fees to all member organizations regardless of how they acquired their membership. The Exchange also notes that, while NYSE Amex benefits to a large degree from the NYSE's regulatory program and all NYSE Amex members pay regulatory fees to the NYSE, the revenues generated from NYSE regulatory fees are significantly less than is needed to fund the NYSE and NYSE Amex equities regulatory program. As such, the Exchange believes it is appropriate to charge registered representative fees to those member organizations that have benefitted from the waiver, as a contribution to the costs of regulating their NYSE Amex equities trading activities.

The rule change will become operative as of January 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as all member organizations will pay the same fees and the fees charged to member organizations that previously benefitted from the waiver will be sufficient to fund only a portion of the costs of NYSE Amex's regulation of those member organizations' NYSE Amex equities trading activities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[3] *See* Exchange Act Release 59045 (December 3, 2008), 73 FR 75151 (December 10, 2008) (SR–NYSEALTR–2008–09).

[4] *See* Exchange Act Release 59170 (December 29, 2008), 74 FR 486 (January 6, 2009) (SR–NYSEALTR–2008–19).

[5] *See* Exchange Act Release 60176 (June 26, 2009), 74 FR 32021 (July 6, 2009) (SR–NYSAmex–2009–30).

[6] *See* e-mail from John Carey, Chief Counsel US Equities, NYSE Euronext, Inc. to Leah Mesfin, Special Counsel, Division of Trading and Markets, Commission, on January 4, 2010, clarifying that the waiver ended on December 31, 2009.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2009–95 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2009–95 and should be submitted on or before February 2, 2010.

[11] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–298 Filed 1–11–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61290; File No. SR–ISE–2009–109]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Amounts That Direct Edge ECN, in Its Capacity as an Introducing Broker for Non-ISE Members, Passes Through to Such Non-ISE Members

January 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the amounts that Direct Edge ECN ("DECN"), in its capacity as an introducing broker for non-ISE Members, passes through to such non-ISE Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA. On December 30, 2009, the ISE filed for immediate effectiveness a proposed rule change to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members[3] to simplify its fee schedule by (i) eliminating the Super Tier and Ultra Tier rebates;[4] and (ii) amending

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

[4] On July 1, 2009, the Exchange adopted a new Ultra Tier Rebate whereby ISE Members were provided a $0.0032 rebate per share for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the attributed MPID satisfies one of the following criteria on a daily basis, measured monthly: (i) Adding 100,000,000 shares or more on EDGX; or (ii) adding 50,000,000 shares or more of liquidity on EDGX, so long as added liquidity on EDGX is at least 20,000,000 shares greater than the previous calendar month. The rebate described above is referred to as an "Ultra Tier Rebate" on the DECN fee schedule. *See* Securities and Exchange Act Release No. 60232 (July 2, 2009), 74 FR 33309 (July 10, 2009)(SR–ISE–2009–43).

On October 1, 2009, the Exchange amended the criteria for meeting this tier by allowing ISE Members to receive a $0.0032 rebate per share for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the attributed MPID posts 1% of the total consolidated volume ("TCV") in average daily volume ("ADV"). TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape A, B, and C securities. *See* Securities Exchange Act Release No. 60769 (October 2, 2009) 74 FR 51903 (October 8, 2009)(SR–ISE–2009–68).

On May 1, 2009, the Exchange amended the Super Tier rebate, which provides a $0.0030 rebate per share for liquidity added on EDGX if the attributed MPID satisfies any of the following three criteria on a daily basis, measured monthly: (i) Adding 40,000,000 shares or more on either EDGX, EDGA, or EDGX and EDGA combined; (ii) adding 20,000,000 shares or more on either EDGX, EDGA, or EDGX and EDGA combined and routing 20,000,000 shares or more through EDGA; or (iii) adding 10,000,000 shares or more of liquidity to EDGX, so long as added liquidity on EDGX is at least 5,000,000 shares greater than the previous calendar month. *See* Securities Exchange Act Release No. 59887 (May 7, 2009), 74 FR 22792 (May 14, 2009)(SR–ISE–2009–24).

To adjust DECN's pricing model to be more consistent with other exchanges (even though DECN is not an exchange), in SR–ISE–2009–108, the Exchange proposed to de-link the pricing structures of DECN to eliminate pricing offers that are contingent on activity across both platforms. Secondly, in that filing, the Exchange proposed to simplify its fee schedule, which will provide Members with greater consistency and transparency during the period that the EDGA and EDGX

its fees and rebates.[5] The changes made pursuant to SR–ISE–2009–108 became operative on January 1, 2010.

In its capacity as a member of ISE, DECN currently serves as an introducing broker for the non-ISE Member subscribers of DECN to access EDGX and EDGA. DECN, as an ISE Member and introducing broker, receives rebates and is assessed charges from DECN for transactions it executes on EDGX or EDGA in its capacity as introducing broker for non-ISE Members. Since the amounts of such rebates and charges were changed pursuant to SR–ISE–2009–108, DECN wishes to make corresponding changes to the amounts it passes through to non-ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers receive and are charged will be the same as the amounts that ISE Members receive and are charged.

ISE is seeking accelerated approval of this proposed rule change, as well as an effective date of January 1, 2010. ISE represents that this proposal will ensure that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will in effect receive and be charged equivalent amounts and that the imposition of such amounts will begin on the same January 1, 2010 start date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, this proposal will ensure that dues, fees and other charges imposed on ISE Members are equitably allocated to both ISE Members and non-ISE Members (by virtue of the pass-through described above).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2009–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

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Exchanges are preparing to launch, when volume will be transitioning from DECN to the EDGA and EDGX Exchanges (assuming their respective Form 1 applications are approved by the Commission). Finally, the Exchange believes that the proposed rate changes will help to maintain the competitive position of DECN. On May 7, 2009, each of EDGA Exchange, Inc. and EDGX Exchange, Inc. (the "EDGA and EDGX Exchanges") filed their respective Form 1 applications to register as a national securities exchange ("Form 1") pursuant to Section 6 of the Securities Exchange Act of 1934. On July 30, 2009, the Exchanges filed Amendment No. 1 to the Form 1 Application. On September 17, 2009, the Form 1 was published in the **Federal Register** for notice and comment. *See* Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 (September 17, 2009).

To effectuate the foregoing, in SR–ISE–2009–108, the Exchange deleted the Super Tier and Ultra Tier rebates discussed above.

[5] In SR–ISE–2009–108, the Exchange amended its fee schedule for adding liquidity on EDGX from free to 0.15% of the dollar value of the transaction for securities priced less than $1. For removing liquidity on EDGX, the Exchange amended its fee schedule for the removal fee from 0.20% of the dollar value of the transaction to 0.30% of the dollar value of the transaction.

DECN does not charge port charges to Members executing 200,000 shares or more of combined liquidity on EDGX and/or EDGA on a monthly basis, per port. Any port (or number of ports) in excess of this, however, was charged $50 per port, per month. In SR–ISE–2009–108, the Exchange eliminated this contingency and provided that all port charges are free irrespective of how much volume the Member executes.

Previously, the Exchange provided that the removal rate on EDGA, which was a rebate of $0.0002 per share, was contingent on the attributed MPID adding or routing a minimum average daily share volume, measured monthly, of 50,000 shares on EDGA. In SR–ISE–2009–108, the Exchange provided that hidden order executions (Flag H) also count toward this volume. As a result, any attributed MPID not meeting this minimum will be charged $0.0030 per share for removing liquidity from EDGA. In addition, the Exchange eliminated this contingency (in footnote 1 of the fee schedule) as it applies to EDGX or EDGA/EDGX combined volume. As mentioned above, the Exchange de-linked the pricing structures of DECN (EDGA/EDGX) to eliminate pricing offers that are contingent on activity across both platforms.

For adding liquidity on EDGA, Members were charged $0.0002 per share to add liquidity on EDGA unless the attributed MPID added a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. Any attributed MPID meeting this minimum would not be charged to add liquidity on EDGA. In SR–ISE–2009–108, the Exchange deleted the above paragraph in footnote 1 as the current charge of $0.0002 per share to add liquidity on EDGA is no longer dependent on Members adding a minimum average daily share volume, measured monthly, of at least 50,000,000 shares on EDGA. In addition, any attributed MPID meeting this minimum will also be charged $0.0002 per share to add liquidity on EDGA. Therefore, the text in footnote 1 has been deleted to reflect this change.

Members could qualify for a rebate of $0.0032 per share for all liquidity posted on EDGX if they: (i) Added or route at least 10,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6); and (ii) added a minimum of 75,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre- and post-trading hours. In SR–ISE–2009–108, for EDGX, the Exchange amended this as follows: for Members adding volume in securities priced $1 and over, they will receive a rebate of *$0.0031* per share for all liquidity posted on EDGX if they: (i) add or route at least *5,000,000* shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6); and (ii) add a minimum of *50,000,000* shares of average daily volume on EDGX in total, including during both market hours and pre- and post-trading hours (emphasis added). The new thresholds allow more Members to receive this rebate and is designed to reward members who add or route significant order flow to EDGX both during market hours and pre- and post-trading hours. It is also designed to increase liquidity during pre- and post-trading hours. For all Members, including Members not meeting the above thresholds, the Exchange now proposes to rebate $0.0029 per share for adding liquidity (to EDGX) in securities on all Tapes. This replaced the Super Tier and Ultra Tier structure that had been in place and is described above. Conforming amendments were made to flags B, V, Y, 3 & 4 ("add liquidity" flags) to reflect this fee change.

