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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

[FNS–2007–0042]

RIN 0584–AD12

Food Distribution Program on Indian Reservations: Resource Limits and Exclusions, and Extended Certification Periods

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending the regulations for the Food Distribution Program on Indian Reservations (FDPIR). The changes will improve program service, ensure consistency between FDPIR and the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program), and respond to concerns expressed by the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR) that the current FDPIR resource limits are insufficient for the target populations and serve as a barrier to participation. The rule will increase the maximum level of allowable resources to the same level permitted under SNAP (including the establishment of a resource limit of \$3,000 for FDPIR households with a disabled member in accordance with Section 4107 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), and annual adjustments for inflation in accordance with Section 4104 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), allow a resource exclusion for the first \$1,500 of the equity value of one pre-paid funeral arrangement per household member, and allow households in which all members are elderly and/or

disabled to be certified for up to 24 months.

DATES: *Effective Date:* This rule is effective March 1, 2010.

FOR FURTHER INFORMATION CONTACT: Laura Castro, Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, 3101 Park Center Drive, Room 506, Alexandria, Virginia 22302, or by telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

- I. Procedural Matters
- II. Background and Discussion of the Final Rule

I. Procedural Matters

A. Executive Order 12866

This rule has been determined to be significant, and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

B. Regulatory Impact Analysis

1. Need for Action

This action is needed to ensure that regulations pertaining to certification period assignments for elderly and/or disabled households and resource standards are consistent between FDPIR and SNAP and to reflect provisions contained in the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), which established a resource limit of \$3,000 for SNAP households with a disabled member, and in Section 4104 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), which established an annual inflation adjustment to the SNAP resource limits starting in fiscal year (FY) 2009.

2. Benefits

This rule amends FDPIR regulations by aligning several provisions with their counterparts in the SNAP. These regulatory changes are designed to help ensure that FDPIR benefits are provided to low-income households living on or near Indian reservations that are in need of nutrition assistance. Because FDPIR regulations regarding resource limits and exclusions are altered by this rule, participation could potentially increase, thus expanding access to those eligible for the program and increasing nutritional benefits to the targeted population.

FNS has projected the impact of each change on FDPIR participation. However, we are unable to determine

the total number of individuals that might be added as a result of this rule. An individual might benefit from more than one provision and the effect of the overlap could not be determined.

3. Cost

This action is not expected to significantly increase costs of State and local agencies, or their commercial contractors, in using donated foods. The combined impact of the changes in this rulemaking is projected to increase program costs by \$68,000 in FY 2010 and \$852,000 over a five-year period (FY 2010–2014). These increased costs are attributable to potential increases in participation.

C. Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Under Secretary for Food, Nutrition and Consumer Services has certified that this action will not have a significant impact on a substantial number of small entities. While program participants and Indian Tribal Organizations (ITOs) and State agencies that administer the FDPIR and the Food Distribution Program for Indian Households in Oklahoma (FDPIHO) will be affected by this rulemaking, the economic effect will not be significant.

D. Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory

provisions of Title II of the UMRA) that impose on State, local or Tribal governments or the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.567. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice published at 48 FR 29114, June 24, 1983, the donation of foods in such programs is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

F. Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

1. Prior Consultation With Tribal/State Officials

The programs affected by the regulatory provisions in this rule are all Tribal or State-administered, federally funded programs. FNS' national headquarters and regional offices have formal and informal discussions with State officials on an ongoing basis regarding program issues relating to the distribution of donated foods. FNS meets annually with NAFDPIR, a national group of State agencies, to discuss issues relating to food distribution.

2. Nature of Concerns and the Need To Issue This Rule

This rule will provide consistency between FDPIR and SNAP in regard to certification period assignments for elderly and/or disabled households and resource standards. The rule was prompted, in part, by a resolution passed by NAFDPIR in FY 2000. NAFDPIR expressed concern that the current FDPIR resource limit was insufficient for the target population and served as a barrier to participation. The rule was also prompted, in part, by a provision contained in the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), enacted on May 13, 2002. Section 4107 of Public Law

107–171 established a SNAP resource limit of \$3,000 for households with a disabled member. Also, Section 4104 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), enacted on May 22, 2008, established an annual inflation factor adjustment to the SNAP resource limits. That provision was effective October 1, 2008. The other regulatory provisions finalized in this rule are also consistent with SNAP provisions.

3. Extent to Which the Department Meets Those Concerns

The Department has considered the impact of the final rule on State agencies. The Department does not expect the provisions of this rule to conflict with any State or local law, regulations or policies. The overall effect of this rule is to ensure that low-income households living on or near Indian reservations receive nutrition assistance. This rule will ensure consistency between FDPIR and SNAP in regard to certification period assignments for elderly and/or disabled households and resource standards.

G. Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Although the provisions of this rule are not expected to conflict with any State or local law, regulations, or policies, the rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted.

H. Civil Rights Impact Analysis

The Office of Civil Rights (OCR) has reviewed this rule in accordance with Departmental Regulation 4300–4, "Civil Rights Impact Analysis", to identify and address any major civil rights impact the rule might have on protected classes. Due to the unavailability of data, OCR cannot assess disproportionate impact on women, minorities, and persons with disabilities. OCR believes the intent of this rule is not to limit or reduce the ability of participants to receive the benefits of donated foods in the FDPIR, nor is its intent to reduce or eliminate equal access to participation in FDPIR.

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Proposed information collection burden related to the provisions in this final rule and burden changes related to the implementation of a new Web-Based Supply Chain Management System (WBSCM) are currently at OMB for review under OMB No. 0584–0293, expiration date November 30, 2009. These information collection requirements will not become effective until approved by OMB. Once they have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

This rule will not change the current recordkeeping burden for ITOs and State agencies under OMB No. 0584–0293, but it will impact the reporting burden due to an expected change in number of households participating in FDPIR as a result of this rule. Households complete an application process to participate in the program and are recertified at intervals determined by the State agency or ITO. The current estimated annual reporting burden for the certification or recertification of households to participate in FDPIR is 2,329.05. The provisions of this rule are expected to increase that burden to approximately 2,379.66, which is an increase of 50.61 burden hours.

The approved and proposed information collection estimates for OMB No. 0584–0293 are as follows:

Current estimated total annual responses: 1,160,746.

Proposed estimated total annual responses: 1,655,720.

Difference due to program changes, as reflected in this final rule: 99.

Difference due to WBSCM implementation: 494,875.

Current estimated annual recordkeeping and reporting burden: 1,073,701.

Proposed estimated annual recordkeeping and reporting burden: 1,079,172.

Difference due to program changes, as reflected in this final rule: 51.

Difference due to WBSCM implementation: 5,420.

J. E-Government Act Compliance

The Department 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.

II. Background and Discussion of the Final Rule

On July 3, 2008, FNS published a proposed rule in the **Federal Register** (73 FR 38155) to amend the regulations for FDPIR at 7 CFR part 253. The proposed changes would improve program service by: (1) Bringing the maximum level of allowable resources in line with SNAP, including the establishment of a resource limit of \$3,000 for households with a disabled member and a provision for an annual inflation adjustment to the resource limits starting in FY 2009; (2) allowing a resource exclusion for the first \$1,500 of the equity value of one pre-paid funeral arrangement per household member; and (3) allowing households in which all members are elderly and/or disabled to be certified for up to 24 months. It was intended that these proposed changes would also impact the operation of FDPIHO under which the eligibility and certification provisions of 7 CFR part 253 are adopted by reference at 7 CFR 254.5(a).

Comments were solicited through September 2, 2008 on the provisions of the proposed rulemaking. FNS received three comments from the public on the proposed regulatory changes. These comments are discussed below and are available for review at <http://www.regulation.gov>. Enter "FNS-2007-0042" in the box under "Search Documents" and click on "Go" to view the comments received.

In the following discussion and regulatory text, the term "State agency," as defined at 7 CFR 253.2, is used to include ITOs authorized to operate FDPIR and FDPIHO in accordance with 7 CFR parts 253 and 254. The term "FDPIR" is used in this final rule to refer collectively to FDPIR and FDPIHO.

A. Bring the Maximum Level of Allowable Resources in Line With SNAP

The July 3, 2008 rule proposed an amendment to regulations at 7 CFR 253.6(d)(1) to bring the maximum level of allowable resources in FDPIR in line with those established for SNAP under Section 5(g) of the Food and Nutrition Act of 2008 (formerly the Food Stamp Act of 1977) (7 U.S.C. 2014(g)). This would mean: (1) A resource limit of \$3,000 for households with at least one elderly or disabled member; (2) a resource limit of \$2,000 for households without any elderly or disabled

members; and (3) annual inflationary adjustments to the above resource limits starting in FY 2009. The annual resource limit adjustment is based on increases to the Bureau of Labor Standards Consumer Price Index for All Urban Consumers for the 12-month period ending the preceding June 30, rounded down to the nearest \$250 increment. Each adjustment is based on the unrounded amount for the prior 12-month period.

The rule also proposed two conforming amendments to FDPIR regulations. The first change would add definitions for "elderly" and "disabled" at 7 CFR 253.2. These definitions conform to the definitions used under SNAP. The second amendment would revise 7 CFR 253.7(c)(1) to state that households must report within 10 calendar days when their countable resources exceed the applicable maximum allowable limit.

One commenter expressed support for the proposed changes, especially the annual inflationary adjustment to the resource limits.

Another commenter opposed the proposed changes to the resource standards. The commenter stated that program standards should be set according to local economic conditions rather than being based on state or national data. As discussed in the preamble to the July 3, 2008 proposed rule, the proposed changes are intended to bring FDPIR resource standards in line with the resource limits prescribed by Congress for SNAP. FDPIR was established by Congress in 1977 as an alternative to SNAP for low income households living on or near Indian reservations that did not have easy access to SNAP offices and authorized grocery stores. Consequently, FDPIR has similar eligibility criteria to SNAP, although certain administrative requirements have been simplified and streamlined under FDPIR.

Based on the above discussion of the comments received, the proposed changes to bring the maximum level of allowable resources in FDPIR in line with those established for SNAP are retained in this final rule.

B. Resource Exclusion for the First \$1,500 of the Equity Value of One Pre-Paid Funeral Agreement per Household Member

The July 3, 2008 rule proposed an amendment to the regulations at 7 CFR 253.6(d)(2)(i) to ensure that pre-paid funeral agreements with equity value are treated the same under FDPIR as under SNAP. As proposed, the first \$1,500 of equity value of one pre-paid funeral agreement per household

member would not be counted as a household resource under FDPIR. A pre-paid funeral agreement is a pre-negotiated agreement or contract, with a bona fide funeral home, cemetery, burial planner, etc., for funeral and/or burial services.

In many instances pre-paid funeral agreements are already excluded as a resource under current FDPIR policy, or have no equity value and would not be counted as a resource. For example, funeral expenses are often covered under life insurance policies and current FDPIR policy allows a resource exclusion for the cash value of life insurance policies. Also, an irrevocable pre-paid funeral contract that has no cash surrender value would not be counted as a resource under FDPIR.

Certain pre-paid funeral agreements, however, have equity value. This means that they have a specific value that can be legally converted to cash by the household member and used for normal living expenses. Under current FDPIR policy, the full equity value of a pre-paid funeral agreement would be counted as a resource to the household. Therefore the intent of the proposed change was to provide a resource exclusion, as is provided under SNAP, for those pre-paid funeral agreements that have equity value, but are not currently excluded as a resource under FDPIR. FNS proposed a regulatory change that would ensure that those pre-paid funeral agreements would be treated the same under FDPIR as under SNAP.

One commenter stated that their Tribal members, by and large, do not purchase pre-paid funeral agreements, and that many Tribes provide funeral assistance to their membership. FNS recognizes the valuable service that Tribes provide in assisting members with their funeral expenses. However, for those individuals that have had to use their own resources to secure their funeral arrangements in advance, FNS believes that the SNAP provision is a reasonable approach for providing an exclusion for pre-paid funeral agreements that have equity value.

Another commenter stated that not all eligible FDPIR participants have resources earmarked for funeral expenses, but that funds set aside for funeral expenses should be verified. This comment may be in reference to households that have funds for funeral expenses commingled with other household savings. Under current FDPIR policy and this final rule, funds, including those held for funeral expenses, held in a checking or savings account that are accessible to a household for normal living expenses

are considered a resource to the household. As discussed in the preamble to the July 3, 2008 proposed rule, there is no verifiable way to distinguish the funds held for funeral expenses from a household's general savings when the funds are comingled.

One of the commenters suggested that we define "equity value" in the regulations and provide an example to clarify the proposed provision. We have added the definition of "equity value" and an example to 7 CFR 253.6(d)(2)(i).

Based on the above discussion of the comments received, the proposed changes to allow a resource exclusion for the first \$1,500 of the equity value of one pre-paid funeral agreement per household member are retained in this final rule with the addition of the definition of "equity value" and an example to 7 CFR 253.6(d)(2)(i), as discussed above.

C. Extend Certification Periods Up to 24 Months for Households in Which All Members Are Elderly or Disabled

The July 3, 2008 rule proposed the amendment of regulations at 7 CFR 253.7(b)(2) to allow households in which all members are elderly and/or disabled to be certified for up to 24 months. Under current FDPIR policy, no household can be certified for more than 12 months. This change is intended to benefit elderly and/or disabled households that have stable incomes and household circumstances.

One commenter stated that this change "would help Tribal members very little" and would exclude individuals and families who have the right by Treaty to receive rations until they "are able to support themselves." The commenter stated that "(i)f the harsher Food Stamp regulations are applied to FDPIR programs, even fewer Tribal members will be eligible for participation." The intent of the SNAP provision is to remove potential barriers to participation by allowing elderly and/or disabled households to continue to participate beyond the current 12-month limitation without a recertification interview. Eliminating the need for a recertification interview after the first 12 months of certification would make it easier for low-income elderly and/or disabled households to stay enrolled in FDPIR.

Two commenters addressed the reporting requirements for households. One commenter stated that the proposed change would "help FDPIR reduce the cost of certification but each participant must self report if their eligibility or economic circumstances change." Another commenter remarked that households must be informed that they

are still subject to the requirement to report changes in household circumstances. The proposed change would not modify the requirement at 7 CFR 253.7(c) for households to report changes in household composition and/or income that occur during their certification period. Each State agency is required to develop procedures for when and how changes in circumstances are reported by households. Although the proposed change would require the State agency to contact the household at the end of the first 12 months so that the State agency can determine if there are any changes in circumstances at that time, this action by the State agency would not relieve the household of its responsibility to report changes in income or household composition in accordance with 7 CFR 253.7(c).

D. Other Comments

One commenter stated that FNS failed to consult with Indian Tribal governments prior to the publication of the proposed rulemaking and has failed to comply with Executive Order 13175 on government-to-government relationships with Indian Tribes. FNS' actions in relation to this rule are in compliance with Departmental Regulation Number 1340-006 and Executive Order 13175 in regard to consultation and coordination with Indian Tribal governments. FNS published a proposed rulemaking in the **Federal Register** on July 3, 2008 with a 60-day comment period. In addition, on July 3, 2008 FNS specifically advised the ITOs and State agencies that administer FDPIR of the publication of the proposed rule and the 60-day comment period. The proposed rule was posted for public viewing on the FDPIR Web site at <http://www.fns.usda.gov/fdd/programs/fdpir>. Prior to the publication of the proposed rulemaking, the provisions of the proposed rule were discussed with tribal and State representatives of the ITOs and State agencies that administer FDPIR at NAFDPIR conferences in 2001, 2003, 2004, and 2008. Also, as discussed in the preamble to the proposed rulemaking, the provision for a resource exclusion for the first \$1,500 of the equity value of one pre-paid funeral agreement per household member was proposed in response to a resolution passed by NAFDPIR at its annual conference in 2000. The proposal for a regulatory change was discussed in a January 3, 2001 letter from the FNS Food Distribution Division Director to the President of NAFDPIR.

The same commenter stated that the proposed rulemaking violated Treaty

Rights by requiring FDPIR to operate like SNAP. The commenter also stated its view that the "new USDA approach in treating FDPIR like the Food Stamp Program" was a means taken by FNS to evade its trust responsibility. FNS' approach to align SNAP and FDPIR policies is not new. This has been FNS' approach since the establishment of FDPIR in 1977. This approach is based on Congressional intent that FDPIR serve as an alternative to SNAP for low-income households that reside on or near Indian reservations. The preamble to the December 8, 1978 proposed rulemaking (43 FR 57798) provides the rationale for FNS' approach to align the policies of the two programs and a detailed history of FNS' consultation efforts with tribal governments and other stakeholders in the development of those policies.

The same commenter stated that "there should be full funding for each eligible program participant so that the food distributed fully meets the needs of those participants." The purchase and distribution of USDA foods under FDPIR is authorized by section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)) and section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note). FNS administers FDPIR in accordance with these legislative mandates. Section 4(a) of the Agriculture and Consumer Protection Act of 1973 directs the Secretary "to improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet." The joint conference committee report that accompanied the amending legislation in 1977 noted that the conferees did not intend that "the commodity package will necessarily in and of itself constitute a 'nutritionally adequate diet'" (H. Conf. Rpt. 95-599, p. 205 (September 12, 1977)). As such, the preamble to the December 8, 1978 proposed rulemaking states that it is the intent of the Department to offer a food package that "represents an acceptable alternative to Food Stamp Program benefits" (43 FR 57798). Moreover, Congress funds FDPIR through annual appropriations and FNS uses all available funding to support the Program. FNS does not have authority to exceed the appropriated funding levels for the purposes suggested by the commenter.

Based on the above discussion of the comments received, the proposed changes for extended certification periods for elderly and/or disabled households are retained in this final rule.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ Accordingly, 7 CFR part 253 is amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

■ 1. The authority citation for 7 CFR part 253 is revised to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2036).

■ 2. In § 253.2:

■ a. Remove paragraph designations (a) through (j) and list the definitions in alphabetical order.

■ b. Add new definitions entitled “Disabled member” and “Elderly member” in alphabetical order to read as follows:

§ 253.2 Definitions.

* * * * *

Disabled member means a member of a household who:

(1) Receives supplemental security income benefits under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;

(2) Receives federally- or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;

(3) Receives federally- or State-administered supplemental benefits under section 212(a) of Public Law 93–66;

(4) Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act;

(5) Is a veteran with a service-connected or non-service-connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under title 38 of the United States Code;

(6) Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under title 38 of the United States Code;

(7) Is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving

child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code;

(8) Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under title 38 of the United States Code and has a disability considered permanent under section 221(i) of the Social Security Act. “Entitled” as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them;

(9) Receives an annuity payment under: Section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act; or

(10) Is a recipient of interim assistance benefits pending the receipt of Supplemented Security Income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based State general assistance benefits provided that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the State agency, which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

Elderly member means a member of a household who is sixty years of age or older.

* * * * *

■ 3. In § 253.6:

■ a. Amend paragraph (d)(1) by revising the second sentence; and

■ b. Revise paragraph (d)(2)(i).

The revisions and addition read as follows:

§ 253.6 Eligibility of households.

* * * * *

(d) * * *

(1) * * * The household's maximum allowable resources shall not exceed the limits established for the Supplemental Nutrition Assistance Program.

(2) * * *

(i) The cash value of life insurance policies; pension funds, including funds in pension plans with interest penalties

for early withdrawals, such as a Keogh plan or an Individual Retirement Account, as long as the funds remain in the pension plans; and the first \$1,500 of the equity value of one bona fide pre-paid funeral agreement per household member. The equity value of a pre-paid funeral agreement is the value that can be legally converted to cash by the household member. For example, an individual has a \$1,200 pre-paid funeral agreement with a funeral home. The conditions of the agreement allow the household to cancel the agreement and receive a refund of the \$1,200 minus a service fee of \$50. The equity value of the pre-paid funeral agreement is \$1,150.

* * * * *

■ 4. In § 253.7:

■ a. Amend paragraph (b)(2)(iii) by removing the last sentence;

■ b. Add new paragraph (b)(2)(iv); and

■ c. Amend paragraph (c)(1) by revising the third sentence;

The revision and addition read as follows:

§ 253.7 Certification of households.

* * * * *

(b) * * *

(2) * * *

(iv) In no event may a certification period exceed 12 months, except that households in which all adult members are elderly and/or disabled may be certified for up to 24 months. Households assigned certification periods that are longer than 12 months must be contacted by the State agency at least once every 12 months to determine if the household wishes to continue to participate in the program and whether there are any changes in household circumstances that would warrant a redetermination of eligibility or a change in benefit level. The State agency may use any method it chooses for this contact, including a face-to-face interview, telephone call or a home visit. Contact with the household's authorized representative would not satisfy this requirement; the State agency must contact a household member. The case file must document the contact with the household and include the date of contact, method of contact, name of person contacted, whether the household wishes to continue to participate, and whether changes in household circumstances would warrant a redetermination of eligibility or a change in benefit level.

* * * * *

(c) * * *

(1) * * * Households must also report within 10 calendar days when countable resources, which are

identified in § 253.6(d)(2), exceed the maximum allowable limits as described at § 253.6(d)(1). * * *

* * * * *

Dated: January 12, 2010.

Kevin W. Concannon,
Under Secretary, Food, Nutrition, and
Consumer Services.

[FR Doc. 2010-1708 Filed 1-27-10; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Nos. EE-RM/TP-99-450 and EE-RM/TP-05-500]

RIN 1904-AA96 and 1904-AB53

Energy Conservation Program: Certification, Compliance, and Enforcement Requirements for Certain Consumer Products and Commercial and Industrial Equipment; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical correction.

SUMMARY: This document contains a technical correction to the final rule regarding the certification, compliance and enforcement regulations that was published on January 5, 2010. In that final rule, the U.S. Department of Energy (DOE) adopted regulations to implement reporting requirements for energy conservation standards and energy use, and to address other matters, including compliance certification, prohibited actions, and enforcement procedures for specific consumer products and commercial and industrial equipment. Due to drafting errors, language added to the rule in one amendment was deleted from the rule by another amendment, and certain erroneous internal cross references were made. This correction addresses these errors.

DATES: This technical correction is effective February 4, 2010.

FOR FURTHER INFORMATION CONTACT: Michael McCabe, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9155. E-mail: Michael.McCabe@ee.doe.gov.

Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202)

586-9507. E-mail: Michael.Kido@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 5, 2010, the U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) published a final rule titled "Certification, Compliance, and Enforcement Requirements for Certain Consumer Products and Commercial and Industrial Equipment." 75 FR 652. Since the publication of that rule, it has come to DOE's attention that due to a technical oversight, a certain part of the final regulations was inadvertently deleted from the final rule. DOE did not intend to remove this language from its regulations and through this correction document DOE reinserts this inadvertently deleted language. Additionally, certain sections of the regulatory text have an internal referencing error.

II. Need for Correction

As published, the final regulation erroneously removed two provisions that DOE had intended to reserve (10 CFR 431.171) and to amend (10 CFR 431.172). This document intends to reestablishes these provisions. In FR Doc. E9-30886, appearing in the notice beginning on page 652 in the **Federal Register** of Tuesday, January 5, 2010, the following corrections are made:

Subpart J—[Corrected]

1. On page 667, in the second column, correct the table of contents for subpart J to part 431 to read as follows:

Subpart J—Provisions for Commercial Heating, Ventilating, Air-Conditioning and Water Heating Products

Sec.

431.171 Purpose and scope. [Reserved]

431.172 Definitions.

431.173 Requirements applicable to all manufacturers.

431.174 Additional requirements applicable to Voluntary Independent Certification Program participants.

431.175 Additional requirements applicable to non-Voluntary Independent Certification Program participants.

431.176 Voluntary Independent Certification Programs.

2. On page 667, in the second column, directly below the heading of subpart J, add and reserve § 431.171, and add § 431.172, to read as follows:

§ 431.171 Purpose and scope. [Reserved]

§ 431.172 Definitions.

The following definitions apply for purposes of subparts D through G, J through K and subpart T of this part.

Other terms in these subparts shall be defined elsewhere in the Part and, if not defined in this part, shall have the meaning set forth in section 340 of the Act.

Alternate efficiency determination method or AEDM means a method of calculating the efficiency of a commercial HVAC and WH product, in terms of the descriptor used in or under section 342(a) of the Act to state the energy conservation standard for that product.

Basic model means, with respect to a commercial HVAC & WH product, all units of such product, manufactured by one manufacturer, which have the same primary energy source and which do not have any differing electrical, physical, or functional characteristics that affect energy consumption.

Commercial HVAC & WH product means any small or large commercial package air-conditioning and heating equipment, packaged terminal air conditioner, packaged terminal heat pump, commercial packaged boiler, hot water supply boiler, commercial warm air furnace, instantaneous water heater, storage water heater, or unfired hot water storage tank.

Flue loss means the sum of the sensible heat and latent heat above room temperature of the flue gases leaving the appliance.

Industrial equipment means an article of equipment, regardless of whether it is in fact distributed in commerce for industrial or commercial use, of a type which:

(1) In operation consumes, or is designed to consume energy;

(2) To any significant extent, is distributed in commerce for industrial or commercial use; and

(3) Is not a "covered product" as defined in Section 321(2) of EPCA, 42 U.S.C. 6291(2), other than a component of a covered product with respect to which there is in effect a determination under Section 341(c) of EPCA, 42 U.S.C. 6312(c).

Private labeler means, with respect to a commercial HVAC & WH product, an owner of a brand or trademark on the label of a product which bears a private label. A commercial HVAC & WH product bears a private label if:

(1) Such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product;

(2) The person with whose brand or trademark such product (or container) is labeled has authorized or caused such product to be so labeled; and

(3) The brand or trademark of a manufacturer of such product does not appear on such label.

§ 431.373 [Corrected]

3. On page 672, in the first and second columns under § 431.373, revise paragraphs (a)(3)(ii) and (iii), and on page 673, in the first column under § 431.373, revise paragraph (a)(6)(i)(B) to read as follows:

§ 431.373 Enforcement.

* * * * *

(a) * * *

(3) * * *

(ii) For automatic commercial ice makers, as well as commercial refrigerators, freezers, and refrigerator-freezers, the methods are described in appendix D to subpart T of part 431 and include the following provisions:

* * * * *

(iii) For commercial HVAC and WH products, the methods are described in appendix D to subpart T of part 431 and include the following provisions:

* * * * *

(6) * * *

(i) * * *

(B) For automatic commercial ice makers, as well as commercial refrigerators, freezers, and refrigerator-freezers, the applicable provisions in appendix D to subpart T of part 431, and limited to a maximum of six additional units of basic model.

* * * * *

Issued in Washington, DC, on January 22, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010-1728 Filed 1-27-10; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2009-1146; Directorate Identifier 2008-SW-38-AD; Amendment 39-16184; AD 2010-03-01]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model AS332L1, AS332L2, and EC225LP Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters. This AD results from

mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI states: "Recently, a report was received concerning the discovery of fragments of a plastic blanking plug (fitted to the harness belt buckle 5th attachment point) inside a seat harness belt buckle. Over time, this blanking plug hardens and becomes brittle. This condition, if not corrected, can lead to failure of the plug and fragments being caught inside the buckle, causing interference and preventing the belt from being released during an emergency evacuation of the aircraft." This AD requires actions that are intended to address this unsafe condition.

DATES: This AD becomes effective on February 12, 2010.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of February 12, 2010.

We must receive comments on this AD by March 29, 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 your comments electronically.
- **Fax:** (202) 493-2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053-4005, telephone (800) 232-0323, fax (972) 641-3710, or at <http://www.eurocopter.com>.

Examining the Docket: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is stated in the **ADDRESSES** section of this

AD. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

George Schwab, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76137, telephone (817) 222-5114, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:**Discussion**

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2008-0075, dated April 22, 2008, to correct an unsafe condition for the ECF Model AS332L1, AS332L2, and EC225LP helicopters. EASA received a report concerning the discovery of fragments of a plastic blanking plug (fitted to the harness belt buckle 5th attachment point) inside a seat harness belt buckle. Over time, this blanking plug hardens, becomes brittle, and starts to deteriorate. This condition, if not corrected, can lead to fragments of the plug being caught inside the buckle, preventing the belt from releasing during an emergency evacuation of the aircraft.

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

Related Service Information

ECF has issued Emergency Alert Service Bulletin No. 01.00.72 for the Model AS332L1 and L2 helicopters and No. 04A003 for the Model EC225LP helicopters, both dated April 15, 2008. The seat buckles installed on the specified helicopters have five attachment points, and the seat harness belts have four attachment points only. Therefore, the 5th belt buckle attachment point is blanked using a plastic blanking plug. These plastic blanking plugs harden and become brittle over time. Mishandling of the buckle can cause the blanking plug to fail and fragments may be caught inside the buckle. Any fragments inside the buckle can lead to interference and may prevent the buckle from releasing the belts. The service information specifies removing all seat harness belt buckle blanking plugs, part number (P/N) 332V85134620 or P/N 332V85134621. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

These products have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral

agreement with France, they have notified us of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Differences Between This AD and the MCAI AD

This AD does not require you to return the parts to the manufacturer. Also, we refer to the compliance time as 30 days rather than 1 month.

Costs of Compliance

We estimate that this AD will affect about 6 helicopters of U.S. registry. We also estimate that it will take about .4 work-hour per helicopter to inspect for a failed blanking plug and replace the belt buckle with an airworthy belt buckle if the plug has failed. The average labor rate is \$80 per work-hour. Required parts will cost about \$250 per belt buckle. Based on these figures, we estimate the cost of this AD on U.S. operators will be \$1,692, assuming 1 belt buckle per helicopter is replaced.

FAA’s Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. We find that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because this unsafe condition requires immediate adoption of this AD due to possible inability to release the seat belts from the seat harness belt buckle during an emergency evacuation of the helicopter. Therefore, we have determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. However, we invite you to send us any written data, views, or arguments

concerning this AD. Send your comments to an address listed under the ADDRESSES section of this AD. Include “Docket No. FAA–2009–1146; Directorate Identifier 2008–SW–38–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

Therefore, I certify this AD:

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

We prepared an economic 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:

2010–03–01 Eurocopter France:
Amendment 39–16184. Docket No. FAA–2009–1146; Directorate Identifier 2008–SW–38–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on February 12, 2010.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AS332L1, AS332L2, and EC225LP helicopters with the following seat harnesses, fitted with blanking plugs, part number (P/N) 332V85134620 or P/N 332V85134621, except seat harnesses modified by Eurocopter MOD 332V080169, installed, certificated in any category:

Harness manufacturer	Seat harness P/N
Schroth	P/N 1–10–725203. P/N 1–10–P65203. On Fisher Harmony single seats, P/N 03140000011X205 (Eurocopter P/N 704A41210112). On Fisher Harmony two-seat benches, P/N 03150000011XX205 (Eurocopter P/N 704A41210113).
AM–SAFE	P/N 503583–407–2251. P/N 503583–408–2251. On Sicma single seats with the following P/Ns: P/N 17911–02–00 (Eurocopter P/N 704A41210102). P/N 17911–03–00 (Eurocopter P/N 704A41210105). P/N 17912–02–00 (Eurocopter P/N 704A41210103).