For removing liquidity, the Exchange charged $0.0028 per share for removing liquidity on EDGX for securities on all Tapes. In SR–ISE–2009–108, the Exchange amended the fee schedule to charge $0.0029 per share for removing liquidity on EDGX. The Exchange believes that this fee structure will enable it to compete effectively with other market centers. Conforming amendments were made to the N, W, and 6 flags ("remove liquidity" flags) to reflect this fee change.

Finally, in SR–ISE–2009–108, the Exchange amended the fee for EDGA orders routed to EDGX. Previously, the Exchange charged $0.0028 per share and this event yielded flag "I". In SR–ISE–2009–108, the Exchange increased this fee to $0.0029 per share on the EDGA platform. The Exchange believes that this rate change will enable it to maintain a competitive position with regards to other away market centers.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–109 and should be submitted on or before February 2, 2010.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)[9] of the Act, which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities.

As described more fully above, ISE recently amended DECN's fee schedule for ISE Members pursuant to SR–ISE–2009–108 (the "Member Fee Filing"). The fee changes made pursuant to the Member Fee Filing became operative on January 1, 2010. DECN receives rebates and is charged fees for transactions it executes on EGDX or EDGA in its capacity as an introducing broker for its non-ISE member subscribers.

The current proposal, which will apply retroactively to January 1, 2010, will allow DECN to pass through the revised rebates and fees to the non-ISE member subscribers for which it acts as an introducing broker. The Commission finds that the proposal is consistent with the Act because it will provide rebates and charge fees to non-ISE member subscribers that are equivalent to those established for ISE member subscribers in the Member Fee Filing.[10]

ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register**. As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the revised rebate and fees established for ISE member subscribers in the Member Fee Filing, resulting in equivalent rebates and fees for ISE member and non-member subscribers. In addition, because the proposal will apply the revised rebates and fees retroactively to January 1, 2010, the revised rebates and fees will have the same effective date, thereby promoting consistency in the DECN's fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–ISE–2009–109) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–297 Filed 1–11–10; 8:45 am]

BILLING CODE 8011–01–P

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6864]

Culturally Significant Objects Imported for Exhibition Determinations: "Roman Art"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Roman Art," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about January 2010 until on or about January 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: January 4, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–358 Filed 1–11–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6863]

Culturally Significant Objects Imported for Exhibition: Determinations: "Giovanni Boldini in Impressionist Paris"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Giovanni Boldini in Impressionist Paris," imported from abroad for temporary

exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Sterling and Francine Clark Art Institute, Williamstown, MA, from on or about February 13, 2010, until on or about April 25, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 4, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–368 Filed 1–11–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6824]

Advisory Committee International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice; FACA Committee meeting announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of the sixth meeting of the Advisory Committee on International Postal and Delivery Services. This Committee has been formed in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

Public input: Any member of the public interested in providing public input to the meeting should contact Mr. Chris Wood, whose contact information is listed under **FOR FURTHER INFORMATION CONTACT** section of this notice. Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speaker list must be received in writing (letter, e-mail, or fax) prior to the close of business on February 4, 2010; written comments from members of the public for distribution at this meeting must reach Mr. Wood by letter, e-mail, or fax by this same date.

Meeting agenda: The agenda of the meeting will include a review of the results of the October–November 2009 session of the UPU Council of Administration and other subjects related to international postal and delivery services of interest to Advisory Committee members and the public.

Date: February 11, 2010 from 2 p.m. to about 5 p.m. (open to the public).

Location: The American Institute of Architects (Boardroom), 1735 New York Ave., NW., Washington, DC 20006.

For further information, please contact Christopher Wood, Office of Technical Specialized Agencies (IO/GS), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–1044, *woodcs@state.gov.*

Dated: December 22, 2009.

Dennis M. Delehanty,

Designated Federal Officer, Advisory Committee on International Postal and Delivery Services.

Dennis M. Delehanty,

Foreign Affairs Officer, Department of State.

[FR Doc. 2010–361 Filed 1–11–10; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

University Transportation Centers (UTC) Program Grants (49 U.S.C. 5506); Suspension of Competitions

AGENCY: Research and Innovative Technology Administration, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation is providing notice that it intends to suspend competitions for its University Transportation Centers (UTC) Program grants (49 USC 5506) pending the enactment of multi-year, surface transportation authorization legislation that is necessary to define the purpose, eligibility, number, and funding amounts of any future grants.

DATES: Dates for future UTC competitions are not known at this time. As more information is available about future grant competitions, it will be posted on the UTC Program's Web site, *http://utc.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Curtis Tompkins, University Transportation Centers Program, Office of Research, Development and Technology, RDT–30, Research and Innovative Technology Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone Number (202) 366–2125, Fax Number (202) 493–2993 or E-mail *curtis.tompkins@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59, as amended by Pub. L. 110–244) requires the Research and Innovative Technology Administration (RITA) of the U.S. Department of Transportation (U.S. DOT) to complete competitions for Regional UTCs by March 31, 2010, and for Tier I UTCs by June 30, 2010. Because there is no surface transportation authorization legislation or other authorizing vehicle yet in place to state the structure and funding of the UTC Program beyond Federal Fiscal Year 2009, and because of the burden that would be placed on applicants to pursue a competition process that has a high likelihood of being voided should a multi-year, surface transportation authorization substantially change the terms and conditions of the UTC Program and grants to be issued under that program, the Research and Innovative Technology Administration is suspending these competitions until such time as a multi-year surface transportation authorization has been enacted.

Issued in Washington, DC, on December 18, 2009.

Peter H. Appel,

Administrator.

[FR Doc. 2010–366 Filed 1–11–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0193; Notice 1]

Receipt of Petition for Decision That Nonconforming 2001 and 2002 Ducati MH900e Motorcycles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 and 2002 Ducati MH900e motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001 and

2002 Ducati MH900e motorcycles that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 11, 2010.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted 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: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.*

Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into or sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

US SPECS, LLC ("US SPECS"), of Havre de Grace, Maryland (Registered Importer 03–321) has petitioned NHTSA to decide whether non-U.S. certified 2001 and 2002 Ducati MH900e motorcycles are eligible for importation into the United States. The vehicles that US SPECS believes are substantially similar are 2001 and 2002 Ducati MH900e motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S.-certified 2001 and 2002 Ducati MH900e motorcycles to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

US SPECS submitted information with its petition intended to demonstrate that non-U.S. certified 2001 and 2002 Ducati MH900e motorcycles, as originally manufactured, conform to many FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001 and 2002 Ducati MH900e motorcycles are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles Other Than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 106 *Brake Hoses:* Inspection of all vehicles, and replacement of noncompliant brake hoses with U.S.-model hoses on vehicles that are not already so equipped.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of the following U.S.-model components on vehicles not already so equipped: (a) Headlamp; (b) front and rear side-mounted reflex reflectors; (c) rear-mounted reflex reflector; (d) turn signal lamps; and (e) taillamp.

Standard No. 111 *Rearview Mirrors:* Inspection of all vehicles, and replacement of noncompliant mirrors with U.S.-model components on vehicles that are not already so equipped.

Standard No. 120 *Tire Selection and Rims for Vehicles Other Than Passenger Cars:* Installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* Installation of a U.S.-model speedometer, or modification of the existing speedometer to conform to the requirements of the standard.

Standard No. 205 *Glazing Materials:* Inspection of all vehicles, and removal of noncompliant glazing or replacement of the glazing with U.S.-model glazing on vehicles that are not already so equipped.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal**

Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 7, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–331 Filed 1–11–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Mayer Brown LLP as outside counsel for BNSF Railway Company (WB461–16—11/13/09) for permission to use certain data from the Board's 1999 through 2008 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–307 Filed 1–11–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Assignment Form

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form "Assignment Form."

DATES: Written comments should be received on or before March 15, 2010.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kevin McIntyre, Manager, Judgment Fund Branch, 3700 East West Highway, Room 6E15, Hyattsville, MD 20782, (202) 874–6664.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Assignment Form.

OMB Number: 1510–0035.

Form Number: None.

Abstract: This form is used when an awardholder wants to assign or transfer all or part of his/her award to another person. When this occurs, the awardholder forfeits all future rights to the portion assigned.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 150.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 75.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Dated: November 27, 2009.

David Rebich,

Assistant Commissioner Management.

[FR Doc. 2010–262 Filed 1–11–10; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Application and Renewal Fees Imposed on Surety Companies and Reinsuring Companies; Increase in Fees Imposed

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Application and renewal fees imposed on surety companies and reinsuring companies; Increase in fees imposed.