Harness manufacturer	Seat harness P/N
	P/N 17912-03-00 (Eurocopter P/N 704A41210106). On Sicma two-seat benches with the following P/Ns: P/N 17920-02-00 (Eurocopter P/N 704A41210104). P/N 17920-03-00 (Eurocopter P/N 704A41210107). P/N 504729-401-2251 on rear bench seats (all P/Ns).

Note: Embodiment of MOD 332V080169 can be checked visually by verifying that no blanking plug is fitted on the 5th attachment point of the buckle plus verifying that aircraft records indicate the blanking plug has been removed by following MOD 332V080169.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states: "Recently, a report was received concerning the discovery of fragments of a plastic blanking plug (fitted to the harness belt buckle 5th attachment point) inside a seat harness belt buckle. Over time, this blanking plug hardens and becomes brittle. This condition, if not corrected, can lead to failure of the plug and fragments being caught inside the buckle, causing interference and preventing the belt from being released during an emergency evacuation of the aircraft."

Actions and Compliance

(e) Required as indicated, unless accomplished previously, do the following:

- (1) Within 30 days, pry out the blanking plug from each seat harness belt buckle.
- (2) If the removed blanking plug has deteriorated (fragmented), before further flight, replace the belt buckle with an airworthy belt buckle without a plastic blanking plug. Do this replacement as depicted in Figures 7 and 8 for the "AM-SAFE" belt buckle and Figure 9 for the "SCHROTH" belt buckle of Eurocopter Emergency Alert Service Bulletin (ASB) No. 01.00.72 for the Model AS332L1 and L2 and ASB No. 04A003 for the Model EC225LP helicopters, both dated April 15, 2008. To replace a belt buckle, follow the Accomplishment Instructions, paragraph 2.B.2.b. of ASB 01.00.72 or ASB 04A003, both dated April 15, 2008, as applicable to your model helicopter, except this AD does not require you to return the harness belt buckle to the manufacturer.

(i) Conduct a buckle fastening release test to ensure the buckle works correctly.

(ii) Inspect the positioning of the seat harness belt on the buckle to assure that it is as depicted in Figure 6 of the ASB, as applicable to your model helicopter.

(3) If the blanking plug has not deteriorated, return the buckle to service without the blanking plug.

Note: This modifies the buckle to be airworthy without the blanking plug.

Differences Between This AD and the MCAI AD

(f) This AD does not require you to return the harness belt buckle to the manufacturer. Also, we use a compliance time of 30 days rather than 1 month.

Other Information

(g) The Manager, Safety Management Group, FAA, ATTN: George Schwab, Aviation Safety Engineer, Rotorcraft Directorate, Fort Worth, Texas 76137, telephone (817) 222-5114, fax (817) 222-5961 has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

Related Information

(h) European Aviation Safety Agency (EASA) AD No. 2008-0075, dated April 22, 2008, contains related information.

Joint Aircraft System/Component (JASC) Code

(i) JASC Code 2500: Cabin Equipment & Furnishings.

Material Incorporated by Reference

(j) You must use the specified portions of Eurocopter Emergency Alert Service Bulletin No. 01.00.72 for the Model AS332L1 and L2 helicopters and No. 04A003 for the Model EC225LP helicopters, both dated April 15, 2008, to do the actions required.

(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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053-4005, telephone (972) 641-3460, fax (972) 641-3527, or at <http://www.eurocopter.com>.

(3) You may review copies at the FAA, Rotorcraft Directorate, Fort Worth, Texas 76137; or 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/cfr/ibr-locations.html>.

Issued in Fort Worth, Texas, on November 24, 2009.

Lance T. Gant,

*Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.*

[FR Doc. 2010-1515 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0782; Directorate Identifier 2009-NM-011-AD; Amendment 39-16181; AD 2010-02-10]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A330-201, -202, -203, -223, -243, -301, -302, -303, -321, -322, -323, -341, -342, and -343 Series Airplanes; Model A340-211, -212, -213, -311, -312, and -313 Series Airplanes; and Model A340-541 and -642 Airplanes

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

ACTION: Final rule.

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:

During a scheduled maintenance inspection on the MLG [main landing gear], the bogie stop pad was found deformed and cracked. Upon removal of the bogie stop pad for replacement, the bogie beam was also found cracked.

A second bogie beam crack has subsequently been found on another aircraft, located under a bogie stop pad which only had superficial paint damage.

This condition, if not detected and corrected, could result in the aircraft departing the runway or to the bogie detaching from the aircraft or gear collapses, which would all constitute unsafe conditions at speeds above 30 knots.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 4, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 4, 2010.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 4, 2009 (74 FR 45781). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During a scheduled maintenance inspection on the MLG [main landing gear], the bogie stop pad was found deformed and cracked. Upon removal of the bogie stop pad for replacement, the bogie beam was also found cracked.

Laboratory investigation indicates that an overload event has occurred and no fatigue propagation of the crack was evident. An investigation is still underway to establish the root cause of this overload.

A second bogie beam crack has subsequently been found on another aircraft, located under a bogie stop pad which only had superficial paint damage.

This condition, if not detected and corrected, could result in the aircraft departing the runway or to the bogie detaching from the aircraft or gear collapses, which would all constitute unsafe conditions at speeds above 30 knots.

As a precautionary measure, this AD requires detailed inspections under the bogie stop pad of both MLG bogie beams and, in case deformation or damage is detected, to apply the associated repair.

The one-time inspections consist of the following:

- Inspection for corrosion and damage to the paint and cadmium plate of the sliding piston subassembly.
- Inspection for cracking and deformation of the top and bottom surfaces and bolt holes of the bogie stop pad subassembly and bracket.
- Inspection for cracking, corrosion, and damage to protective treatments, and deformation of the bogie beam surface of the bogie beam subassembly where the bogie stop pad subassembly has been removed, and a magnetic particle non-destructive test inspection of the bogie beam assembly where the

bogie stop pad subassembly has been removed.

Corrective actions include repairing protective treatments, removing corrosion, and replacing the bogie stop pad if necessary. For airplanes on which a crack or deformation in the bogie beam is found, corrective actions include contacting Messier-Dowty Limited and/or Airbus for instructions for repair, and repairing before further flight.

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

Comments

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

Correction of Labor Estimate

Air Transport Association (ATA), on behalf of its member Northwest Airlines (NWA), states that the labor estimates are significantly underestimated in the proposed AD. NWA states that the NPRM estimate of 2 work-hours should be revised to specify 18 work-hours, based on work-hours listed in the vendor service bulletins.

We agree that the labor estimates are underestimated. The service bulletins cited in the proposed AD call for a total of 4 work-hours, but only to get access. The Airbus service bulletins refer to the vendor service bulletins for inspection time and repair. The vendor service bulletins identify up to 8 work-hours per bogie beam for a total of up to 16 work-hours for the inspection per airplane. However, we have not included the time to perform on-condition actions, such as repair. The "Cost of Compliance" section has been changed accordingly.

Clarification of Compliance Times and Affected Airplanes

The ATA, on behalf of its member NWA, states that clarification of the compliance time is needed in paragraphs (f)(1)(ii), (f)(1)(iii), and (f)(1)(iv) of the proposed AD. Where the paragraphs specify time or flight cycles on the new or overhauled bogie beam, the operator proposes to refer to the time or flight cycles from the installation date of the new or overhauled bogie beam in service.

We agree and have made changes to paragraphs (f)(1)(ii), (f)(1)(iii), and (f)(1)(iv) of this AD accordingly. Similar changes have been made to paragraphs (f)(1)(v) and (f)(1)(vi) of this 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.

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 determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 52 products of U.S. registry. We also estimate that it will take about 16 work-hours per product to comply with the basic requirements of 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 \$66,560, or \$1,280 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this 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.

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 the NPRM, 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.

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:

2010-02-10 AIRBUS: Amendment 39-16181. Docket No. FAA-2009-0782; Directorate Identifier 2009-NM-011-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 4, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330-201, -202, -203, -223, -243, -301, -302, -303, -321, -322, -323, -341, -342, and -343 series airplanes; Model A340-211, -212, -213, -311, -312, -313 series airplanes; and Model A340-541 and -642 airplanes; all serial numbers; certificated in any category.

Subject

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

Reason

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

During a scheduled maintenance inspection on the MLG [main landing gear], the bogie stop pad was found deformed and cracked. Upon removal of the bogie stop pad for replacement, the bogie beam was also found cracked.

Laboratory investigation indicates that an overload event has occurred and no fatigue propagation of the crack was evident. An investigation is still underway to establish the root cause of this overload.

A second bogie beam crack has subsequently been found on another aircraft, located under a bogie stop pad which only had superficial paint damage.

This condition, if not detected and corrected, could result in the aircraft departing the runway or to the bogie detaching from the aircraft or gear collapses, which would all constitute unsafe conditions at speeds above 30 knots.

As a precautionary measure, this AD requires detailed inspections under the bogie stop pad of both MLG bogie beams and, in

case deformation or damage is detected, to apply the associated repair.

Actions and Compliance

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

(1) At the applicable compliance time specified in paragraph (f)(1)(i), (f)(1)(ii), (f)(1)(iii), (f)(1)(iv), (f)(1)(v), or (f)(1)(vi) of this AD, perform one-time detailed inspections of both main landing gear bogie beams in the region of the bogie stop pad for detection of deformation and damage, and apply the applicable corrective actions, in accordance with instructions defined in the Airbus mandatory service bulletins listed in Table 1 of this AD, as applicable. Do all applicable corrective actions before further flight.

(i) Airplanes with 22 months or less and 2,500 flight cycles or less from the first flight with the original bogie beam as of the effective date of this AD: Not earlier than 2,500 flight cycles or 22 months on the original bogie beam, whichever occurs first, but not later than 40 months from first flight.

(ii) Airplanes with 22 months or less and 2,500 flight cycles or less from the installation date of a new bogie beam in service as of the effective date of this AD: Not earlier than 2,500 flight cycles or 22 months from the installation date of the new bogie beam, whichever occurs first, but no later than 40 months from the installation date of a new bogie beam in service.

(iii) Airplanes with 22 months or less and 2,500 flight cycles or less from the installation date of an overhauled bogie beam in service as of the effective date of this AD: Not earlier than 2,500 flight cycles or 22 months from the installation date of the overhauled bogie beam in service, whichever occurs first, but no later than 40 months from the installation date of the overhauled bogie beam in service.

(iv) Airplanes with more than 22 months or more than 2,500 flight cycles from the first flight with the original bogie beam, as of the effective date of this AD: Within 18 months after the effective date of this AD.

(v) Airplanes with more than 22 months or more than 2,500 flight cycles from the installation date of a new bogie beam in service, as of the effective date of this AD: Within 18 months after the effective date of this AD.

(vi) Airplanes with more than 22 months or more than 2,500 flight cycles from the installation date of an overhauled bogie beam in service, as of the effective date of this AD: Within 18 months after the effective date of this AD.

TABLE 1—SERVICE BULLETINS

For model—	Use Airbus Mandatory Service Bulletin—	Dated—
A330-201, -202, -203, -223, -243, -301, -302, -303, -321, -322, -323, -341, -342, -343 series airplanes.	A330-32-3220	October 10, 2008.
A340-211, -212, -213, -311, -312, -313 series airplanes	A340-32-4264	October 10, 2008.
A340-541, -642 airplanes	A340-32-5087	October 10, 2008.

(2) Report the results of the inspection required by paragraph (f)(1) of this AD, including no findings, to Airbus, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; Attn: SEDCC1 Technical Data and Documentation Services; Fax (+33) 5 61 93 28 06; e-mail sb.reporting@airbus.com; at the applicable time specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD.

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

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

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, 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, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (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 (EASA) Airworthiness Directive 2008-0223, dated December 15, 2008, and the Airbus mandatory service bulletins listed in Table 1 of this AD, for related information.

Material Incorporated by Reference

(i) You must use the service information contained in Table 2 of this AD, 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 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; 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.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Airbus Mandatory Service Bulletin—	Dated—
A330-32-3220	October 10, 2008.
A340-32-4264	October 10, 2008.
A340-32-5087	October 10, 2008.

Issued in Renton, Washington, on January 14, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010-1277 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0912; Directorate Identifier 2009-NM-047-AD; Amendment 39-16182; AD 2010-02-11]

RIN 2120-AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ Airplanes

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

ACTION: Final rule.

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:

Reports have been received of finding corrosion at the Frame 29 wing-to-fuselage attachment lug plate joint. This condition, if not detected and corrected, could result in a degradation of the structural integrity of Frame 29 and the wing-to-fuselage attachment.

* * * * *

The unsafe condition is degradation of the structural integrity of Frame 29 and the wing-to-fuselage attachment, which could result in loss of control of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 4, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 4, 2010.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

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:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 19, 2009 (74 FR 53433). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Reports have been received of finding corrosion at the Frame 29 wing-to-fuselage attachment lug plate joint. This condition, if not detected and corrected, could result in a degradation of the structural integrity of Frame 29 and the wing-to-fuselage attachment.

The current method of inspecting the Frame 29 wing-to-fuselage attachment lug plate joint for corrosion is not considered adequate for finding corrosion in this particular area.

To address this concern, BAE Systems (Operations) Limited has published Inspection Service Bulletin ISB.53-213, which replaces current Maintenance Review Board Report Structurally Significant Items Task 53-20-103 (equal to Maintenance

Planning Document Tasks 532003–DVI–10000–1, 532003–DVI–10000–2 and 532003–DVI–10000–3) and Corrosion Prevention and Control Programme Task C53–230–02–01.

For the reason described above, this AD requires repetitive [detailed] inspections of the Frame 29 wing-to-fuselage attachment lug plate joint [for discrepancies, which are corrosion and fatigue cracking of the bolts and fastener bores; degraded, cracked, missing, and poor condition sealant] and repair(s) [which include replacing bolts, contacting BAE Systems for repair instructions and doing the repair, and re-applying sealant], as necessary.

The unsafe condition is degradation of the structural integrity of Frame 29 and the wing-to-fuselage attachment, which could result in loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

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.

Conclusion

We reviewed the available data, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 1 product of U.S. registry. We also estimate that it will take about 12 work-

hours per product to comply with the basic requirements of 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. operator 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 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.

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 the NPRM, 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.

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:

2010–02–11 BAE Systems (Operations)

Limited: Amendment 39–16182. Docket No. FAA–2009–0912; Directorate Identifier 2009–NM–047–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 4, 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 BAE SYSTEMS (Operations) Limited 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 53: Fuselage.

Reason

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

Reports have been received of finding corrosion at the Frame 29 wing-to-fuselage attachment lug plate joint. This condition, if not detected and corrected, could result in a degradation of the structural integrity of Frame 29 and the wing-to-fuselage attachment.

The current method of inspecting the Frame 29 wing-to-fuselage attachment lug plate joint for corrosion is not considered adequate for finding corrosion in this particular area.

To address this concern, BAE Systems (Operations) Limited has published Inspection Service Bulletin ISB.53–213, which replaces current Maintenance Review Board Report Structurally Significant Items Task 53–20–103 (equal to Maintenance Planning Document Tasks 532003–DVI–10000–1, 532003–DVI–10000–2 and 532003–

DVI-10000-3) and Corrosion Prevention and Control Programme Task C53-230-02-01.

For the reason described above, this AD requires repetitive [detailed] inspections of the Frame 29 wing-to-fuselage attachment lug plate joint [for discrepancies, which are corrosion and fatigue cracking of the bolts and fastener bores; degraded, cracked, missing, and poor condition sealant] and repair(s) [which include replacing bolts, contacting BAE Systems for repair instructions and doing the repair and re-applying sealant], as necessary.

The unsafe condition is degradation of the structural integrity of Frame 29 and the wing-to-fuselage attachment, which could result in loss of control of the airplane.

Actions and Compliance

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

(1) Within 24 months after the effective date of this AD, do a detailed inspection for discrepancies of the frame 29 wing-to-fuselage attachment lug plate joint, in accordance with the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.53-213, dated May 21, 2008.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

(2) Repeat the inspection required by paragraph (f)(1) of this AD thereafter at intervals not to exceed 48 months.

(3) During any inspection required by paragraph (f)(1) or (f)(2) of this AD, if it is not possible to replace a removed bolt with another bolt having the same part number as a replacement item, before further flight, contact BAE SYSTEMS to replace the removed bolt with an alternative bolt and do the approved BAE SYSTEMS repair.

(4) If during any inspection required by paragraph (f)(1) or (f)(2) of this AD, any discrepancy is found, before further flight, repair in accordance with paragraph 2.C. of the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.53-213, dated May 21, 2008.

(5) Although BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.53-213, dated May 21, 2008, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Although BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.53-213, dated May 21, 2008; and European Aviation Safety Agency (EASA) AD 2009-0046, dated March 2, 2009; specify to submit certain information to the manufacturer, this AD does not include that requirement.

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.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2009-0046, dated March 2, 2009; and BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.53-213, dated May 21, 2008; for related information.

Material Incorporated by Reference

(i) You must use BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.53-213, dated May 21, 2008, 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 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>.

(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 January 14, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010-1283 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2010-0047; Directorate Identifier 2009-SW-28-AD; Amendment 39-16177; AD 2010-02-07]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model SE3160, SA315B, SA316B, SA316C, and SA319B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters. The existing AD requires certain inspections of a main rotor blade (blade) manufactured under a Parts Manufacturer Approval under Supplemental Type Certificate (STC) SH778GL. The AD requires inspecting each affected root end bolt (bolt) and bolt-hole for corrosion or a crack on the blade root end fitting (fitting) or in a bolt-hole. For certain serial-numbered blades, the AD also requires a one-time pull test on each fitting and blade root end doubler (doubler) to detect disbonding. This AD requires certain inspections for voids in any doubler or fitting and for paint cracks along the forward and aft edge of the blade fitting. Also, this AD requires inspecting the blade tip weight housing attachment. This AD also requires replacing unairworthy blades with airworthy blades. This amendment is prompted by reports from the STC holder of disbands at the fittings, doublers, and the tip weight fitting. The actions specified by this AD are intended to prevent blade failure and subsequent loss of control of the helicopter.

DATES: Effective February 12, 2010.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 2010.

Comments for inclusion in the Rules Docket must be received on or before March 29, 2010.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- **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.

You may get the service information identified in this AD from Phlight of Phancy Corp. (PPC), 791 Westport Parkway, Fort Worth, Texas 76177-4511, telephone 817-491-6755, fax 817-491-6759.

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information 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 Docket Operations office (telephone (800) 647-5527) is located in Room W12-140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Martin R. Crane, ASW-170, Aviation Safety Engineer, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5170, fax (817) 222-5783.

SUPPLEMENTARY INFORMATION: On July 16, 2003, the FAA issued an Emergency AD 2003-15-51. That Emergency AD was published as a final rule on August 28, 2003 (68 FR 51681). The current AD requires certain inspections of a blade manufactured under a PMA issued and based on STC SH778GL. The AD requires inspecting each bolt and bolt-hole for corrosion or a crack on the fitting or in a bolt-hole on each affected blade. For certain serial-numbered blades, the AD also requires a one-time pull test on each fitting and doubler to detect disbonding. That action was prompted by a report from the blade manufacturer of the discovery of a

cracked blade. In that action, we stated that the cause of the crack remained under investigation. That condition, if not corrected, could result in failure of a blade and subsequent loss of control of the helicopter.

Since issuing that AD, bond failures continue to be found in certain blades produced under a Parts Manufacturer Approval based on STC SH778GL. These bond failures occurred even after the inspections specified by Rotor Trends LLC Service Bulletin (SB) No. 01.03, dated July 9, 2003 (Rotor Trends SB), and required by AD 2003-15-51. Pflight of Phancy Corp. (PPC), the current STC holder, has issued Service Bulletin No. SB L3160-P-001, dated May 20, 2009 (PPC SB), to supersede the Rotor Trends SB. The PPC SB specifies visual and tap inspections of the blade root fittings and doublers. The PPC SB also specifies replacing certain blades that have voids or paint cracks and inspecting the blade tip weight housing on the outboard end of the blade. Finally, the PPC SB specifies removing all affected blades by May 20, 2010, or 500 hours time-in-service (TIS), whichever occurs first. This AD does not require replacing the blades at 500 hours TIS. However, replacing the affected blades with airworthy blades to which this AD does not apply would be terminating action for the requirements of this AD.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter model helicopters of these same type designs, this AD supersedes AD 2003-15-51 to require the following:

- Within 10 hours TIS, inspect each affected blade in the doublers for a void and in the forward and aft edges for a paint crack.
 - If you do not find a void or paint crack in the doublers or fitting, and the only void you find is isolated in a .25 inch edge band of any doubler or a fitting, repeat the inspection at intervals not to exceed 30 hours TIS.
 - If you find a void in any doubler or either fitting not isolated in a .25 inch band or a paint crack of any length along the forward or aft edge of the fitting at certain blade stations, replace the blade with an airworthy blade before further flight.
- Within 10 hours TIS, tap and visually inspect each affected blade:
 - Remove the paint, and coin tap inspect the upper and lower surface of the No. 2 spar to tip weight housing bond for a bond void.
 - Using a 10X or higher magnifying glass, visually inspect the No. 1 spar around through pins for hole elongation, a crack in the spar, and pin movement

(pins should be flush with upper and lower spar surfaces). Visually inspect the tip weight housing outboard face for movement relative to the spar (tip weight housing should be flush with the face of No. 1 and 2 spars).

- Measure the thickness of the upper and lower spar by using calipers held against the face of the No. 1 spar in alignment with the through pins.
- If you find any of the following, replace the blade with an airworthy blade before further flight:
 - A void between the No. 2 spar to tip weight housing;
 - In the No. 1 spar, either a crack, an elongated through pin hole, movement of a through pin, or a through pin that is not flush with the spar surface;
 - Movement of the tip weight housing or a tip weight housing that is not flush with the No. 1 or 2 spar; or
 - An upper or lower spar measures less than 0.045 inch.
- If you do not find any of these discrepancies, repeat the inspection at intervals not to exceed 30 hours TIS.
- Replacing an affected blade with an airworthy blade, with a serial number that is not included in the "Applicability" section of this AD, constitutes terminating action for the requirements of this AD.

Do the actions by following the specified portions of the SB described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, inspecting each blade within 10 hours TIS, repeating the inspection at intervals not to exceed 30 hours TIS, and replacing the blades as necessary before further flight are very short compliance times, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that this AD will affect 30 helicopters. The required actions will take about 3 work hours to inspect a blade and 3 work hours to replace a blade at an average labor rate of \$80 per work hour. Required parts will cost about \$50,000 per blade. There are three blades per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be \$3,588,640, assuming 71 blades are replaced.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2010-0047; Directorate Identifier 2009-SW-28-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

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 an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration 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. Section 39.13 is amended by removing Amendment 39-13276 (68 FR 51681, dated August 28, 2003), and by adding a new airworthiness directive (AD), Amendment 39-16177, to read as follows:

2010-02-07 Eurocopter France:

Amendment 39-16177. Docket No. FAA-2010-0047; Directorate Identifier 2009-SW-28-AD. Supersedes AD 2003-15-51, Amendment 39-13276, Docket No. 2003-SW-34-AD.

Applicability:

Eurocopter France Model SE3160, SA315B, SA316B, SA316C, and SA319B helicopters, with main rotor blade (blade) part number L3160-100-01, serial number (S/N) 600 through 671 (except those identified with both "SB L3160-P-001A" and "SB L3160-P-001B" next to the blade data plate), produced under a Parts Manufacturer Approval based on Supplemental Type Certificate SH778GL, installed, certificated in any category.

Compliance:

Required as indicated.

To prevent failure of a blade and subsequent loss of control of the helicopter, do the following:

(a) Within 10 hours time-in-service (TIS), unless accomplished previously, tap and

visually inspect each blade, S/N 600 through 666, 668 through 669, and 671 (except those identified with "SB L3160-P-001A" next to the blade data plate) in the root doublers for a void and in the forward and aft edges for a paint crack in the areas depicted in Figure 1 of Phlight of Phancy Corp. Service Bulletin No. SB L3160-P-001, dated May 20, 2009 (SB), and by following the Accomplishment Instructions, Part A, paragraph 2.a. through 2.e., of the SB.

(1) If there is no void or paint crack in the root doublers or fitting, and the only void you find is isolated in the .25 inch edge band of a doubler or a fitting as depicted in Figure 1 of the SB, repeat the inspection at intervals not to exceed 30 hours TIS.

(2) If you find a void in any doubler or any root fitting not isolated to the .25 inch band as depicted in Figure 1 of the SB or a paint crack of any length along the forward or aft edge of a root fitting between Blade Stations 35.02 and 42.52, replace the blade with an airworthy blade before further flight.

(b) Within 10 hours TIS, unless accomplished previously, inspect each blade, S/N 600 through 671 (except those identified with "SB L3160-P-001B" next to the blade data plate), in the areas depicted in Figures 2 and 3 and by following the Accomplishment Instructions, Part B, of the SB as follows:

(1) Remove the paint and coin tap inspect the upper and lower surface of the No. 2 spar to tip weight housing bond as depicted in Figure 2 of the SB for a bond void. Conduct the inspection by following the Accomplishment Instructions, Part B, paragraphs 2.a. through 2.e. of the SB.

(2) Using a 10X or higher magnifying glass, visually inspect the No. 1 spar around the through pins for hole elongation, a crack in the spar, and pin movement (pins should be flush with upper and lower spar surfaces). Visually inspect the tip weight housing outboard face for evidence of movement relative to the spar (tip weight housing should be flush with the face of No. 1 and 2 spars).

(3) Measure the thickness of the upper and lower spar by using calipers held against the face of the No. 1 spar in alignment with the through pins as depicted in Figure 3 of the SB.

(4) If you *find* any of the following, replace the blade with an airworthy blade before further flight:

(i) A void between the No. 2 spar and tip weight housing;

(ii) In the No. 1 spar, either a crack, an elongated through pinhole, movement of a through pin, or a through pin that is not flush with the spar surface;

(iii) Movement of the tip weight housing or a tip weight housing that is not flush with the No. 1 and No. 2 spar; or

(iv) An upper or lower spar with thickness less than 0.045 inch.

(5) If you *do not find* any of the discrepancies identified in paragraph (b)(4)(i) through (b)(4)(iv) of this AD, repeat the inspections required by paragraph (b) of this AD at intervals not to exceed 30 hours TIS.

(c) Replacing an affected blade with an airworthy blade with a serial number that is not included in the "Applicability" section of

this AD constitutes terminating action for the requirements of this AD.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Directorate, Rotorcraft Certification Office, ATTN: DOT/FAA Southwest Region, Martin Crane, ASW-170, Aviation Safety Engineer, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5170, fax (817) 222-5783, for information about previously approved alternative methods of compliance.

(e) Special flight permits will not be issued.

(f) The Joint Aircraft System/Component (JASC) Code for the subject of this AD is Code 6210: Main rotor blades.

(g) Inspect the blades by following the specified portions of the Phlight of Phancy Corp. Service Bulletin SB L3160-P-001, dated May 20, 2009. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Phlight of Phancy Corp., 791 Westport Parkway, Fort Worth, Texas 76177-4511, telephone 817-491-6755, fax 817-491-6759. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or 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.

(h) This amendment becomes effective on February 12, 2010.

Issued in Fort Worth, Texas, on January 8, 2010.

Mark R. Schilling,

*Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.*

[FR Doc. 2010-1157 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0793; Directorate Identifier 2009-NM-051-AD; Amendment 39-16183; AD 2010-02-12]

RIN 2120-AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 0070 and 0100 Airplanes

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

ACTION: Final rule.

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:

Several cases have been reported where a passenger door actuator detached from the passenger door. This caused the passenger door to drop to the platform in an uncontrolled manner.

This condition, if not corrected, could result in injury to persons on the ground and damage to the aircraft.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 4, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 4, 2010.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1137; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 28, 2009 (74 FR 49349). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Several cases have been reported where a passenger door actuator detached from the passenger door. This caused the passenger door to drop to the platform in an uncontrolled manner.

This condition, if not corrected, could result in injury to persons on the ground and damage to the aircraft.

To address this problem, Fokker Services has developed an improved actuator to ensure the proper functioning of the door opening mechanism.

For the reason described above, this AD requires the replacement of existing airstair door actuators with improved actuators.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

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.

Conclusion

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

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it will take about 12 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$4,933 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$11,786, or \$5,893 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

We determined that this 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.

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 the NPRM, 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.

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:

2010-02-12 Fokker Services B.V.:

Amendment 39-16183. Docket No. FAA-2009-0793; Directorate Identifier 2009-NM-051-AD.

Effective Date

- (a) This airworthiness directive (AD) becomes effective March 4, 2010.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, all serial numbers, if equipped with an "airstair" type door with a passenger door actuator having part number (P/N) A26900-401, A82936-701, A82936-705, R5320, R5320-1, R5320-12, W26900-401, W53200-401, W53200-403, or W53200-405.

Subject

- (d) Air Transport Association (ATA) of America Code 52: Doors.

Reason

- (e) The mandatory continuing airworthiness information (MCAI) states: Several cases have been reported where a passenger door actuator detached from the passenger door. This caused the passenger door to drop to the platform in an uncontrolled manner.

This condition, if not corrected, could result in injury to persons on the ground and damage to the aircraft.

To address this problem, Fokker Services has developed an improved actuator to ensure the proper functioning of the door opening mechanism.

For the reason described above, this AD requires the replacement of existing airstair door actuators with improved actuators.

Actions and Compliance

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

(1) Within 7,500 flight cycles after the effective date of this AD, replace the affected door actuator with a new or modified unit that has a part number not identified in paragraph (c) of this AD, in accordance with Fokker Service Bulletin SBF100-52-087, dated November 10, 2008.

(2) As of 18 months after the effective date of this AD, no person may install on any airplane a door actuator with a part number listed in paragraph (c) of this AD; modification of the actuators in accordance with Fokker Component Service Bulletin

R5320-52-011, dated November 10, 2008, changes the part number of the actuator.

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, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1137; 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 2009-0026, dated February 17, 2009; and Fokker Service Bulletin SBF100-52-087, dated November 10, 2008; for related information.

Material Incorporated by Reference

(i) You must use Fokker Service Bulletin SBF100-52-087, dated November 10, 2008, 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 Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252-627-350; fax +31 (0)252 627 211; e-mail technicalservices.fokkerservices@stork.com; Internet <http://www.myfokkerfleet.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 January 14, 2010.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 2010–1288 Filed 1–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30706; Amdt. No. 3357]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 28, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 28, 2010.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800

Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. 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.

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP

and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on January 8, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures,

effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
11-Feb-10 ...	WA	WALLA WALLA	WALLA WALLA REGIONAL.	9/1673	1/4/10	VOR RWY 16, AMDT 12.
11-Feb-10 ...	WA	WALLA WALLA	WALLA WALLA REGIONAL.	9/1674	1/4/10	RNAV (GPS) RWY 16, ORIG.
11-Feb-10 ...	WA	WALLA WALLA	WALLA WALLA REGIONAL.	9/1675	1/4/10	VOR/DME RWY 2, ORIG–A, VOR/DME OR.
11-Feb-10 ...	UT	SALT LAKE CITY	SALT LAKE CITY INTL	9/1676	12/30/09	TACAN RWY 17, AMDT 2.
11-Feb-10 ...	MO	SULLIVAN	SULLIVAN REGIONAL	9/5855	12/23/09	NDB RWY 24, ORIG.
11-Feb-10 ...	AK	KING SALMON	KING SALMON	9/6043	12/23/09	LOC/DME BC RWY 30, AMDT 4.
11-Feb-10 ...	CA	CARLSBAD	MC CLELLAN-PAL-OMAR.	9/6044	12/23/09	ILS OR LOC RWY 24, AMDT 8D.
11-Feb-10 ...	MN	INTERNATIONAL FALLS.	FALLS INTL	9/6112	12/28/09	ILS OR LOC/DME RWY 13, AMDT 1.
11-Feb-10 ...	MN	INTERNATIONAL FALLS.	FALLS INTL	9/6113	12/28/09	ILS OR LOC RWY 31, AMDT 10.
11-Mar-10 ...	PA	ALLENTOWN	LEHIGH VALLEY INTL	9/6612	12/30/09	RNAV (GPS) RWY 31, AMDT 1.