SUMMARY: Effective December 31, 2009, The Department of the Treasury, Financial Management Service, is increasing the fees it imposes on and collects from surety companies and reinsuring companies.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: The fees imposed and collected, as referred to in 31 CFR 223.22, cover the costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business. These fees are determined in accordance with the Office of Management and Budget Circular A–25, as amended. The change in fees is the result of a thorough analysis of costs associated with the Surety Bond Branch.

The new fee rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$8,850.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority—$5,200.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States)—$3,125.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer—$2,220.

Questions concerning this notice should be directed to the Surety Bond Branch, Financial Accounting and Services Division, Financial Management Service, Department of the

Treasury, 3700 East West Highway, Room 6F01, Hyattsville, MD 20782, Telephone (202) 874–6850.

Dated: December 22, 2009.

David Rebich,

Assistant Commissioner for Management (CFO), Financial Management Service.

[FR Doc. 2010–256 Filed 1–11–10; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held February 10, 2010.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on February 10, 2010, in Room 4112 beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bothwell, C:AP:P&V:ART, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435–5611 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on February 10, 2010, in Room 4112 beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Diane S. Ryan,

Chief, Appeals.

[FR Doc. 2010–317 Filed 1–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee January 2010 Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee January 2010 Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for January 26, 2010.

Date: January 26, 2010.

Time: 9 a.m.

Location: Conference Room 5 North, United States Mint, 801 9th Street, NW., Washington, DC 20220.

Subject: Review candidate designs for the 2011 America the Beautiful Quarters candidate designs for Gettysburg National Military Park, Glacier National Park, Olympic National Park, Vicksburg National Military Park, and Chickasaw National Recreation Area.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: January 7, 2010.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. 2010–375 Filed 1–11–10; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Tuesday,

January 12, 2010

Part II

Department of Housing and Urban Development

24 CFR Part 257

HOPE for Homeowners Program; Statutory Transfer of Program Authority to HUD and Conforming Amendments To Adopt Recently Enacted Statutory Changes; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 257

[Docket No. FR–5340–I–02]

RIN 2502–AI76

HOPE for Homeowners Program; Statutory Transfer of Program Authority to HUD and Conforming Amendments To Adopt Recently Enacted Statutory Changes

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This rule implements the changes made to the HOPE for Homeowners (H4H) program by the recently enacted Helping Families Save Their Homes Act of 2009. Prior to enactment of the Helping Families Save Their Homes Act of 2009, rulemaking authority was under the Board of Directors of the HOPE for Homeowners Program (Board), and the regulations for the program are codified in a chapter of the Code of Federal Regulations (CFR) reserved for the Board.

The H4H program is a temporary program that offers homeowners and existing mortgage loan holders (or servicers acting on their behalf) insurance on the refinancing of loans for distressed mortgagors to support long-term sustainable homeownership, including, among other things, allowing homeowners to avoid foreclosure. The statute also transfers program responsibility for the H4H program to the Secretary of HUD. Previously, the program was overseen by a Board consisting of HUD, the Department of the Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve Board. The Board will continue in an advisory capacity to the Secretary of HUD on the implementation of the program.

HUD also takes the opportunity afforded by this rule to address the two public comments received on the January 7, 2009, interim rule issued by the Board. Comments received in response to this rule will be taken into consideration in the development of a final rule, to follow this interim rule.

DATES: *Effective Date:* March 15, 2010. *Comment Due Date:* March 15, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9278, Washington, DC 20410–8000; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The HOPE for Homeowners Program

The HOPE for Homeowners Act of 2008 (Title IV of Division A of the Housing and Economic Recovery Act of 2008) (HERA) (Pub. L. 110–289, 122 Stat. 2654, approved July 30, 2008) amended Title II of the National Housing Act (NHA) to add a new section 257. Section 257 (12 U.S.C. 1701z–23) establishes the H4H program, a temporary program within HUD's Federal Housing Administration (FHA) that offers homeowners and mortgage loan holders (or servicers acting on their behalf) insurance on the refinancing of loans for distressed mortgagors to support long-term sustainable homeownership and avoid foreclosure. Section 257 authorizes FHA to insure such refinanced eligible mortgages commencing no earlier than October 1, 2008, and the authority to insure new mortgages expires September 30, 2011.

The fundamental principle behind the H4H program is that providing new equity and reducing monthly payments for distressed homeowners may be an effective way to help homeowners avoid foreclosure. Under the H4H program, refinanced mortgages are offered by FHA-approved mortgagees to eligible borrowers who are at risk of losing their homes to foreclosure. The refinanced mortgage insured by FHA can have a principal loan balance below the current appraised value of the home, creating new equity in the mortgaged property. Participating mortgagors share their new equity and future appreciation of the value of the property subject to the refinanced mortgage with FHA. All holders of outstanding mortgage liens on a property must agree to accept the proceeds of the H4H program mortgage as payment in full of all indebtedness under the existing mortgage(s). Participation in the H4H program is voluntary. No mortgagees, servicers, or investors are compelled to participate.

Under section 257, as originally established by HERA, the H4H program was administered by a Board of Directors (Board) comprised of the Secretary of HUD, the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System (Federal Reserve Board), and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation (or their designees). On October 6, 2008, at 73 FR 58418, the

Board published regulations in the **Federal Register** that established the core requirements for implementation of the H4H program. These regulations are codified in part 4001 of title 24 of the CFR.

B. The Board's January 7, 2009, Interim Rule

Section 124 of the Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343, 122 Stat. 3765, approved October 3, 2008) (EESA) amended section 257 of the NHA to provide additional flexibility and options to lenders participating in the H4H program. Among other things, section 124 of EESA authorizes upfront payments to a holder of an existing subordinate mortgage in lieu of providing the subordinate lien holder with a portion of HUD's 50 percent interest in the future appreciation of the value of the property. On January 7, 2009, at 74 FR 617, the Board published an interim rule to implement the changes made by EESA, and provided the public with a 60-day period to comment on the regulatory amendments. The public comment period closed on March 9, 2009.

C. The Helping Families Save Their Homes Act of 2009

On May 20, 2009, the President signed into law the Helping Families Save Their Homes Act of 2009 (Division A of Pub. L. 111–22, 123 Stat. 1632) (Helping Families Act). Section 202 of the Helping Families Act makes several amendments to section 257 of the NHA to enhance operation of the H4H program and to provide additional flexibility to participants. In addition, the Helping Families Act transfers responsibility, including rulemaking authority, for the H4H program from the Board to the Secretary of HUD. The Board will continue in an advisory capacity to the Secretary of HUD on the implementation of the H4H program.

II. This Interim Rule

This interim rule implements the changes made to the H4H program by the Helping Families Act. The statutory revisions to the H4H program made by the Helping Families Act, in several instances, have superseded the regulatory amendments made by the January 7, 2009, interim rule. Nonetheless, HUD takes the opportunity afforded by today's publication to also address the two public comments received on the January 7, 2009, interim rule issued by the Board.

This section of the preamble discusses the regulatory amendments made in response to the Helping Families Act. Section IV of the preamble discusses the issues and suggestions submitted by the two public commenters on the January 7, 2009, interim rule and HUD's responses to these comments.

Key Changes Made to the H4H Program by the Helping Families Act

1. *Transfer of H4H program responsibility to HUD.* As noted, the Helping Families Act transfers responsibility for the H4H program from the Board to HUD. This interim rule implements this statutory mandate by transferring the H4H program regulations to a new part 257 of HUD's regulations in title 24 of the CFR. With the exception of the regulatory amendments discussed below in this preamble, the substance of new part 257 is nearly identical to that of 24 CFR part 4001, which will be removed from the CFR in a future rulemaking. Where appropriate, the interim rule revises the H4H program regulations to replace references to the Board with references to HUD. Because the Board continues to serve in an advisory capacity to the Secretary of HUD on the administration of the H4H program, the interim rule does not remove 24 CFR part 4000, which establishes the Board's procedures governing access to records under the Freedom of Information Act (5 U.S.C. 552). The procedures contained in part 4000 remain applicable to the Board's ongoing advisory responsibilities.

2. *Inheritance exception to present ownership interest requirement (§ 257.104).* Section 257(e)(11) of the NHA requires that the residence covered by the H4H program mortgage be the only residence in which the mortgagor has a present ownership interest. The Helping Families Act amended this provision to allow the Secretary of HUD to establish an exception for a mortgagor who has inherited property. The interim rule implements this statutory flexibility by providing for such an exception.

3. *Eligible mortgagors (§ 257.106).* Prior to amendment by the Helping Families Act, section 257 of NHA based the calculation of a borrower's debt-to-income (DTI) ratio on a March 1, 2008 date. Specifically, the borrower's DTI could be calculated as of March 1, 2008, or as of a later date, due to mortgage resets occurring after that date, but under the mortgage terms in effect on March 1, 2008. The Helping Families Act streamlines this calculation by removing all references to March 1, 2008, and instead requiring that DTI be calculated based on the borrower's existing mortgages at the time of application for the H4H program mortgage. The interim rule implements the simplified DTI calculation provisions in new § 257.106(a).