[FR Doc. 2010–863 Filed 1–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30705 ; Amdt. No 3356]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under

instrument flight rules at the affected airports.

DATES: This rule is effective January 28, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 28, 2010.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. 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.

*Availability—*All SIAPs and Takeoff Minimums and ODPs are available

online free of charge. Visit <http://www.nfdc.faa.gov> to register.

Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169. (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA

Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on January 8, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

* * * *Effective 11 FEB 2010*

Enterprise, AL, Enterprise Muni, VOR RWY 5, Amdt 4
Chino, CA, Chino, ILS OR LOC RWY 26R, Amdt 8
Stockton, CA, Stockton Metropolitan, ILS OR LOC RWY 29R, Amdt 19
Avon Park, FL, Avon Park Executive, GPS RWY 4, Orig-A, CANCELLED
Avon Park, FL, Avon Park Executive, GPS RWY 9, Orig-A, CANCELLED
Avon Park, FL, Avon Park Executive, RNAV (GPS) RWY 5, Orig
Avon Park, FL, Avon Park Executive, RNAV (GPS) RWY 10, Orig
Titusville, FL, Space Coast Rgnl, RNAV (GPS) RWY 36, Orig-A

West Palm Beach, FL, Palm Beach Intl, RNAV (RNP) Z RWY 10L, Orig
West Palm Beach, FL, Palm Beach Intl, RNAV (RNP) Z RWY 14, Orig
West Palm Beach, FL, Palm Beach Intl, RNAV (RNP) Z RWY 28R, Orig
West Palm Beach, FL, Palm Beach Intl, RNAV (RNP) Z RWY 32, Orig
Kailua-Kona, HI, Kona Intl at Keahole, ILS OR LOC/DME RWY 17, Amdt 1
Kailua-Kona, HI, Kona Intl at Keahole, LOC RWY 17, Amdt 6B, CANCELLED
Clarion, IA, Clarion Muni, NDB RWY 14, Amdt 4
Clarion, IA, Clarion Muni, RNAV (GPS) RWY 14, Orig
Clarion, IA, Clarion Muni, RNAV (GPS) RWY 32, Orig
Clarion, IA, Clarion Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Emmetsburg, IA, Emmetsburg Muni, NDB RWY 13, Amdt 3
Emmetsburg, IA, Emmetsburg Muni, NDB RWY 31, Amdt 3
Emmetsburg, IA, Emmetsburg Muni, RNAV (GPS) RWY 13, Orig
Emmetsburg, IA, Emmetsburg Muni, RNAV (GPS) RWY 31, Orig
Emmetsburg, IA, Emmetsburg Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Forest City, IA, Forest City Muni, GPS RWY 33, Orig, CANCELLED
Forest City, IA, Forest City Muni, RNAV (GPS) RWY 33, Orig
Le Mars, IA, Le Mars Muni, GPS RWY 18, Orig-A, CANCELLED
Le Mars, IA, Le Mars Muni, RNAV (GPS) RWY 18, Orig
Le Mars, IA, Le Mars Muni, RNAV (GPS) RWY 36, Orig
Mapleton, IA, James G Whiting Memorial Field, Takeoff Minimums and Obstacle DP, Amdt 1
Carbondale/Murphysboro, IL, Southern Illinois, ILS OR LOC RWY 18L, Amdt 13
Carbondale/Murphysboro, IL, Southern Illinois, NDB RWY 18L, Amdt 13
Carbondale/Murphysboro, IL, Southern Illinois, RNAV (GPS) RWY 36R, Orig
Carbondale/Murphysboro, IL, Southern Illinois, Takeoff Minimums and Obstacle DP, Orig
Greenville, IL, Greenville, GPS RWY 18, Orig, CANCELLED
Greenville, IL, Greenville, RNAV (GPS) RWY 18, Orig
Bardstown, KY, Samuels Field, GPS RWY 20, Amdt 1A, CANCELLED
Bardstown, KY, Samuels Field, RNAV (GPS) RWY 2, Orig
Bardstown, KY, Samuels Field, RNAV (GPS) RWY 20, Orig
Taunton, MA, Taunton Muni-King Field, NDB RWY 30, Amdt 5
Taunton, MA, Taunton Muni-King Field, RNAV (GPS) RWY 30, Orig
Allegan, MI, Padgham Field, RNAV (GPS) RWY 11, Orig
Allegan, MI, Padgham Field, RNAV (GPS) RWY 29, Orig
Allegan, MI, Padgham Field, Takeoff Minimums and Obstacle DP, Amdt 2
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) RWY 30L, Amdt 2
Wolf Point, MT, L.M.Clayton, Takeoff Minimums and Obstacle DP, Orig

Minot, ND, Minot Intl, RNAV (GPS) RWY 8, Orig
 Minot, ND, Minot Intl, RNAV (GPS) RWY 26, Orig
 Minot, ND, Minot Intl, VOR RWY 8, Amdt 11
 Minot, ND, Minot Intl, VOR RWY 26, Amdt 13
 Whitefield, NH, Mount Washington Rgnl, RNAV (GPS) Y RWY 10, Orig
 Whitefield, NH, Mount Washington Rgnl, RNAV (GPS) Z RWY 10, Orig
 Newark, NJ, Newark Liberty Intl, GLS RWY 11, Orig
 Newark, NJ, Newark Liberty Intl, GLS RWY 22L, Orig
 Newark, NJ, Newark Liberty Intl, GLS RWY 22R, Orig
 Monticello, NY, Sullivan County Intl, RNAV (GPS) RWY 15, Orig
 Monticello, NY, Sullivan County Intl, RNAV (GPS) RWY 33, Amdt 1
 Ashland, OH, Ashland County, NDB RWY 19, Amdt 11
 Ashland, OH, Ashland County, RNAV (GPS) RWY 19, Orig
 Ashland, OH, Ashland County, VOR-A, Amdt 9
 Athens/Albany, OH, Ohio University Snyder Field, RNAV (GPS) RWY 7, Amdt 1
 Athens/Albany, OH, Ohio University Snyder Field, RNAV (GPS) RWY 25, Amdt 1
 Athens/Albany, OH, Ohio University Snyder Field, Takeoff Minimums and Obstacle DP, Orig
 Celina, OH, Lakefield, NDB RWY 8, Amdt 5
 Celina, OH, Lakefield, RNAV (GPS) RWY 8, Orig
 Celina, OH, Lakefield, RNAV (GPS) RWY 26, Orig
 Celina, OH, Lakefield, Takeoff Minimums and Obstacle DP, Amdt 2
 Celina, OH, Lakefield, VOR/DME RNAV OR GPS RWY 26, Amdt 6, CANCELLED
 Lima, OH, Lima Allen County, ILS OR LOC RWY 28, Amdt 4
 Lima, OH, Lima Allen County, NDB OR GPS RWY 9, Amdt 2A, CANCELLED
 Lima, OH, Lima Allen County, RNAV (GPS) RWY 10, Orig
 Lima, OH, Lima Allen County, RNAV (GPS) RWY 28, Amdt 1
 Lima, OH, Lima Allen County, Takeoff Minimums and Obstacle DP, Amdt 1
 Lima, OH, Lima Allen County, VOR RWY 28, Amdt 16
 Ardmore, OK, Ardmore Downtown Executive, Takeoff Minimums and Obstacle DP, Amdt 2
 Lawton, OK, Lawton-Ft Sill Rgnl, Takeoff Minimums and Obstacle DP, Orig
 Collegeville, PA, Perkomen Valley, VOR RWY 9, Amdt 5, CANCELLED
 Collegeville, PA, Perkomen Valley, VOR-A, Orig
 Saluda, SC, Saluda County, RNAV (GPS) RWY 1, Orig
 Saluda, SC, Saluda County, RNAV (GPS) RWY 19, Orig
 Greeneville, TN, Greeneville-Greene County Muni, Takeoff Minimums and Obstacle DP, Amdt 3
 Abilene, TX, Abilene Rgnl, ILS OR LOC RWY 35R, Amdt 7
 Abilene, TX, Abilene Rgnl, LOC RWY 17R, Orig
 Abilene, TX, Abilene Rgnl, LOC BC RWY 17L, Amdt 3D, CANCELLED

Brenham, TX, Brenham Muni, Takeoff Minimums and Obstacle DP, Amdt 1
 Dumas, TX, Moore County, GPS RWY 19, Orig-A, CANCELLED
 Dumas, TX, Moore County, RNAV (GPS) RWY 1, Orig
 Dumas, TX, Moore County, RNAV (GPS) RWY 19, Orig
 Dumas, TX, Moore County, Takeoff and Minimums and Obstacle DP, Orig
 Henderson, TX, Rusk County, RNAV (GPS) RWY 17, Amdt 1
 Hereford, TX, Hereford Muni, GPS RWY 20, Orig-A, CANCELLED
 Hereford, TX, Hereford Muni, RNAV (GPS) RWY 2, Orig
 Hereford, TX, Hereford Muni, RNAV (GPS) RWY 20, Orig
 Hereford, TX, Hereford Muni, Takeoff and Minimums and Obstacle DP, Orig
 Bridgewater, VA, Bridgewater Air Park, NDB OR GPS-A, Amdt 4B, CANCELLED
 Bridgewater, VA, Bridgewater Air Park, RNAV (GPS) RWY 15, Orig
 Bridgewater, VA, Bridgewater Air Park, RNAV (GPS) RWY 33, Orig
 Olympia, WA, Olympia Rgnl, ILS OR LOC RWY 17, Amdt 11
 Racine, WI, John H. Batten, NDB OR GPS RWY 4, Amdt 3B, CANCELLED
 Racine, WI, John H. Batten, RNAV (GPS) RWY 4, Orig
 Racine, WI, John H. Batten, RNAV (GPS) RWY 22, Orig
 Racine, WI, John H. Batten, RNAV (GPS) RWY 32, Orig
 Racine, WI, John H. Batten, Takeoff Minimums and Obstacle DP, Amdt 5
 Racine, WI, John H. Batten, VOR RWY 4, Amdt 1
 Racine, WI, John H. Batten, VOR/DME RNAV OR GPS RWY 22, Amdt 3A, CANCELLED
 Stevens Point, WI, Stevens Point Muni, RNAV (GPS) RWY 12, Orig
 Stevens Point, WI, Stevens Point Muni, RNAV (GPS) RWY 30, Orig
 Stevens Point, WI, Stevens Point Muni, VOR/DME RWY 30, Amdt 18
 West Bend, WI, West Bend Muni, Takeoff Minimums and Obstacle DP, Orig
 Martinsburg, WV, Eastern WV Rgnl/Shepherd, ILS OR LOC RWY 26, Amdt 8
 Moundsville, WV, Marshall County, RNAV (GPS) RWY 6, Orig-A
 Spencer, WV, Boggs Field, RNAV (GPS) RWY 10, Orig-A
 Spencer, WV, Boggs Field, RNAV (GPS) RWY 28, Orig-A
 Cody, WY, Yellowstone Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
On December 28, 2009 (74 FR 68523) The FAA published an Amendment in Docket No. 30701; Amdt No. 3352 to Part 97 of the Federal Aviation Regulations under section 97.20. The following entries are hereby rescinded in their entirety:
 Little River, CA, Little River, LITTLE RIVER ONE Graphic Obstacle DP
 Little River, CA, Little River, Takeoff Minimums and Obstacle DP, Orig
On January 7, 2010 (75 FR 917) The FAA published an Amendment in Docket No. 30703; Amdt No. 3354 to Part 97 of the Federal Aviation Regulations under section 97.33. The following entries are hereby rescinded in their entirety:

Elim, AK, Elim, RNAV (GPS) RWY 1, Orig
 Elim, AK, Elim, RNAV (GPS) RWY 19, Orig
 [FR Doc. 2010-1289 Filed 1-27-10; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2007-0115]

RIN 1625-AA87

Security Zone; Escorted Vessels, Charleston, SC, Captain of the Port Zone

Correction

Rule document E8-11863 was inadvertently published in the Proposed Rules section of the issue of May 28, 2008, beginning on page 30560. It should have appeared in the Rules and Regulations section.

[FR Doc. 2010-517 Filed 1-27-10; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0908191244-91427-02]

RIN 0648-XT93

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2010 commercial summer flounder quota to the Commonwealth of Virginia. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective January 25, 2010 through December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Management Specialist, 978-281-9257.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual

specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 68,279 lb (30,971 kg) of its 2010 commercial quota to Virginia to cover summer flounder landings of nine vessels granted safe harbor in Virginia due to poor weather conditions and a navigation hazard on January 2, 2010. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2010 are: North Carolina, 3,466,652 lb (1,572,447 kg); and Virginia, 2,813,805 lb (1,276,320 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 25, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010-1762 Filed 1-25-10; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351-9087-02]

RIN 0648-XU11

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access fishery. This action is necessary to fully use the 2010 A season total allowable catch (TAC) of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 25, 2010. Comments must be received at the following address no later than 4:30 p.m., A.l.t., February 9, 2010.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648-XU11, 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.
- Fax: (907) 586-7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally 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, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens

Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea on January 20, 2010 (publication in the **Federal Register** pending).

NMFS has determined that approximately 604 mt of the 2010 A season Atka mackerel TAC for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2010 A season TAC of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery, NMFS is terminating the previous closure and is reopening directed fishing for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 22, 2010. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea

subarea for vessels participating in the BSAI trawl limited access fishery to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit

written comments on this action to the above address until February 12, 2010.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 25, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010-1760 Filed 1-25-10; 4:15 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 75, No. 18

Thursday, January 28, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-90; NRC-2008-0279]

Natural Resources Defense Council; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Natural Resources Defense Council (PRM-50-90). The petitioner requested that the NRC amend the regulations that govern domestic licensing of highly enriched uranium (HEU) production and utilization facilities to establish a date when the NRC would no longer license the domestic use or export of HEU except for restricted use by a few specialized facilities. The petitioner has not demonstrated that existing NRC licensing, security and export regulations do not currently provide for reasonable assurance of adequate protection of the public health and safety, and the common defense and security of the United States.

ADDRESSES: You can access publicly available documents related to this petition for rulemaking 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 PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Federal Rulemaking Web site: Public comments and supporting materials related to this petition for rulemaking can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2008-0279. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail Carol.Gallagher@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Robert Beall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-3874 or e-mail: Robert.Beall@NRC.Gov.

SUPPLEMENTARY INFORMATION:

The Petition

The NRC received a petition for rulemaking dated March 24, 2008, submitted by the Natural Resources Defense Council (petitioner). The NRC published a notice of receipt and request for public comment on the petition in the **Federal Register** on May 27, 2008 (73 FR 30321). Commenters were given until August 11, 2008, to comment, and the comment period was subsequently extended to September 25, 2008 (73 FR 49965, August 25, 2008).

The petitioner requests that the NRC amend Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities"; 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material", and other applicable regulations. Specifically, the petitioner requests that 10 CFR 50.64, "Limitations on the use of highly enriched uranium (HEU) in domestic non-power reactors" and portions of Part 70 that govern the licensing of production, calibration, or reference sources be amended to establish a date by which the NRC would no longer license the civilian use of HEU in the United States (U.S.). The petitioner also requests that applicable NRC regulations governing the export of HEU from the U.S. be amended to establish a date after which the NRC would no longer license or otherwise authorize these exports.

The petitioner believes that, with limited exceptions, a ban on the civilian

use of HEU should be imposed and identifies three issues in this regard.

1. The petitioner states that the NRC should not license the civilian use of HEU after December 31, 2009 (or an alternative date), except for use as reactor fuel at the MITR-II facility at the Massachusetts Institute of Technology (MIT), the Heavy Water Test Reactor at the National Institute of Standards and Technology (NIST), and the MURR facility at the University of Missouri. The petitioner states that these licensees should be required to work with the NRC to establish dates by which these reactors would be required to convert to using only low enriched uranium (LEU) fuel and report the progress toward fuel conversion annually to the NRC. The petitioner also notes that no commercial U.S. power reactors use HEU fuel and that no future plans to use HEU in NRC-licensed power facilities exist. The petitioner further states that the NRC continues to license the civilian use of HEU to fuel seven existing research and test reactors that have not yet converted to LEU fuel.

The petitioner states that 10 CFR 50.64 prohibits continued use of HEU fuel in domestic non-power reactors if an LEU fuel alternative is available. The petitioner predicts that the three HEU-fueled TRIGA-type research reactors at Oregon State University, the University of Wisconsin, and Washington State University will be converted to LEU during the next 2 years. The petitioner also notes that the MIT, NIST, and MURR facilities are working with the Department of Energy (DOE) to develop HEU fuel alternatives but questions the accuracy of DOE's estimate that these facilities will be converted by 2014. The petitioner does not know if the only other facility in the U.S., (a small Nuclear Test Reactor (NTR) at General Electric's Vallecitos Nuclear Center used for radiography) is scheduled for conversion to LEU but notes that the newer and larger LEU-fueled TRIGA facility at the McClellan Nuclear Radiation Center is also used for radiography.

2. The petitioner requested that the NRC establish a date when HEU could no longer be licensed for export, citing as an example the export of HEU to licensees in Canada for Molybdenum-99 (Mo-99)/Technetium-99m (Tc-99m) medical radioisotope production. The petitioner states that a ban on the NRC-

licensed civilian use and export of HEU should apply to all facilities except those that (1) blend down existing HEU to LEU fuel for civilian power reactors; and (2) blend down HEU to lower concentrations (between 20 to 40 percent U-235) of HEU for use at the MIT, NIST, and MURR facilities. The petitioner is not aware of any other civilian use of HEU other than for the export to Canada for use in producing Mo-99 for Tc-99m, the most widely used medical radioisotope in the world.

The petitioner suggests that the Canadian supplier of medical radioisotopes, MDS Nordion, could convert to the use of LEU targets because at least two other Mo-99 producers have been doing so “for more than 30 years.” Although MDS Nordion would incur expenses associated with the conversion, the petitioner believes it would be “a small price to pay for the elimination of HEU.” The petitioner does not believe that establishing a firm date for ending civilian use of HEU in the U.S. or its export abroad would be detrimental to medical radioisotope production. However, the petitioner suggests that the NRC could authorize use of 20 to 40 percent-enriched HEU for a limited time if evidence is presented that complete elimination of HEU would not be practical for the MURR and MDS Nordion facilities. The petitioner states that a “reduction from 93.5 percent enriched-HEU to 40 percent would only increase the target material requirement for Mo-99 production by a factor of about 2.3.”

3. The petitioner states that other countries will not likely ban the civilian use of HEU as long as similar use of HEU is permitted in the U.S. and that a U.S. ban would signal to other countries “the imperative of eliminating vulnerable sources of HEU.” In addition, the petitioner states that HEU cannot be reliably detected with radiation monitors that are at the ports and borders around the United States and moreover, the portals can be easily bypassed. The petitioner states that eliminating civilian HEU use is absolutely necessary because the greatest non-state threat to the U.S. is the risk that terrorists will acquire and use HEU to make an improvised nuclear explosive device. The petitioner states that eliminating HEU at its source should be this country’s highest priority because the existing Federal HEU to LEU conversion programs are moving far too slowly to combat the threat.

The petitioner would exempt from the proposed amendment the following: (1) HEU used for weapons and naval propulsion reactor fuel; (2) spent fuel and radioactive waste regulated by 10

CFR Part 72; (3) the use of HEU under exemptions in 10 CFR 70.11–70.17; and (4) small quantities for production of calibration or references sources covered under 10 CFR 70.19 and 70.20.

The petitioner concludes that because LEU is available and can be used as research and test reactor fuel and as targets for medical radioisotope production, there is no reason to continue using HEU for such purposes. The petitioner states that the high national security risks of HEU use clearly outweigh the benefits. Therefore the NRC should no longer license the civilian use and export of HEU. The petitioner requested that the NRC conduct a rulemaking to establish the proposed amendments as detailed in the petition for rulemaking.

The NRC determined that the petition met the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802 and the petition was docketed as PRM–50–90 on April 1, 2008.

During the public comment period the petitioner sent in the following additional comments and modifications to the original petition (PRM–50–90):

1. Delete the request to allow the use of lower enriched HEU for research reactors and radioisotope production because this would not be an improvement over setting a date when the use and export of HEU would not be authorized.

2. Modify 10 CFR 50.64 to require each HEU licensed research and test reactor to set and periodically update a schedule with the NRC for the conversion from HEU to LEU fuel and to make a good faith effort to meet the schedule. If the licensee cannot make the schedule, the NRC would consider amending the schedule to enable the continued operation of the facility.

3. In conjunction with the NRC, Canadian licensees would set and periodically update a schedule for the conversion from HEU to LEU targets for the production of Mo-99/Tc-99m. The Canadian licensees should make a good faith effort to meet the schedule. If the licensee cannot meet the schedule, the NRC would consider amending the schedule to enable the continued production of medical isotopes. (NRDC 1, NRDC 2, and NRDC 3).

NRC Evaluation

As a general matter, the petitioner’s bases for requesting the regulatory changes appear primarily to be founded on foreign policy and national security concerns that are beyond the NRC’s statutory purview under the Atomic Energy Act of 1954, as amended (AEA). The petitioner admits that “this issue

has less to do with the security of HEU used for civil activities in the United States than it does in signaling to other countries the imperative of eliminating vulnerable sources of HEU elsewhere.” But the AEA does not provide the NRC with regulatory authority to deny licenses, whether for civilian domestic use or for exports, solely to promote certain foreign policy objectives, not otherwise directly related to NRC’s AEA responsibilities and authorities. While the NRC works effectively to minimize the use and export of HEU until substantial LEU replacement options are available in conjunction with the Department of Energy’s Global Threat Reduction Initiative, the NRC’s licensing authority for HEU as well as other nuclear materials is strictly regulatory in nature and may only be exercised in accordance with the statutory scheme and congressional policies established in the AEA.

With respect to matters within the NRC’s authority, such as the licensing and security of domestic use and export of HEU, the petitioner has not provided a basis for the NRC to conclude that its regulations do not provide reasonable assurance of adequate protection of the public health and safety or the common defense and security or fail to implement other applicable statutory licensing requirements. For example, 10 CFR 50.64(b)(3) already provides the licensee the flexibility to use HEU enriched as close to 20 percent as possible. In addition, 10 CFR 50.64(c)(2) requires each research and test reactor licensee authorized to possess and use HEU fuel to submit an annual report to the NRC with a schedule and certification of funding for the conversion to LEU fuel. If the conversion funding is not available, the licensee must submit a proposal to the NRC with a new conversion schedule and certification of funding, if available, every 12 months. In addition to the restrictions of 10 CFR 50.64, the NRC has imposed a comprehensive scheme through its regulations, orders and other measures that ensure the security of HEU licensed for civilian domestic use. With respect to exports of HEU, the AEA’s various requirements are contained in provisions throughout 10 CFR Part 110.

Additional issues raised by the petition are addressed in the NRC’s responses to the other comments that PRM–50–90 generated.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The NRC received 4,764 comment letters: Two

from States, one from a Congressional Representative, three from private companies, ten from associated organizations, one from a private individual, two from state universities, one from the Department of Energy (DOE), and 4,744 electronic form comments generated by the public using the petitioner's Web site. Most of the comments focused on the three main elements of the petition previously outlined. The NRC reviewed and considered the comments and responses in its decision. A summary of the comments in support of and against the petition and the NRC's evaluation of the comments follows.

Comment 1: Three commenters supported the petitioner's assertion that banning the civilian use of HEU would be the most effective way to decrease the risk of a terrorist attack. The commenters believe that there are inadequate radiation detectors at the borders of the United States for detecting HEU and that the physical security of this material is inadequate. The use of LEU in place of HEU would greatly reduce the risk of nuclear proliferation and the potential for diversion and use in terrorist attacks. (WNCPSR 1, AG 1, NPEC 1).

NRC Response 1: The commenters' statements, which generally amount to assertions that HEU carries high nuclear proliferation risks, do not constitute bases for granting the rulemaking petition. As noted previously, the NRC's licensing authority under the AEA is solely regulatory in nature. The AEA contains no outright ban on NRC licensing of civilian use of HEU. Rather, under the AEA the NRC may not issue a license for civilian use of HEU if it finds that the license would be inimical to the common defense and security or the public health and safety.

Acting in its regulatory capacity, it has been the Commission's policy for over 20 years to support and limit the domestic use of HEU, and it has taken a number of steps within the bounds of its authority to carry out this policy. For instance, in 1978, the United States Department of Energy started the Reduced Enrichment for Research and Test Reactors (RERTR) program. The goal of this program is the conversion of research and test reactors and targets from the use of HEU to the use of LEU. In 1982, the NRC issued a Statement of Policy fully supporting the RERTR program and stating that the NRC would act expeditiously to review the use of new LEU fuel types in non-power reactors (hereafter research and test reactors) (47 FR 37007, August 24, 1982). In addition, the NRC stated that each HEU export license application

will continue to be closely scrutinized to verify that the HEU export meets U.S. statutory requirements. In 2004, the RERTR program became part of the Global Threat Reduction Initiative (GTRI)¹ conducted by DOE's National Nuclear Security Administration (NNSA).

The structure of 10 CFR 50.64 recognizes certain limitations in the effort to convert research and test reactors from HEU to LEU. Since the inception of the RERTR program, it has been recognized that the process of converting from HEU to LEU fuel would require significant funding from Congress and would take a considerable amount of time. Because research and test reactors have special design features, conversion to LEU requires long lead times for developing, designing and testing new types of fuel to avoid serious losses in performance.

However, 10 CFR 50.64 provides regulatory controls that directly address the limitations of time and funding. Until NRC-licensed research and test reactors are converted from HEU to LEU fuel, each domestic research and test reactor using HEU is required by 10 CFR 50.64(c)(2) to submit an annual certification to the NRC on whether or not DOE funding for the LEU conversion is available along with a schedule of the conversion process. As indicated, Congress provides the funding to DOE to support the HEU to LEU conversion of research and test reactors, and therefore, speed and priority of the LEU conversion process is not under NRC's control. In addition, the NRC acknowledges that banning the use of HEU without a suitable LEU replacement in place would result in significant negative impacts relative to the operation of these research and test reactor facilities, and would likely result in the loss of the research and development benefits these facilities provide.

With regard to the detection of HEU crossing U.S. borders, although the NRC works with the U.S. Department of Homeland Security (DHS) in the event there is a potential threat at the U.S. border from the export or import of radioactive materials, the NRC has no authority over this matter. DHS is responsible for the radiation detectors, and for controlling the borders of the U.S.

Regarding the domestic security of HEU, 10 CFR 73.20, 73.25, 73.45, and 10 CFR Part 74 outline the physical protection requirements for possession,

¹ For more information about the GTRI program see http://nnsa.energy.gov/nuclear_nonproliferation/1550.htm.

use, transportation and accounting of this material by NRC licensees. DOE is the sole U.S. supplier of HEU and the licensed possession and export of HEU requires a physical protection system that will provide a high assurance that the activity does not constitute an unreasonable risk to the public health and safety. Information concerning the site specific security measures to protect HEU activity is considered Safeguards Information under 10 CFR 73.22 and this information must be protected against unauthorized disclosure. Generally, the actual physical movement of HEU is performed using armed escorts and special vehicles designed to protect against the theft, diversion, or radiological sabotage of the material.

In sum, the NRC strongly supports the use of LEU fuel and targets, rather than HEU, as set forth in its 1982 Policy Statement, and will continue to act expeditiously to authorize requested conversions of domestic licensee facilities. The NRC believes it already has adequate regulations in place to support the continued safe and secure use of HEU until a suitable replacement is available.

Therefore, the NRC does not believe that Comment 1 provides a basis for granting the rulemaking petition.

Comment 2: One commenter supported the elimination of HEU in the production of radioisotopes. In addition to the petitioner's statements, the commenter referenced an article in the Journal of American College of Radiology which concludes that the cost increase to consumers to have the manufacturers of radioisotopes switch to using LEU targets would be in the range of 1 percent to 2 percent. The commenter feels that this would not be an undue burden to the licensees to improve national security. (PSR 2).

NRC Response 2: As noted above, the NRC may only exercise its export licensing authority within the confines of the statutory scheme and congressional policies reflected in the AEA. While the AEA establishes strict requirements for all NRC licensed exports of special nuclear material (*i.e.*, the export licensing criteria under AEA section 127 must be met, the NRC must have an AEA section 123 agreement for cooperation with the recipient country, and the NRC must find that the export would not be inimical to the common defense and security or the public health and safety of the U.S.), it establishes no congressional policy to ban outright NRC licensing of HEU exports regardless of whether the statutory criteria are satisfied.

In the Energy Policy Act of 1992 (EPAct 1992), Congress amended the AEA to require the NRC to adopt additional, more stringent criteria specifically for licensing exports of HEU. Under Section 134 of the AEA, the NRC may issue a license for the export of HEU to be used as a fuel or target in a nuclear research or test reactor only if, in addition to meeting the other AEA requirements for exports of special nuclear material, the NRC determines that:

(1) There is no alternative nuclear reactor fuel or target enriched to a lesser percent than the proposed export that can be used in the foreign reactor;

(2) The proposed recipient of the uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative in lieu of HEU; and

(3) The U.S. Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor.

More recently, in the Energy Policy Act of 2005 (EPAct 2005), Congress further amended the AEA by adding a new section 134.b, "Medical Isotope Production," in which Congress continued to encourage the eventual end to relying on HEU targets in the production of medical radioisotopes. In the new AEA section 134.b, Congress lifted certain restrictions on exports of HEU to Canada, France, Belgium, Germany, and The Netherlands for the production of medical radioisotopes if the recipient country supplies an assurance letter to the U.S. that the HEU will be used solely for medical isotope production, and if the NRC determines that the HEU will only be irradiated in a reactor that uses alternative fuel or is the subject of an agreement with the U.S. to convert to alternative fuel when such fuel can be used in the reactor.

The most common radioisotope produced for medical use is Molybdenum-99 (Mo-99)/Technetium-99m (Tc-99m). The U.S. uses about half of the world's production of these isotopes, for which there are no domestic producers. Almost all of the Mo-99/Tc-99m is manufactured by four companies using HEU targets. In recent years, the NRC has only authorized exports of HEU target material to the Canadian medical radioisotope producer.

In support of their request that the NRC ban altogether the civilian use and export of HEU, both the petitioner and the commenter suggest that the NRC may find at this time that the use of LEU targets for production of medical isotopes would be feasible and not cost-

prohibitive. However, as a regulator, it is not the NRC's role to determine in the first instance whether the use of LEU targets for medical isotope production is commercially feasible. As reflected in the NRC's response to Comment 1 and explained further below, that role belongs primarily to DOE.