In accordance with the Helping Families Act, the interim rule prohibits mortgagors with a net worth that exceeds $1 million from participation in the H4H program (§ 257.106(d)). For purposes of the statutory ban on millionaires, the interim rule defines net worth as the total dollar amount of all the liabilities subtracted from the total dollar amount of all the assets (other than retirement accounts) of the mortgagor.

4. *Underwriting requirements (§ 257.110).* The interim rule provides additional flexibility regarding the loan-to-value (LTV) thresholds and the allowable total monthly payments under the H4H program mortgage. HUD believes this flexibility will facilitate participation in the H4H program.

The H4H program regulations, prior to amendment by the Helping Families Act, defined that the initial principal balance of the H4H program mortgage as a percentage of the current appraised value of the property may not exceed 96.5 percent. The interim rule will no longer codify a regulatory cap on LTV. HUD has determined that any such cap is more appropriately established through Mortgagee Letter, given the temporary nature of the program and the urgency of the situations the program is intended to address. Removal of the codified LTV cap will allow HUD to more rapidly modify the H4H program in response to evolving housing market conditions. For these reasons, HUD's position is that removal from the codified regulations is the right approach; however, HUD specifically invites comment on removal of the LTV cap from the codified regulations.

The rule continues to provide that the mortgagor's total monthly mortgage payment under a H4H program mortgage with an LTV greater than 90 percent, excluding the upfront premium, may not exceed 31 percent of the mortgagor's monthly gross income. Moreover, as required under the current regulations, the sum of the total monthly mortgage payment under such a H4H program mortgage and all monthly recurring expenses of the mortgagor may not exceed 43 percent of the mortgagor's monthly gross income. (See § 257.110(a)(2).)

5. *Mortgagor representations (§§ 257.112 and 257.116).* The Helping Families Act revises the existing required mortgagor representations. Specifically, the mortgagor is now required to provide a certification to the Secretary of HUD that the mortgagor has not: (1) Intentionally defaulted on an existing mortgage or other substantial

debt during the 5-year period ending upon insurance of the H4H program mortgage, (2) knowingly, willfully, and with actual knowledge furnished material information known to be false for purposes of obtaining the H4H program mortgage; or (3) been convicted under federal or state law for fraud during the 10-year period ending upon the insurance of the H4H program mortgage. The interim rule implements this requirement at § 257.116(b)(1). For purposes of the required certification, the interim rule defines substantial debt to mean any individual liability of the mortgagor that exceeds $100,000.

The Helping Families Act also requires that the mortgagee make a good-faith effort to determine that the mortgagor has not been convicted under federal or state law for fraud during the 10-year period ending upon insurance of the H4H program mortgage. The interim rule implements this provision at § 257.112(b) by requiring that the mortgagor provide the mortgagee with a certification that the mortgagor has not been convicted of fraud during the previous 10-year period and requiring that the mortgagee take such other action as HUD may specify in administrative guidance. For purposes of reducing required paperwork and facilitating H4H program oversight, the interim rule allows this certification to be combined with the mortgagor certification to the Secretary of HUD, discussed above and required under § 257.116(b)(1).

6. *Appreciation sharing and upfront payments (§ 257.120).* This interim rule makes the following changes to the appreciation sharing and upfront payment provisions in order to implement the Helping Families Act, as well as to provide additional flexibility and thereby facilitate increased participation in the H4H program.

First, the interim rule removes the consideration of capital improvement expenditures from the calculation of appreciation in value. Further, the interim rule no longer requires that a subordinate mortgage must have been originated on or before January 1, 2008, in order for the person or entity holding the subordinate mortgage to be eligible for a portion of FHA's interest in the appreciation in the value of the property.

The interim rule implements the limitation on the amount of appreciation to which FHA is entitled. The Helping Families Act amends section 257 of the NHA to limit the FHA appreciation interest to 50 percent of the appraised value of the property at the time the H4H program mortgage was originated. Accordingly, § 257.120(b) of the interim rule provides that, upon sale or disposition of the property, FHA may be entitled to receive the lesser of up to 50 percent of the appreciation in value, or an amount equal to the appraised value of the property at the time when the existing senior mortgage was originated.

The interim rule removes the current Appendix to the H4H program regulations and will no longer codify the specific amounts of the upfront payment and the risk-adjusted future appreciation payment. Regulatory codification of the specific amounts has the potential to delay needed adjustments. Accordingly, HUD has determined that these amounts are more appropriately set forth through a Mortgagee Letter, which will allow the Department to more expeditiously update the amounts in response to the availability of new economic data and feedback from H4H program participants.

As noted above, section 124 of EESA authorizes upfront payments to a holder of an existing subordinate mortgage in lieu of providing the subordinate lien holder a portion of HUD's 50 percent interest in the future appreciation of the value of the property. HUD has implemented this authority through rulemaking. This interim rule clarifies the regulatory language to provide that the offer of an upfront payment is at HUD's discretion. HUD notes that, at least initially, FHA will be exercising the authority to offer upfront payments in lieu of any shared appreciation.

7. *Payment of allowable fees and closing costs no longer codified in regulation.* New part 257 will no longer codify the sources that may be used to pay allowable closing costs incurred in connection with the refinancing and insurance of a mortgage under the H4H program. Similar to removal of the LTV cap in codified regulation, removal of allowable closing costs allows HUD to more quickly respond to changing conditions, such as new costs that may appear, and make a determination of whether they should be considered allowable costs. This is the type of item that is better addressed in more specific guidance, such as through a mortgagee letter. Although HUD's position is that removal from the codified regulations is the best approach, HUD specifically solicits comments on the exclusion in the codified regulations of sources that may be used to pay allowable closing costs.

8. *Revised upfront and annual mortgage insurance premiums (§ 257.203).* The interim rule implements the flexibility provided by the Helping Families Act regarding upfront and annual mortgage insurance premiums for H4H program mortgages. Prior to amendment by the Helping Families Act, section 257 of the NHA specified an upfront premium of 3 percent of the amount of the original insured principal obligation of the H4H program mortgage, and an annual premium of 1.5 percent of the remaining insured principal balance. The Helping Families Act amended section 257 to provide for an upfront premium of "not more than" 3 percent, and an annual premium of "not more than" 1.5 percent. The interim rule reflects these statutory changes at § 257.203(a)(1) and (a)(2).

9. *Streamlined property preservation exception to subordinate lien restrictions (§ 257.303).* The interim rule streamlines eligibility for the property preservation exception to the restriction on subordinate liens. Section 257 prohibits the mortgagor from granting a new second lien on the property during the first 5 years of the H4H program mortgage, except as the Secretary of HUD determines necessary to ensure the maintenance of property standards. The current H4H program regulations establish seven factors that must be met in order to qualify for the property preservation exception. This interim rule simplifies the determination of whether a subordinate lien qualifies for the exception by removing the seventh factor, regarding the sum of the unpaid principal balance and accrued and unpaid interest on the H4H program mortgage and the original principal balance of the new mortgage debt. Further, the interim rule clarifies that the restriction on subordinate liens does not apply to FHA loss mitigation actions (*e.g.,* mortgage modifications and partial claims).

III. Discussion of the Public Comments on the January 7, 2009, Interim Rule

Two public comments were submitted on the January 7, 2009, interim rule; one by a national organization representing mortgage bankers, and the other representing state and federal credit unions. Both commenters were generally supportive of the regulatory amendments promulgated in the interim rule, but also offered suggestions they believed would further enhance the H4H program. As noted earlier in this preamble, the statutory amendments made by the Helping Families Act have, in several instances, superseded provisions in the January 7, 2009, regulatory changes. Nevertheless, HUD appreciates the support expressed by the commenters and the suggestions for program improvements that were offered. The issues and suggestions submitted by the two public

commenters and HUD's responses to these comments are as follows.

Comment: The process for becoming an FHA-approved lender is too burdensome. One of the commenters stated that the process for qualifying as an FHA-approved lender is very burdensome. The commenter expressed interest in working with FHA to discuss how the process may be streamlined.

Response: The January 7, 2009, interim rule did not address the FHA lender approval process or solicit comment on this process, and therefore the comment is outside the scope of the January 7, 2009, interim final rule, which pertains solely to the H4H program regulations. Nevertheless, HUD appreciates the feedback on the FHA-approved lender process. HUD is frequently reviewing its processes for the purpose of determining that the processes achieve their goal without being unduly burdensome.

Comment: The upfront and future appreciation payments percentages are too low. One of the commenters stated that the amounts of the risk-adjusted upfront payment and the risk-adjusted future appreciation payment provided for by the January 7, 2009, interim rule will discourage participation in the H4H program, and position FHA to only receive loans where foreclosure is imminent. The commenter stated that both payments should be significantly higher to encourage subordinate lien holder participation.

Response: As noted above in this preamble, new 24 CFR part 257 no longer codifies the specific amounts of the upfront payment and the risk-adjusted future appreciation payment. As discussed, HUD has determined that these amounts are more appropriately set forth through Mortgagee Letter, which will allow the Department to more expeditiously adjust the specific amounts to reflect changes in market conditions and facilitate the participation of subordinate lien holders in the H4H program.

Comment: Additional flexibility is necessary regarding allowable LTV and DTI ratios. One of the commenters suggested that the allowable LTV ratio of 96.5 percent not be limited to those mortgagors whose new total monthly payment under the H4H program does not exceed 31 percent of the mortgagor's monthly gross income. Further, the commenter suggested that servicers should be allowed to consider compensating factors as a basis for exceeding the current maximum DTI. The commenter stated that these changes would make the H4H program more accessible to mortgagors in high-cost areas, such as California, where borrowers are accustomed to spending a higher percentage of their gross income on housing.

Response: As noted above, this interim rule revises the provisions regarding allowable LTV ratios to provide additional flexibility and address concerns, such as those expressed by the commenter regarding high-cost areas. Specifically, the interim rule no longer codifies a cap on LTV, since HUD has determined that any such cap is more appropriately established through Mortgagee Letter. Establishment of LTV limits through Mortgagee Letter will allow HUD to more rapidly modify the H4H program in response to evolving housing market conditions. The rule continues to provide that the mortgagor's total monthly mortgage payment under a H4H program mortgage with an LTV greater than 90 percent, excluding the upfront premium, may not exceed 31 percent of the mortgagor's monthly gross income. Moreover, as required under the current regulations, the sum of the total monthly mortgage payment under such a H4H program mortgage and all monthly recurring expenses of the mortgagor may not exceed 43 percent of the mortgagor's monthly gross income. (See § 257.110(a)(2).)

Comment: Fully vetted legal documents should be provided for shared appreciation and shared equity mortgage documents. One of the commenters suggested that a servicer should not be liable for ensuring that the legal documents for the shared equity and appreciation mortgages are valid and enforceable in all states. The commenter suggested that appropriately vetted legal documents necessary for executing both types of subordinate loans should be provided by FHA. The commenter stated that the burden of performing the necessary legal review, and the associated costs and risks of litigation should the mortgages be found deficient, have deterred servicers from participating in the H4H program.

Response: Lenders should modify the documents as may be necessary for compliance with state law. However, well-established document preparation services have modified, or are in the process of offering, state-compliant model security instruments for the H4H program. FHA-approved lenders have long used these services.

Comment: Endorsement time frame is not consistent with standard endorsement procedures. One of the commenters objected to the requirement that the lender include in the file evidence that the borrower has made the first payment within 120 days of closing. Under the H4H program regulations, if the borrower has not made such payment, the loan will not be eligible for payment of a claim under the H4H program. The commenter stated that this requirement is inconsistent with the standard endorsement rule for FHA loans that allows loans that are endorsed late to receive insurance benefits if such loans are current or brought current. The commenter wrote that while section 257 of the NHA provides that insurance benefits will not be paid if there is a "first payment default," FHA has the authority to interpret the term to mean "a borrower who does not make the first payment or subsequent payments on the loan." The commenter wrote that adopting the interpretation suggested by the commenter, in combination with the retention of the current FHA endorsement policy, will limit the exposure of servicers to those cases where the borrower fails to make the first and subsequent payments on a late endorsement.

Response: The H4H program regulations provide endorsement procedures that protect lenders from exposure and promote confidence in the insurance being provided. The change suggested by the commenter would actually increase a lender's exposure should the borrower not make the first payment since HUD is prohibited from paying a claim under such circumstances. To ensure that the lenders comply with the first payment default provision established in the law, this interim rule continues to require the lender to include in the file evidence that the borrower has made the first payment within 120 days of loan closing.

IV. Justification for Interim Rulemaking

HUD generally publishes regulatory changes for public comment before issuing them for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest." For the following reasons, the Department finds that a delay in the effectiveness of this interim rule, in order to solicit prior public comment, would be contrary to the public interest and statutory direction.

As noted above in this preamble, H4H is a temporary program. Section 257(r) of the NHA provides that the Secretary of HUD may not enter into any new commitment to insure an H4H program

mortgage after September 30, 2011. Further, the H4H program was enacted to help the federal government address the national housing crisis. As noted by Congress, the goal of the H4H program is, in part, "to help stabilize and provide confidence in mortgage markets by bringing transparency to the value of assets based on mortgage assets" (section 257(b)(3)). The changes made by the Helping Families Act were designed to provide additional needed flexibility and address programmatic deficiencies identified by lenders, HUD, and Congress. The pressing need to address the housing crisis and the temporary nature of the H4H program demonstrate it was the intent of Congress that the benefits of the H4H program be made promptly available to the public. A delay of the effectiveness of this rule for the prior solicitation of public comment would be contrary to the public interest, by postponing the benefits that Congress sought to be made immediately available to homeowners and lenders.

The majority of the regulatory amendments made by this interim rule closely track the statutory language of the Helping Families Act. The amendments are largely conforming in nature, updating the current H4H program regulations to reflect the language of the Helping Families Act. A delay in the effectiveness of these regulatory amendments is unnecessary because the Department does not have the discretion to revise statutory language in response to comments submitted by the public. Although not directly on point as to whether good cause exists for the omission of prior public comment, the Department also notes that, in the case of other regulatory changes, the interim rule revises existing program requirements to provide lenders and homeowners with additional flexibility and facilitate their participation in the H4H program. The interim rule does not impose new regulatory burdens on lenders and homeowners.

Although HUD has determined that good cause exists to publish this rule for effect without prior solicitation of public comment, the Department recognizes the value and importance of public input in the rulemaking process. Accordingly, HUD is issuing these regulatory amendments on an interim basis and providing for a 60-day public comment period. All comments will be considered in the development of the final rule.

V. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, "Regulatory Planning and Review"). This rule was determined to be economically significant under Executive Order 12866. The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

The Economic Analysis prepared for this rule is also available for public inspection and on HUD's Web site at *http://www.hud.gov.* A summary of the findings contained in the Economic Analysis follows.

The economic impacts of this rule stem largely from the changes to the H4H program to increase participation. Readjusting the parameters of the H4H program will not substantially change the benefits of preventing a foreclosure. The modifications will, however, significantly increase the number of refinancings by imposing less onerous constraints on lenders and borrowers. HUD estimates that, with 10,000 participants annually, the H4H program will generate $273 million in net benefits to society. H4H program participation could be as high as 137,500 over the life of the program, with commensurately higher benefits.

While the benefits per refinancing are substantial, the aggregate impact depends upon participation. The success of the H4H program will largely depend upon alternative opportunities for borrowers to refinance or modify their loans and the ability and willingness of servicers and investors to embrace the program. HUD estimates that a little more than 750,000 nonprime borrowers experiencing foreclosure could potentially be helped through a revised H4H program, but that only 18 percent, or 137,500 households, will actually refinance through a revised H4H program due to various factors affecting the ineligibility of many of the potentially eligible homeowners. This number of 137,500 (or approximately 90,000 annually) should be viewed as a maximum.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This interim rule does not impose new regulatory burdens on homeowners and lenders participating in the H4H program. The regulatory amendments made by this interim rule closely adhere to the statutory language of the Helping Families Act. Accordingly, the majority of the amendments are largely conforming in nature, updating the current H4H program regulations to reflect the language of the Helping Families Act, and do not reflect the exercise of agency discretion to establish policy. Moreover, all of the regulatory changes—those mandated by the Helping Families Act and those where HUD is exercising policy discretion—revise existing program requirements to provide lenders and homeowners with additional flexibility and facilitate their participation in the H4H program, and not to establish new regulatory burdens. Accordingly, HUD has determined that this interim rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments from all entities, including small entities, regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0579. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an

agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This interim rule will not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

List of Subjects

24 CFR Part 257

Administrative procedures, Practice and procedure, Mortgage insurance, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends chapter I of title 24 of the Code of Federal Regulations by adding part 257 to read as follows:

PART 257—HOPE FOR HOMEOWNERS PROGRAM

Subpart A—HOPE for Homeowners Program—General Requirements

Subpart B—Eligibility Requirements and Underwriting Procedures

Subpart C—Rights and Obligations Under the Contract of Insurance

Subpart D—Servicing Responsibilities

Subpart E—Enforcement

Authority: 12 U.S.C. 1701z–22; 42 U.S.C. 3535(d).

Subpart A—HOPE for Homeowners Program—General Requirements

§ 257.1 Purpose of program.

The HOPE for Homeowners (H4H) program is a temporary program authorized by section 257 of the National Housing Act, established within the Federal Housing Administration (FHA) of the Department of Housing and Urban Development (HUD) that offers to homeowners and existing loan holders (or servicers acting on their behalf), FHA insurance on refinanced loans for distressed borrowers to support long-term sustainable homeownership by, among other things, allowing homeowners to avoid foreclosure. The H4H program is administered by HUD through FHA. As used in this subpart, the terms HUD and FHA are interchangeable.