The EPAct 2005 supports continued safe, secure, and reliable production of medical radioisotopes using HEU from the U.S. until a suitable LEU-based substitute is available. In that act, Congress required the Secretary of Energy to arrange for the National Academy of Sciences (NAS) to conduct a study² to determine:

(1) The feasibility of procuring supplies of medical radioisotopes from commercial sources that do not use HEU;

(2) The current and projected demand and availability of medical radioisotopes in regular current domestic use;

(3) The progress that is being made by DOE and others to eliminate all use of HEU in reactor fuel, reactor targets, and medical radioisotope production facilities; and

(4) The potential cost differential in medical radioisotope production in the reactors and target processing facilities if the products were derived from LEU.

The NAS study was issued in January of 2009, and identifies additional steps that could be taken by DOE and the medical radioisotope producers to improve the feasibility of HEU to LEU conversions. By August 2010, DOE is required to submit a report to Congress regarding the NAS findings, and on whether any commercial producers have committed to provide domestic requirements for medical radioisotopes without using HEU. Under the EPAct 2005, if any such commercial producers later become capable of meeting domestic requirements for medical radioisotopes without using HEU, the DOE is required to certify this to Congress, in which case the NRC will, by rule, terminate its review of HEU export license applications.

Therefore, the NRC does not believe that Comment 2 provides a basis for granting the rulemaking petition.

Comment 3: A total of 4,744 members of the public submitted the same comment urging the NRC to end the civilian use of HEU. The commenters believe that HEU could be diverted and used to build an improvised nuclear weapon and is simply too dangerous for

continued commercial use here and abroad. In addition, these commenters express concerns that the facilities housing the nuclear material are poorly secured. These commenters state that recent studies have shown that radiation monitors cannot reliably detect HEU being smuggled into, and out of, the United States, so the most reliable plan would be to replace and ban its commercial sources. These commenters also state that a U.S. move to ban the use of HEU would signal to other countries the critical need to eliminate the use of HEU. (FORM 1, FORM 3).

NRC Response 3: As previously discussed, the AEA does not authorize the NRC to ban outright the civilian use of HEU under all circumstances. Nor does the AEA authorize the NRC to deny export licenses solely to promote certain foreign policy objectives, such as encouraging other countries not to use HEU.

The NRC can only act within the bounds of its regulatory authority under the AEA to protect the public health and safety and the common defense and security. As a regulator, the NRC has enacted a comprehensive regulatory structure to strictly control licensing of facilities for domestic use of HEU, as well as licensing of exports of HEU. In addition to NRC regulations, the NRC is confident that international treaties and standards governing possession, use, and export of HEU ensure that adequate controls are employed to reduce the risks of theft of HEU from civilian research and test reactors and medical radioisotope production facilities. In addition, the NRC participates in U.S. Government consultations with the governments of countries seeking exports of HEU from the United States. These consultations include an assessment of the security of facilities that will receive U.S. origin HEU, so the security of the facilities can be considered in determining whether an export license should be approved. Given these controls, the likelihood of acquiring U.S. origin HEU from a facility in the U.S. or elsewhere in amounts sufficient to make an improvised nuclear weapon is considered very remote. U.S. origin HEU fuel is manufactured, shipped, and maintained in limited quantities so that acquiring an amount necessary to make a weapon would be very difficult. In addition, converting HEU fuel into a form suitable for use as a weapon requires considerable technical expertise, due to its physical nature and design. Further, the GTRI program continues to make progress and to support the conversion of domestic and

² National Academies of Science Report; "Medical Isotope Production Without Highly Enriched Uranium"; http://www.nap.edu/catalog.php?record_id=12569.

foreign research and test reactors from HEU to LEU fuel.

The security of research and test reactors is regulated through requirements located in 10 CFR Part 73 of the Commission's regulations. The specific security measures that are required vary depending on several factors, which include the quantity and type of special nuclear material possessed by the licensee, as well as the power level at which the licensee is authorized to operate. 10 CFR 73.60 and 73.67 require, at a minimum, that each research and test reactor that stores and uses special nuclear material in controlled access areas, (1) monitors the controlled access areas for unauthorized activities, and (2) ensures that there is a response to all unauthorized activities. These regulations also require that unescorted access to the controlled access areas be limited to authorized individuals. The research and test reactors implement these requirements on a site-specific basis through their security plans and procedures.

Subsequent to September 11, 2001, the NRC evaluated the adequacy of security at research and test reactors and considered whether additional actions should be taken to help ensure the trustworthiness and reliability of individuals with unescorted access. The licensees were advised to consider taking immediate additional precautions, including observation of activities within their facility. The NRC evaluated these additional measures at each facility during the remainder of 2001. From 2002 through 2004, research and test reactors voluntarily implemented compensatory measures that included site specific background investigations for individuals granted unescorted access. The NRC has also conducted security assessments at certain research and test reactors which helped to identify risk-significant areas and materials.

In addition to the implementation of site-specific background investigations, the NRC issued orders to all RTRs in April 2007 (72 FR 25337, May 4, 2007), requiring fingerprinting for an FBI identification and criminal history record check for all individuals granted unescorted access to special nuclear material at the facility. The NRC is also undertaking rulemaking to codify unescorted access requirements for RTRs similar to those that were imposed by the April 2007 orders. (See Advanced Notice of Proposed Rulemaking, 74 FR 17115, April 14, 2009).

As stated in the NRC response to Comment 1, DHS is responsible for protecting the borders of the U.S., and the adequacy of the radiation detectors

and other types of equipment used for this purpose.

Under the GTRI program, DOE is responsible for developing, testing, and qualifying the LEU fuel, and for funding the facilities to be converted. The speed of the HEU conversion program is dependent on the successful DOE testing of the new LEU fuel design and the funding provided by Congress. The NRC role is to conduct timely reviews of the license amendment requests to approve the operation with LEU fuel.

Therefore, the NRC does not believe that Comment 3 provides a basis for granting the rulemaking petition.

Comment 4: Five commenters did not agree with the petitioner that a firm date is needed when the NRC will no longer license the domestic use of civilian HEU. Although all of them supported the idea to convert to the use of LEU as quickly as possible, they stated that there are technical, economic, and safety issues that must be addressed first. (TRTR 1, UM 1, MIT 1, CORAR 1, and DOE 1).

NRC Response 4: For many of the reasons already discussed in this notice, the NRC generally agrees with this comment. As stated previously, the NRC's view is that the current U.S. statutory and regulatory framework already addresses the petitioner's security threat concerns regarding the security of HEU licensed for limited civilian domestic use and export.

In addition, the GTRI program is working both in the United States and internationally to reduce the civilian use of HEU by converting facilities to operate with LEU or by shutting down the reactors and removing all the HEU material from the facilities. The NRC works closely with DOE and NRC licensees to ensure that all the required security, safety, and regulatory issues are resolved before, during, and after the conversion process.

Comment 5: The NRC received eleven comments that did not agree with the petitioner's request that the NRC establish a date when HEU would no longer be licensed for export. The commenters stated that there are more than 40,000 nuclear medical procedures performed in the United States each day, and that more than 90 percent of the medical radioisotopes used in these procedures are produced with HEU material. In addition, the most commonly used medical radioisotope in the United States, Mo-99/Tc-99m, is 100 percent imported and produced with HEU materials. The petitioners argue that setting a firm date when the NRC would no longer license the export of HEU before LEU target-based production was available as a

replacement could seriously disrupt the worldwide supply of radioisotopes and have a negative impact on patient care. (TRTR 2, ASTRO 2, UM 2, MDSN 2, SNM 2, ACR 2, CORAR 2, DOE 2, MI 2, NEI 2, and AAPM 2).

NRC Response 5: The NRC agrees with the commenters that there are a number of practical and serious implications related to the availability of HEU. Because of the relatively short half life of Mo-99/Tc-99m (66 hours/6 hours), these radioisotopes cannot be stockpiled or stored for very long and must be constantly replenished. The production and delivery of the technetium generators can only be done on a very tight schedule requiring rigorous planning and execution. An interruption at any point in the production, transportation, or delivery chain can have an impact on the supply of the radioisotope. The availability of Mo-99/Tc-99m is further complicated by the fact that there are a limited number of foreign facilities producing the isotope, the reactors where the targets are irradiated are over 40 years old, and these reactors are used for numerous other types of nuclear research. While there is interest in developing a domestic LEU-based production capability, it is not yet known if or when this capability will become available. In summary, banning HEU without a suitable LEU replacement would affect the production of vital radioisotopes used for medical diagnostics and therapies, and would likely lead to or exacerbate shortages of these medical radioisotopes in the United States. These shortages would have a major negative impact on patient care.

However, in order to license an export of HEU for medical isotope production, the NRC must ensure that all of the applicable statutory requirements, including Section 134 of the AEA, are satisfied. If those statutory requirements are not met, the NRC is not authorized to grant a requested license.

Comment 6: A commenter states that, contrary to the petitioner's belief that a ban on the civilian use of HEU would lead other countries to take similar actions, other countries will not likely follow the U.S. in banning the civilian use of HEU, and that the allies of the U.S. have already joined us to reduce and secure their stocks and uses of HEU. If the petition is granted, the commenter states that would create a false sense of security because the real problem is the potential diversion and lack of inventory control from the countries that made up the former Soviet Union. (TRTR 3).

NRC Response 6: Although the NRC fully supports the efforts of the DOE programs, these activities are not under NRC jurisdiction. However, the NRC believes that DOE's GTRI program is working to address the concerns the commenter mentions.

Determination of Petition

The NRC has determined that the petitioner has not provided an adequate basis on which the NRC could act to implement the proposed changes requested by the petitioner. To the extent that the NRC has authority to act, the NRC's position is that the current regulatory framework in conjunction with DOE's GTRI program already works effectively to minimize the use and export of HEU material until a suitable LEU replacement is available.

With respect to export license applications for HEU, bearing in mind the NRC's responsibility to make an overall finding that each export would not be inimical to the common defense and security of the U.S., the NRC intends to continue its practice to carefully review each application to verify that each requested HEU export is justified in accordance with its statutory and regulatory obligations. The NRC will continue to monitor the progress of DOE's GTRI and RERTR programs, including the HEU to LEU conversion schedules.

The NRC will also continue to encourage that the appropriate actions be taken to eliminate U.S.-supplied-inventories of HEU in a manner consistent with the EPAct 2005 requirements.

For reasons cited in this document, the NRC denies the petition.

Dated at Rockville, MD, January 22, 2010.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2010-1751 Filed 1-27-10; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 33 and 35

[Docket No. RM09-16-000]

Control and Affiliation for Purposes of Market-Based Rate Requirements Under Section 205 of the Federal Power Act and the Requirements of Section 203 of the Federal Power Act

January 21, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations pursuant to sections 203 and 205 of the Federal Power Act (FPA) to grant blanket authorization to acquire securities under section 203 and amend the definitions of "affiliate" in Subpart H and Subpart I of Part 35 of the Commission's regulations. The Commission seeks public comment on the rules and amended regulations proposed herein.

DATES: Comments are due March 29, 2010.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

- *Agency Web site:* <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Andrew P. Mosier, Jr. (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502-6274.

Christina Hayes (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502-6194.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to provide greater

certainty with respect to certain transactions in which a holding company acquires voting securities of a public utility. Specifically, the Commission proposes to amend Part 33 of its regulations to grant a blanket authorization under section 203(a)(2) of the Federal Power Act (FPA), as well as a parallel blanket authorization under section 203(a)(1), for acquisitions of 10 percent or more, but less than 20 percent, of the outstanding voting securities of a public utility or holding company, where the acquiring company files a statement certifying that such securities were not acquired and are not held for the purpose or with the effect of changing or influencing the control of the public utility and such acquiring company complies with certain conditions designed to limit its ability to exercise control (all as set forth in an Affirmation in Support of Exemption from Affiliation Requirements on FERC Form 519-C (Affirmation), the form of which is annexed hereto as Appendix A). The Commission also proposes to amend Subpart H and Subpart I of Part 35 of the Commission regulations to define an "affiliate" of a specified company as any person that controls, is controlled by, or is under common control with such specified company. A public utility in respect of which an Affirmation has been filed would be exempt from certain requirements of an affiliate for purposes of the Commission's market-based rate program, but only with respect to current or subsequent affiliation(s) that result from the transaction that is the subject of such Affirmation and only for so long as the information contained in the Affirmation (as modified through subsequent quarterly updates) is true, complete and correct and the reporting person remains in compliance with the commitments that are made in the Affirmation.

II. Background

A. Overview

2. Section 203 of the FPA, as amended by the Energy Policy Act of 2005,¹ requires Commission authorization for mergers, and dispositions and acquisitions involving electric generation and transmission companies and their holding companies. The Energy Policy Act of 2005 expanded the Commission's authority over corporate transactions and granted the Commission new regulatory tools to strengthen its ability to prevent the exercise of market power. The

¹ Energy Policy Act of 2005, Public Law 109-58, §§ 1289 *et seq.*, 119 Stat. 594 (2005).

Commission has implemented rules under section 203 to help prevent the accumulation of either horizontal or vertical market power, while at the same time eliminating unnecessary regulatory barriers to the making of needed investment in generation and transmission infrastructure. These rules are complemented by the rules the Commission has implemented under its market-based rate program under section 205 to prevent the exercise of market power in wholesale energy and capacity markets.²

3. The Commission has granted, both on a generic basis and on a case-by-case basis, blanket authorizations under section 203 where the Commission has determined that transactions that fall within certain parameters would be consistent with the public interest and would not result in inappropriate cross-subsidization.³ While these blanket authorizations have facilitated transactions under section 203, the Commission must also consider the effect of transactions under the market-based rate program under section 205. The Commission has codified its rules under the market-based rate program.⁴ Under these rules, among other things, a market-based rate seller must demonstrate that neither it nor its affiliates have market power in the relevant geographic market. In this regard, the acquisition or disposition of public utility securities under blanket section 203 authorization may raise questions as to whether the energy assets that are directly or indirectly owned by an investor should be attributed to the public utility whose securities are acquired by the investor for purposes of the public utility's

market power analysis under the market-based rate program.

B. EPSA's Petition for Guidance

4. On September 2, 2008, the Electric Power Supply Association (EPSA) filed a petition requesting guidance regarding concepts of control and affiliation as they relate to transactions subject to the Commission's jurisdiction under sections 203 and 205 of the FPA.⁵ Specifically, EPSC requested that, where an investor directly or indirectly acquires 10 percent or more but less than 20 percent of a public utility's outstanding voting securities and is eligible to file a statement of beneficial ownership with the Securities and Exchange Commission (SEC) on SEC Schedule 13G,⁶ such investment would not be deemed to result in a disposition of the public utility's jurisdictional facilities under section 203(a)(1) of the FPA or to result in affiliation with the public utility for purposes of the Commission's market-based rate requirements under section 205 of the FPA.

5. EPSC states that a number of recent transactions involving investments in publicly-held competitive power supply companies bring to light concerns about when an investment will result in affiliation. EPSC asserts that these concerns threaten to discourage investment in energy infrastructure and also create compliance issues for competitive power supply companies with market-based rates.

6. EPSC states that secondary market transactions in publicly-traded securities can result in situations that could be deemed to result in a transaction subject to Commission authorization under section 203 or

affiliation for market-based rate purposes. EPSC explains that such transactions can subject a public utility to potential compliance issues under sections 203 and 205 of the FPA since they take place without the knowledge of the affected public utility.