§ 257.3 Scope of part.

(a) *Core requirements.* This subpart establishes the core requirements for the H4H program.

(b) *Basic program parameters.* (1) FHA is authorized to insure eligible refinanced mortgages under the H4H program commencing no earlier than October 1, 2008. The authority to insure additional mortgages under the H4H program expires September 30, 2011.

(2) Under the H4H program, an eligible mortgagor may obtain a refinancing of his or her existing mortgage(s) with a new mortgage loan insured by FHA, subject to conditions and restrictions specified in section 257 of the National Housing Act and requirements established by HUD.

(c) *Other applicable requirements.* Except as may be otherwise provided by HUD, the provisions and requirements in the FHA regulations at 24 CFR part 203, which generally are applicable to all FHA-insured single-family mortgage insurance programs, also apply with respect to the insurance of a refinanced eligible mortgage under the H4H program.

§ 257.5 Approval of mortgagees.

(a) *Eligibility.* In order for a mortgage to be eligible for insurance under this part, the mortgagee originating the mortgage loan and seeking mortgage insurance under this part shall have been approved by HUD pursuant to 24 CFR part 202.

(b) *Mortgagee whose loan is to be refinanced.* A mortgagee holding or servicing an eligible mortgage to be refinanced and insured under section 257 of the National Housing Act is not required to be an approved mortgagee as required in paragraph (a) of this section, unless the mortgagee seeks to be the originator of the refinanced mortgage to be insured by FHA.

§ 257.7 Definitions.

As used in this part and in the H4H program, the following definitions apply.

Act means the National Housing Act (12 U.S.C. 1701 *et seq.*).

Allowable closing costs mean charges, fees, and discounts that the mortgagee may collect from the mortgagor as provided at 24 CFR 203.27(a).

Board means the Advisory Board for the HOPE for Homeowners program, which is comprised of the Secretary of HUD, the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System (Federal Reserve Board), and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation or the designees of each such individual.

Contract of insurance means the agreement by which FHA provides mortgage insurance to a mortgagee.

Default and delinquency fees means late charges contained in a mortgage/security instrument for the late or nonreceipt of payments from mortgagors after the date upon which payment is due, including charges imposed by the mortgagee for the return of payments on the mortgage due to insufficient funds.

Direct financial benefit means the same as "initial equity" determined under § 257.118(a).

Disposition means any transaction that results in whole or partial transfer of title of a property other than—

(1) A sale of the property; or

(2) Any transaction or transfer specified at 12 U.S.C. 1701j–3(d)(1) through (8).

Eligible Mortgage means a mortgage as defined at § 257.104.

Existing senior mortgage means an eligible mortgage that has superior priority and is being refinanced by a mortgage insured under section 257 of the Act.

Existing subordinate mortgage means a mortgage that is subordinate in priority to an eligible mortgage that is being refinanced by a mortgage insured under section 257 of the Act.

FHA means the Federal Housing Administration.

HOPE for Homeowners program (or H4H program) means the program established under section 257 of the Act.

HUD means the Department of Housing and Urban Development.

Intentionally defaulted for purposes of section 257(e)(1)(A) of the Act means the mortgagor:

(1) Knowingly failed to make payment on the mortgage or debt;

(2) Had available funds at the time payment on the mortgage or debt was due that could pay the mortgage or debt without undue hardship; and

(3) The debt was not subject to a bona fide dispute.

Mortgage has the same meaning as provided at 24 CFR 203.17(a)(1).

Mortgagee has the same meaning as provided at 24 CFR 203.251(f).

Mortgagor has the same meaning as provided at 24 CFR 203.251(e).

Net worth means the total dollar amount of all liabilities subtracted from the total dollar amount of all assets (other than retirement accounts) of the mortgagor.

Prepayment penalties mean such amounts as defined at 12 CFR 226.32(d)(6) of the Federal Reserve Board's Regulation Z (Truth in Lending).

Primary residence means the dwelling where the mortgagor maintains his or her permanent place of abode and typically spends the majority of the calendar year. A mortgagor can have only one primary residence.

Program mortgage means the mortgage into which the existing senior mortgage is refinanced.

Related party of a person means any of the following or another person acting on behalf of the person or any of the following—

(1) The person's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of any of the foregoing, and the person's spouse;

(2) Any entity of which 25 percent or more of any class of voting securities is owned, controlled, or held in the aggregate by the person or the persons referred to in paragraph (1) of this definition; and

(3) Any entity of which the person or any person referred to in paragraph (1) of this definition serves as a trustee, general partner, limited partner, managing member, or director.

Secretary means the Secretary of Housing and Urban Development.

Substantial debt means any individual liability of the mortgagor that exceeds $100,000.

Total monthly mortgage payment means the sum of:

(1) Principal and interest, as determined on a fully indexed and fully amortized basis; and

(2) *Escrowed amounts.* (i) The monthly required amount collected by or on behalf of the mortgagee for real estate taxes, premiums for required hazard and mortgage insurance, homeowners' association dues, ground rent, special assessments, water and sewer charges, and other similar charges required by the note or security instrument; or

(ii) For mortgages not subject to escrow deposits, 1/12 of the estimated annual costs for items listed in paragraph (2)(i) of this definition.

Subpart B—Eligibility Requirements and Underwriting Procedures

§ 257.102 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart A, concerning eligibility requirements of mortgages covering one-to-four family dwellings under section 203 of the National Housing Act (12 U.S.C. 1709) apply to mortgages on one-to-four family dwellings to be insured under section 257 of the National Housing Act (12 U.S.C. 1701z–22), *except the following provisions:* 203.7 Commitment process; 203.10 Informed consumer choice for prospective FHA mortgagors; 203.12 Mortgage insurance on proposed or new subdivisions; 203.14 Builder's warranty; 203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes; 203.17(d) Maturity; 203.18 Maximum mortgage amounts; 203.18a Solar-energy system; 203.18b Increased mortgage amount; 203.18c One-time or up-front MIP excluded from limitations on maximum mortgage amounts; 203.18d Minimum principal loan amount; 203.19 Mortgagor's minimum investment; 203.20 Agreed interest rate; 203.29 Eligible mortgage in Alaska, Guam, Hawaii or the Virgin Islands; 203.32 Mortgage lien; 203.37a Sale of property; 203.42 Rental properties; 203.43 Eligibility of miscellaneous types of mortgages; 203.43a Eligibility of mortgages covering housing in certain neighborhoods; 203.43d Eligibility of mortgages in certain communities; 203.43e Eligibility of mortgages covering houses in federally impacted areas; 203.43g Eligibility of mortgages in certain communities; 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act; 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act; 203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation Indians; 203.44 Eligibility of advances; 203.45 Eligibility of graduated payment mortgages; 203.47 Eligibility of growing equity mortgages; 203.49 Eligibility of adjustable rate mortgages; 203.50 Eligibility of rehabilitation loans; 203.51 Applicability; and 203.200–203.209 Insured Ten-Year Protection Plans (Plan).

(b) For the purposes of this subpart, all references at 24 CFR part 203, subpart A, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references at 24 CFR part 203, subpart A, to the "Mutual Mortgage Insurance Fund" shall be deemed to be to the Home Ownership Preservation Entity Fund.

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart A, to this part, the provisions of this part shall control.

§ 257.104 Eligible mortgages.

A mortgage eligible to be refinanced under section 257 of the Act must:

(a) Have been originated on or before January 1, 2008.

(b) Be secured by a property that is:

(1) Owned and occupied by the mortgagor as his or her primary residence; and

(2) The only residence in which the mortgagor has any present ownership interest, except for property acquired by the mortgagor through inheritance.

(c) Meet such other requirements as HUD may adopt.

§ 257.106 Eligible mortgagors.

A mortgagor shall be eligible to refinance his or her existing mortgages under section 257 of the Act only if:

(a)(1) The mortgagor has, as of the date of application for the H4H program mortgage, a total monthly mortgage payment of more than 31 percent of the mortgagor's monthly gross income; or

(2) If the mortgagor's existing senior mortgage or existing subordinate mortgage, if any, is an adjustable-rate mortgage that by its terms resets after the date of application for the H4H program mortgage, the mortgagor will be likely to have a total monthly mortgage payment (based on mortgages outstanding on the date of application for the H4H program mortgage) of more than 31 percent of the mortgagor's monthly gross income calculated as of the date the mortgagor applies for the H4H program mortgage;

(b) The mortgagor does not have an ownership interest in any other residential property, except for a property that the mortgagor has inherited;

(c) The mortgagor has not been convicted of fraud under federal or state law during the 10-year period ending upon insurance of the H4H program mortgage;

(d) The mortgagor does not have a net worth, as of the date the mortgagor first applies for the H4H program mortgage, which exceeds $1 million.

(e) The mortgagor meets such other requirements as HUD may adopt.

§ 257.108 Eligible properties.

(a) A mortgage may be insured under the H4H program only if the property that is to be the security for the mortgage is a one-to-four unit residence.

(b) The following property types are eligible to secure a mortgage insured under the H4H program:

(1) Detached and semi-detached dwellings;

(2) A condominium unit;

(3) A cooperative unit; or

(4) A manufactured home that is permanently affixed to realty and is treated as realty under applicable state law, except state taxation law.

§ 257.110 Underwriting.

A mortgage may be insured under the H4H program only if the following conditions are met:

(a) *Loan-to-value and income thresholds.* The loan-to-value (LTV), payment-to-income, and debt-to-income ratios of the H4H program mortgage do not exceed the thresholds set forth in either paragraph (a)(1) or (a)(2) of this section.

(1) *Program mortgage with LTV ratio of 90 percent or less.* (i) The initial principal balance of the H4H program mortgage (excluding the amount of the up-front premium) as a percentage of the current appraised value of the property does not exceed 90 percent;

(ii) The total monthly mortgage payment of the mortgagor under the H4H program mortgage does not exceed 38 percent of the mortgagor's monthly gross income; and

(iii) The sum of the total monthly mortgage payment under the H4H program mortgage and all monthly recurring expenses of the mortgagor do not exceed 43 percent of the mortgagor's monthly gross income.

(2) *Program mortgage with LTV of greater than 90 percent.* (i) The initial principal balance of the H4H program mortgage (excluding the amount of the up-front premium) as a percentage of the current appraised value of the property exceeds 90 percent (up to any limit established by HUD through Mortgagee Letter);

(ii) The total monthly mortgage payment of the mortgagor under the H4H program mortgage does not exceed 31 percent of the mortgagor's monthly gross income; and

(iii) The sum of the total monthly mortgage payment under the H4H program mortgage and all monthly recurring expenses of the mortgagor do not exceed 43 percent of the mortgagor's monthly gross income.

(b) *Past credit performance.* The mortgagor must have made at least six full payments on the existing senior mortgage being refinanced under the H4H program.

(c) The H4H program mortgage shall have a maturity of not less than 30 years and not more than 40 years from the date of origination.

(d) *Nonoccupant co-borrowers.* A mortgage loan may be insured by the FHA under the H4H program, even if one of the mortgagors on the loan (*i.e.,* a co-signer) does not reside at the residence securing the loan, provided that the nonresident mortgagor relinquishes all interests in the property that is to be security for the mortgage before an application is submitted for FHA insurance under the H4H program.

(e) *Limit on origination fees.* Mortgagees may charge and collect from mortgagors allowable closing costs.

§ 257.112 Mortgagee verifications.

(a) *Income verification.* The mortgagee shall use FHA's procedures to verify the mortgagor's income.

(b) *Mortgage fraud verification.* The mortgagor shall provide a certification to the mortgagee that the mortgagor has not been convicted under federal or state law for fraud during the 10-year period ending upon the insurance of the H4H program mortgage. This certification may be combined with the certification to FHA required under § 257.116(b)(1)(ii). The mortgagee shall take such action as HUD may specify in administrative guidance to ensure that the mortgagor is in compliance with the certification.

§ 257.114 Appraisal.

(a) The property shall be appraised by an appraiser on the FHA Appraiser Roster.

(b) An appraisal of a property to be security for an H4H program mortgage shall be conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP), and dated no more than 180 days from the date on which the mortgage transaction is closed, except as otherwise provided by HUD.

(c) The mortgagee must inform the appraiser that copies of the appraisal may be shared with holders and servicers of existing subordinate mortgages.

§ 257.116 Representations and prohibitions.

(a) *Underwriting and appraisal standards.* In order for the H4H program mortgage to be eligible for insurance under the H4H program, the underwriter and the mortgagee must provide certifications, in a format approved by FHA, that the mortgage is in compliance with the underwriting and the appraisal standards set forth in this part, and that it meets all requirements applicable to the H4H program. FHA may require additional certifications by the mortgagee to ensure compliance with such additional standards as FHA deems necessary, given the specific mortgage transaction presented.

(b) *Mortgagor's liability for repayment.* (1) The mortgagor shall provide a certification to FHA that the mortgagor has not:

(i) Intentionally defaulted on the mortgagor's existing mortgage(s), or any other substantial debt during the 5-year period ending upon insurance of the H4H program mortgage; or

(ii) Knowingly or willfully and with actual knowledge furnished material information known to be false for the purpose of obtaining the H4H program mortgage; and

(iii) Been convicted under federal or state law for fraud during the 10-year period ending upon the insurance of the H4H program mortgage. This certification may be combined with the certification to the mortgagee required under § 257.112(b).

(2) The mortgagor shall provide any other certifications that FHA may otherwise require.

(3) A mortgagor obligated under an H4H program mortgage shall agree in writing, on a form prescribed by HUD, to be liable to pay to HUD any Direct Financial Benefit achieved from the reduction of indebtedness on the existing senior and subordinate mortgages that are being refinanced under the H4H program if he or she makes a false statement or other misrepresentation in the certifications and documentation required for H4H program eligibility, including but not limited to the certifications required under paragraphs (b)(1) and (b)(2) of this section.

(c) *Mortgagee in violation of program requirements.* (1) If the mortgagee holds an H4H program mortgage that it originated and/or underwrote, and FHA finds that the mortgagee violated the representations and warranties required under paragraph (a) of this section, FHA is prohibited from paying FHA insurance benefits to that mortgagee.

(2) If the mortgagee no longer holds the H4H program mortgage that it originated and/or underwrote, FHA will pay an insurance claim to the mortgagee presently holding the H4H program mortgage (if all other requirements of the contract for mortgage insurance are met and the present holder did not participate in the violation of H4H program requirements) and shall seek indemnification from the mortgagee that originated the H4H program mortgage.

(d) *FHA insurance.* A mortgage is eligible for insurance if the mortgagee submits a complete case binder within such time period as HUD prescribes. The binder shall include evidence acceptable to HUD that the mortgage is current.

(e) *Mortgagor failure to make first mortgage payment.* FHA shall not pay a mortgage insurance claim to any mortgagee if the first total monthly mortgage payment is not made within 120 days from the date of closing of the mortgage. The mortgagee shall not, directly or indirectly, make all or a part of the first total monthly mortgage payment on behalf of the mortgagor. The mortgagee is prohibited from escrowing funds at closing for all or part of the first total monthly mortgage payment.

§ 257.118 Exit fee.

(a) *Initial Equity.* For purposes of section 257(k)(1) of the Act, the initial equity created as a direct result of the origination of an H4H program mortgage on a property, as calculated by the H4H program mortgage lender, shall equal:

(1) The lesser of—

(i) The appraised value of the property that was used at the time of origination of the H4H program mortgage to underwrite the mortgage and to determine compliance with the maximum LTV ratio at origination established by section 257(e)(2)(B) of the Act; or

(ii) The outstanding amount due under all existing senior mortgages, existing subordinate mortgages, and nonmortgage liens on the property; less

(2) The original principal amount of the H4H program mortgage on the property.

(b) *FHA's interest.* Upon the sale or disposition of a property secured by the H4H program mortgage or H4H program mortgage refinancing, FHA is entitled to receive the portion of the initial equity (as defined by paragraph (a) of this section) set forth in section 257(k)(1) of the Act, subject to such standards and policies as HUD may establish.

§ 257.120 Appreciation sharing or up-front payment.

(a) *Calculation of appreciation.* For purposes of section 257(k)(2) of the Act, the amount of the appreciation in value of a property securing an H4H program mortgage that occurs between the date the mortgage was insured under section 257 of the Act and the date of any subsequent sale or disposition of the property shall be equal to the following, as such amounts of appreciation may be established to the satisfaction of FHA:

(1) In the case of—

(i) A sale of the property to one or more persons, none of whom is a related party of the mortgagor, the gross proceeds from the sale of the property; or

(ii) A disposition of the property or the sale of the property to a related party of the mortgagor, the current appraised value of the property at the time of the disposition or sale; less

(2) The amount of closing costs, as adopted by HUD, incurred by the mortgagor(s) in connection with such sale or disposition, if any; less

(3) The appraised value of the property that was used at the time of origination of the H4H program mortgage to underwrite that mortgage and determine compliance with the maximum LTV ratio at origination established by section 257(e)(2)(B) of the Act.

(b) *HUD's interest in appreciation.* Upon sale or disposition of a property securing an H4H program mortgage, FHA may be entitled to receive the lesser of:

(1) An amount up to 50 percent of the appreciation in value of the property calculated in accordance with paragraph (a) of this section; or

(2) An amount equal to the appraised value of the property that was used at the time the existing senior mortgage was originated.

(c) *Eligibility of subordinate mortgage holders to receive portion of appreciation in value.* The persons or entities that hold, on the date of origination of an H4H program mortgage, an existing subordinate mortgage on the property may be eligible to receive a portion of FHA's interest in the appreciation in value of the property, as determined in accordance with the provisions of this section and such additional standards and policies that HUD may establish, if:

(1) The amount of the unpaid principal and interest on such existing subordinate mortgage, as of the first day of the month in which the mortgagor made application for the H4H program mortgage, is at least $2,500; and

(2) Each person holding such existing subordinate mortgage agrees, in connection with the origination of the H4H program mortgage, to fully release:

(i) The mortgagor(s) from any indebtedness under the existing subordinate mortgage; and

(ii) The holder's mortgage lien on the property.

(d) *Shared appreciation interest of subordinate mortgage holders.*

(1) *In general.* The eligible holder(s) of an existing subordinate mortgage on a property securing an H4H program mortgage may be eligible to receive, subject to paragraph (c)(3) of this section, an interest in FHA's interest in the appreciation in the value of such property, up to the amount set forth in administrative instructions issued by HUD.

(2) *Form.* The interest of an eligible holder of an existing subordinate mortgage under paragraph (d) of this section is evidenced in a shared appreciation certificate or other documentation to be issued by, or on behalf of, HUD.

(3) *Multiple subordinate liens.* If there is more than one eligible existing subordinate mortgage on a property securing an H4H program mortgage, the interests of such eligible existing subordinate mortgages under paragraph

(d)(1) of this section shall have priority among each other in the same order of priority that existed among the existing subordinate mortgages on the date of origination of the H4H program mortgage.

(4) *Distribution of appreciation interest to subordinate mortgage holders.* Upon the sale or disposition of a property securing an H4H program mortgage other than sale or disposition related to a default, any proceeds due to H4H as a result of the appreciation in value of the property (as calculated in accordance with paragraph (a) of this section) shall be distributed:

(i) First to the holders of any shared appreciation certificate or other documentation issued by HUD with respect to the property, if any, in accordance with paragraphs (d)(1), (d)(2), and (d)(3) of this section; and

(ii) The remaining amounts, if any, will be retained by FHA.

(e) *FHA election to offer up-front payment in lieu of a share of appreciation.* In lieu of any shared appreciation payment under paragraph (c) of this section, FHA may elect to offer the eligible holder(s) of an existing subordinate mortgage on a property securing an H4H program mortgage, a payment in an aggregate amount as provided by HUD through Mortgagee Letter. Eligible subordinate lien holders would receive the up-front payment contemporaneously with the origination of the H4H program mortgage.

§ 257.122 Forgiveness or waiver of prepayment penalties and default fees.

The holder or servicer of the existing senior and subordinate mortgages shall either forgive or waive all prepayment penalties and delinquency and default fees.

Subpart C—Rights and Obligations Under the Contract of Insurance

§ 257.201 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart B, covering mortgages insured under section 203 of the Act shall apply to mortgages insured under section 257 of the Act, *except the following sections:* 203.256 Insurance of open-end advances; 203.259a Scope; 203.260 Amount of insurance premium; 203.261 Calculation of periodic MIP (periodic MIP); 203.270 Open-end insurance charges; 203.280 One-time of up-front MIP; 203.281 Calculation of one-time MIP; 203.283 Refund of one-time MIP; 203.284 Calculation of up-front and annual MIP on or after July 1, 1991; 203.285 Fifteen year mortgages: calculation of up-front and annual MIP on or after December 26, 1992; 203.415–203.417 Certificate of Claim; 203.420–203.427 Mutual Mortgage Insurance Fund and Distributive Shares; 203.436 Claim procedures—graduated payment mortgages; 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act; 203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act; 203.439a Mortgages on property in Allegheny Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act; and 203.440–203.495 Rehabilitation Loans.

(b) For the purposes of this subpart, all references at 24 CFR part 203, subpart B, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references at 24 CFR part 203, subpart B, to the "Mutual Mortgage Insurance Fund" shall be deemed to be to the Home Ownership Preservation Entity Fund.

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart B, to this part, the provisions of this part shall control.

§ 257.203 Calculation of up-front and annual mortgage insurance premiums for H4H program mortgages.

(a) *Applicable premiums.* Any mortgage presented for endorsement under section 257 on or after October 1, 2008, and prior to September 30, 2011, shall be subject to the following requirements:

(1) *Up-front premium.* FHA shall establish and collect a single premium payment not more than 3 percent of the amount of the original insured principal obligation of the H4H program mortgage.

(2) *Annual premium.* In addition to the premium under paragraph (a)(1) of this section, FHA shall establish and collect an annual premium payment in an amount not more than 1.5 percent of the amount of the remaining insured principal balance of the H4H program mortgage.

(b) *Proceeds for payment of the up-front premium.* The up-front premium shall be paid with proceeds from the H4H program mortgage through a reduction of the amount of indebtedness that existed on the eligible mortgage prior to its being refinanced.

Subpart D—Servicing Responsibilities

§ 257.301 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart C, covering mortgages insured under section 203 of the Act shall apply to mortgages insured under section 257 of the Act, *except as follows:* 203.664 Processing defaulted mortgages on property located on Indian land; 203.665 Processing defaulted mortgages on property located on Hawaiian home lands; 203.666 Processing defaulted mortgages on property in Allegany Reservation of Seneca Nation of Indians; and 203–670–203.681 Occupied Conveyance.

(b) For the purposes of this subpart, all references in 24 CFR part 203, subpart C, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references in 24 CFR part 203, subpart C, to the "Mutual Mortgage Insurance Fund" shall be deemed to be to the Home Ownership Preservation Entity Fund.

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart C, to this part, the provisions of this part shall control.

§ 257.303 Prohibition on subordinate liens during first 5 years.

(a) *Prohibition on subordinate liens during first 5 years.* Except for FHA loss mitigation actions (e.g., mortgage modifications and partial claims) or as provided in paragraph (b) of this section, a mortgagor shall not, during the first 5 years of the term of the mortgagor's H4H program mortgage, incur any debt, take any action, or fail to take any action that would have the direct result of causing a lien to be placed on the property securing the H4H program mortgage if such lien would be subordinate to the H4H program mortgage.

(b) *Property preservation exception.* Paragraph (a) of this section shall not prevent a mortgagor on the H4H program mortgage from incurring new mortgage debt secured by a lien on the property securing the H4H program mortgage that is subordinate to the H4H program mortgage if:

(1) The proceeds of the new mortgage debt are necessary to ensure the maintenance of property standards, including health and safety standards;

(2) Repair or remediation of the condition would preserve or increase the property's value;

(3) The cost of the proposed repair or remediation is reasonable for the geographic market area;

(4) The results of the repair or remediation are not primarily cosmetic;

(5) The repair or remediation does not represent routine maintenance; and

(6) The new mortgage debt is closed-end credit, as defined in § 226.2 of the Federal Reserve Board's Regulation Z (12 CFR 226.2).

Subpart E—Enforcement Mortgagor False Information

§ 257.401 Notice of false information from mortgagor-procedure.

(a) If FHA finds that the mortgagor has made a false certification or provided false information via any means, including but not limited to false documentation, FHA shall inform the mortgagor, in writing or any other acceptable format, of such fact.

(b) The notice shall be sent to the mortgagor's last known address by both certified and ordinary mail. The notice shall state with specificity the misrepresentation or false statement made by the mortgagor. The notice shall include a request for repayment of the Direct Financial Benefit that the mortgagor is deemed to have received, as determined by FHA, by the refinancing of the eligible mortgage and subordinate mortgages. This does not preclude HUD or the United States from bringing any other action that they may be authorized to bring.

(c) The mortgagor may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, subpart A, except as modified by this section. Requests for a hearing must be made within 45 days from the date of the false information notice.

§ 257.403 Prohibitions on interested parties in insured mortgage transaction.

(a) A mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company or employee thereof, and any person with an interest in a real estate transaction involving an appraisal conducted as part of the process for insuring a mortgage under section 257 of the Act shall not improperly influence or attempt to improperly influence through any means, including but not limited to coercion, extortion, collusion, compensation, instruction, inducement, intimidation, nonpayment for services rendered, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with the origination, processing, and closing of the mortgage for insurance.

(b) HUD may, pursuant to its authority under section 536(a) of the Act, bring an action to impose a civil money penalty for a violation of paragraph (a) of this section.

(c) The authority to bring a civil money penalty under this section shall not preclude HUD from bringing any other action that HUD may be authorized to bring for a violation of paragraph (a) of this section.

§ 257.405 Mortgagees.

(a) HUD will monitor mortgagees to ensure compliance with the requirements of the H4H program. The Mortgagee Review Board at HUD is authorized to impose sanctions and civil money penalties against mortgagees who violates program requirements under this part. The authority of the Mortgagee Review Board to impose sanctions and civil penalties shall not preclude HUD from bringing any other action that HUD may be authorized to bring.

(b) Nonpayment of mortgage insurance claims for reasons established in § 257.16 shall not preclude the Mortgagee Review Board or HUD from bringing any action against the mortgagee that the Mortgagee Review Board or HUD are authorized to bring.

(c) The mortgagee may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, subpart A, except as modified by this section. Requests for a hearing must be made within 45 days from the date of the false information notice.

Dated: November 11, 2009.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

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