7. EPSC's discussion of affiliation for market-based rate purposes is based on the definition of an "affiliate" set forth in Order No. 697-A. That definition has been superseded by the definition adopted in Order No. 697-B, although the changes do not fundamentally alter the issues that EPSC describes. The current definition provides that an affiliate of a specified company is (i) any person that has a 10 percent or greater voting security interest in the specified company; (ii) any company that the specified company has a 10 percent or greater voting interest in; (iii) any person that is under common control with the specified company; or (iv) any person or class of persons that the Commission determines, after notice and opportunity for a hearing, it is necessary or appropriate to treat as an affiliate of the specified company either to promote the public interest or to protect investors and consumers.

8. EPSC states that a number of concerns arise if one strictly applies a 10 percent or greater voting security interest test to determine affiliation. An upstream owner with a 10 percent or greater voting interest in one public utility can acquire a 10 percent or greater voting interest in a second unaffiliated public utility and thereby create a new affiliate relationship between the two public utilities. EPSC states that this could trigger a need for section 203 filings by the acquirer and the second public utility, or only the acquiring company if the securities are acquired on the secondary market.

9. In addition, the transaction could trigger a market-based rate change in status reporting requirement for both the first and second public utilities and their existing affiliates. This requirement could exist even though the affected public utilities are not aware that the new affiliate relations had been created. EPSC claims that the public utilities would thus not be in a position to make a change in status filing, even though failure to make a necessary filing could result in revocation of market-based rate authority and/or the imposition of penalties. EPSC states that the consequences could be even more serious if any of the entities involved is a traditional public utility with captive customers. Where a public utility with market-based rate authority is selling to a traditional public utility with captive customers and subsequently becomes

² *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 FR 39904 (Jul. 20, 2007), FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 73 FR 25832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268, *order on reh'g and clarification*, 124 FERC ¶ 61,055 (2008), *order on reh'g and clarification*, Order No. 697-B, 73 FR 79610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, 74 FR 30924 (Jun. 29, 2009), FERC Stats. & Regs. ¶ 31,291 (2009).

³ *See Transactions Subject to Federal Power Act Section 203*, Order No. 669, 71 FR 1348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, 71 FR 28422 (May 16, 2006), FERC Stats. & Regs. ¶ 31,214 (2006), *order on reh'g*, Order No. 669-B, 71 FR 42579 (Jul. 27, 2006), FERC Stats. & Regs. ¶ 31,225 (2006). *See also Goldman Sachs Group*, 121 FERC ¶ 61,059 (2007), *clarified*, 122 FERC ¶ 61,005 (2008) (*Goldman Sachs*); *Capital Research & Mgmt. Co.*, 116 FERC ¶ 61,267 (2006) (*Capital Research*).

⁴ *See* Order No. 697, 72 FR 39,904 (Jul. 20, 2007), FERC Stats. & Regs. ¶ 31,252 at P 1078-1105; Order No. 697-A, 73 FR 25,832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268 at P 527-533.

⁵ The petition was originally docketed as EL08-87-000 and was subsequently redocketed as PL09-3-000.

⁶ As relevant here, a Schedule 13G is filed with the SEC pursuant to section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* (2000) (1934 Act), and the SEC's rules thereunder, by any person (referred to here as a "passive investor") when such person has acquired beneficial ownership of more than five percent but less than 20 percent of the outstanding voting equity securities of a company that are registered under section 12 of and the 1934 Act and such person certifies that it has not acquired, and does not hold, such securities for the purpose of or with the effect of changing or influencing the control of the issuer. The 20 percent limit on the acquisition of voting securities reflects the SEC's view that "it would be unusual for an investor to be able to make the necessary certification of a passive investment purpose when beneficial ownership approaches 20 percent," where the investor is not subject to other limitations. *Amendments to Beneficial Ownership Reporting Requirements*, File No. S7-16-96, 1998 SEC LEXIS 63, at * 17 n. 20 (Jan. 12, 1998). EPSC appears to have adopted the 20 percent limitation based on its desire to use the filing of Schedule 13G as dispositive of an investor's non-control status.

affiliated with the traditional public utility as the result of investment by a common owner, the market-based rate seller would become subject to the Commission's affiliate sales restrictions, even though it was unaware of the new affiliate relationship.

10. To address its concerns, EPSA requests that the Commission make three basic findings. First, EPSA requests that the Commission state that no control or affiliation exists for market-based rate or section 203 purposes where an investor holds less than 20 percent of a public utility's outstanding voting securities and files a Schedule 13G with the SEC. EPSA also requests a finding that where an investor meets these requirements and thus is deemed not to control the public utility or be an affiliate of it: (1) The public utility need not make a change in status filing in instances where it has market-based rate authorization; (2) subsequent market power analyses submitted in connection with either market-based rate authorizations or section 203 applications need not include generation and inputs owned or controlled by other entities in which the investor holds an interest; and (3) affiliate sales restrictions will not apply to transactions between a publicly-held company and its subsidiaries with market-based rate authorization, on the one hand, and other entities in which the investor has interests, on the other.

11. EPSA recommends that the Commission rely on the SEC's sanctions associated with Schedule 13G filings, and it also recommends the following additional safeguards: (1) As a condition to an investor's reliance on a Schedule 13G filing as the basis for foregoing case-specific approval under section 203(a)(2) for particular investments, the investor would have to file a copy of its Schedule 13G with the Commission within 30 days of filing it with the SEC⁷; and (2) when an investor ceases to meet Schedule 13G eligibility requirements, it must observe the requirements of the SEC's "cooling off period" while awaiting the Commission's section 203 approval, which means that the investor could not acquire additional securities until prior

authorization under section 203 is granted and must refrain from voting its securities during this period.

12. Second, EPSA requests that if the Commission finds no control for section 203 purposes, that finding should also apply for market-based rate authorization purposes, such that the transaction will not be deemed to result in affiliation for market-based rate purposes. This would mean that a public utility with market-based rate authority would not have to file a change in status if an entity that holds an interest in it has also acquired an interest in another utility that did not convey control. As a result, the market power analysis of the public utility with market-based rate authority would not include the second utility's generation and inputs in any required change in status filing.

13. Third, EPSA proposes that when an entity that is upstream of a publicly-held company invests in an entity that is not otherwise related to the publicly-held company, that investment should not be deemed to be within the knowledge and control of the publicly-held company's subsidiaries that have market-based rate authorization.

14. On December 3, 2008, Commission staff held a workshop to address the issues raised by EPSA. Additional comments were submitted on January 16, 2009, and EPSA filed a subsequent response on February 2, 2009.

15. Calpine Corporation and Tenaska Energy, Inc. (Calpine), Mirant Corporation (Mirant), the Edison Electric Institute (EEI), and several other commenters generally support EPSA's proposal. The Financial Institutions Energy Group (FIEG) and Harbinger Management Corporation (on behalf of certain affiliated investment funds) (Harbinger) contend that the absence of a Schedule 13G filing with the SEC does not necessarily indicate the existence of a control relationship. They also assert that the SEC's definition of control is broader than the Commission's view of control, which they contend is limited to matters involving the ability of capacity to reach the market and the decision-making over sales of electric energy.

16. American Public Power Association (APPA) and National Rural Electric Cooperative Association (NRECA) do not oppose EPSA's request that a determination of "no control" under section 203 also apply under the market-based rate program under section 205. But they, as well as Transmission Access Policy Study Group (TAPS) and American Antitrust Institute (AAI), oppose reliance on a

Schedule 13G filing as the sole basis for finding that the investor does not control a utility in which it has invested. Instead, at the workshop APPA and NRECA recommended that the Commission create its own form to evaluate whether an investor has acquired control over a public utility.

17. AAI raises concerns about an investor with a partial interest in rival generating assets, which could diminish competition and lead to a common owner serving as a conduit for commercially sensitive information between rivals. AAI contends that the Department of Justice and the FTC consider these issues of "cross-ownership" and that this Commission should consider these issues, as well. The FTC also encourages the Commission to consider issues associated with an investor's partial ownership of multiple utilities and the investor's related incentives to compete less vigorously, collude to avoid price wars, and share commercially sensitive information.

III. Discussion

A. Overview of Proposal

18. As indicated above, EPSA only sought "guidance" on the issues it raised and did not propose a Commission rulemaking. However, in the course of considering the comments submitted and the discussions at the December 3, 2008 workshop, the Commission has determined that the issues involved may call for more formal treatment. In particular, an additional blanket authorization under section 203(a)(2) may be necessary to achieve the desired result. In addition, the approach EPSA proposed is at odds with aspects of the definition of an "affiliate" applicable under the Commission's market-based rate regulations. Finally, the Commission finds that the Schedule 13G does not provide sufficient information to the Commission to monitor markets and protect the public interest, and therefore is proposing adoption of a form better tailored to the Commission's needs.

19. The proposed Affirmation would create a rebuttable presumption for purposes of section 203 that the investor does not control the public utility whose voting securities it has acquired. The Affirmation is a representation by the filer and does not operate as a conclusive finding that the investor does not control the public utility, which the Commission finds would be necessary for an ownership interest of 10 percent or more, and less than 20 percent, of the outstanding voting securities of a public utility to fall

⁷ EPSA notes that there may be circumstances in which an investor is either not subject to section 203(a)(2) (for example, because the investor is not a holding company) or is able to rely on some other blanket authorization under the regulations. In such circumstances, the investor would not need to rely on the filing of Schedule 13G for section 203(a)(2) purposes. Nevertheless, EPSA asserts that the publicly-held company (that is, the utility or its holding company whose securities are acquired) should still be allowed to rely upon the investor's filing of Schedule 13G with the SEC for purposes of control and affiliation determinations.

outside of the definition of affiliate, as used in its regulations under Part 35. Nevertheless, while the affected companies are still considered affiliates, under the Commission's proposal, the affected companies would qualify for a waiver of certain regulatory requirements pertaining to an affiliate, specifically, the obligation to include the energy assets of the affiliate for purposes of a market power analysis, the change in status reporting requirement and the affiliate transaction restrictions under Part 35 of the Commission's regulations.

20. The Commission is therefore issuing this notice of proposed rulemaking. In it, we propose a new blanket authorization under section 203(a)(2), in Part 33, which would allow a holding company to acquire 10 percent or more, but less than 20 percent, of a public utility's or holding company's outstanding voting securities, provided that the investor files an Affirmation with the Commission on Form 519-C. The Affirmation, while similar to the Schedule 13G in that it would set forth the investor's certification of non-control intent, has been tailored to provide additional information and to impose restrictions on certain activities to better meet the requirements of the FPA and Commission policy. In particular, as described in greater detail below, the Affirmation will serve as the source of information that would otherwise be required under Part 33 of the Commission's regulations in an application under section 203. Further, by filing an Affirmation, the investor would commit to specific restrictions on its actions and to ongoing reporting obligations. The investor would file the Affirmation within 10 days following the acquisition. We believe the use of this newly developed form and the restrictions contained therein will help address the concerns raised by APPA, NRECA, AAI, TAPS, and the FTC.

21. The Commission also proposes to amend the definition of "affiliate" in section 35.36(a)(9) of its market-based rate program regulations.⁸ As proposed to be amended, an "affiliate" of a specified company would mean "any person that controls, is controlled by, or is under common control with, such specified company." Currently, the Commission's regulations create a rebuttable presumption that a person that owns less than 10 percent of the outstanding voting securities of a public

utility lacks control of that public utility.⁹ The Commission proposes to amend its regulations under Part 33 to provide that in any case in which 10 percent or more but less than 20 percent of the outstanding voting securities of a public utility are owned, the public utility would be exempt from certain restrictions applicable to affiliates if the acquiring person has filed an Affirmation and continues to comply with all of the other conditions and reporting obligations set forth therein. Thus, the market-based rate filing requirements, including the filing of a notice of change in status, would not be triggered. The Affirmation would allow the Commission to monitor and sanction entities that violate it.

22. If an investor that is a public utility holding company desires to acquire 20 percent or more of the outstanding voting securities of a public utility, or an interest of 10 percent or more, but less than 20 percent that is not the subject of an Affirmation, then the investor would be required to file a stand-alone application under section 203(a)(2), unless the investor qualifies for one of the other blanket authorizations provided for in the regulations.

23. As discussed above, EPSA notes that an investor's acquisition of the voting securities of a public utility with market-based authorization could trigger the need for change in status filings by both the public utility whose securities are acquired and by any other public utility affiliate of the investor. This requirement could exist even though the affected public utilities are not aware that the new affiliate relations had been created. EPSA further states that the public utilities would thus not be in a position to make a change in status filing, even though failure to make a necessary filing could result in revocation of market-based rate authority and/or the imposition of penalties. The consequences could be even more serious if any of the entities involved is a traditional public utility with captive customers. Where a public utility is selling to a traditional public utility with captive customers and subsequently becomes affiliated with the traditional public utility as the result of investment by a common owner, the public utility would become subject to the Commission's affiliate sales restrictions, even though it was unaware of the new affiliate relationship.

24. In light of these concerns and the fact that the Commission's rules require certain information regarding affiliates

from market-based rate sellers and impose certain restrictions on transactions between affiliates in order to ensure that rates are just and reasonable, we believe that the holding company whose acquisition of voting securities of a public utility results in affiliations between or among public utilities is in the best position to facilitate an affected public utility's compliance with the Commission's regulations pertaining to affiliate relationships. For instance, the holding company may be in the best position to provide to an affected public utility certain information regarding the holding company's investments in other utilities with which the affected public utility would be deemed affiliated, in order to enable the affected public utility to comply with our regulatory requirements regarding affiliate relationships.

25. As EPSA notes, since a public utility with market-based rate authority that fails to comply with market-based rate reporting requirements may risk losing its market-based authorization, and a public utility that fails to comply with our requirements relating to affiliate transactions may be subject to penalties, we expect that a holding company whose investment has created the affiliate relationship between and among affected public utilities would also have an economic incentive to preserve the market-based rate authority of a public utility in which it has invested, and to ensure that a public utility in which it has invested is in compliance with our regulations. A holding company may elect to file the Affirmation in order to relieve the public utility of its obligation to report certain information regarding its affiliations through the holding company investor, and to assist the public utility in complying with our regulations pertaining to affiliate relationships resulting from the investment by the holding company.

B. Section 203

1. Requirements of Section 203

26. Section 203(a)(1) of the FPA requires prior Commission authorization for a public utility to (A) sell, lease, or otherwise dispose of its facilities; (B) merge or consolidate its facilities with any other person; (C) purchase, acquire, or take any security in excess of \$10 million of any other public utility; or (D) purchase, lease, or otherwise acquire an existing generation facility valued in excess of \$10 million and that is used in interstate wholesale

⁸ As discussed below, the Commission also proposes to amend the definition of "affiliate" for purposes of Subpart H, Cross-Subsidiization Restrictions on Affiliation Transactions.

⁹ 18 CFR 35.36(a)(9)(v) (2009).

sales and over which the Commission has ratemaking jurisdiction.¹⁰

27. Section 203(a)(2) requires prior Commission authorization for a holding company in a holding company system that includes a transmitting utility or an electric utility to purchase, acquire, or take any security with a value in excess of \$10 million of a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company with a value in excess of \$10 million.

28. The Commission must approve an application under section 203 if it finds the proposed transaction is consistent with the public interest, and will not result in cross-subsidization of a non-utility associate company or any pledge or encumbrance against utility assets for the benefit of an associate company, unless the cross-subsidization or pledge or encumbrance are found to be consistent with the public interest. The Commission's analysis of whether a transaction is consistent with the public interest generally involves consideration of three factors: (1) The effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹¹ The Commission's regulations establish verification and informational requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.¹²

2. Existing Blanket Authorizations and Case-Specific Approvals

29. Under section 203(a)(5), the Commission is authorized to identify classes of transactions that meet these standards and provide expedited review for such transactions. Pursuant to this authority, the Commission has granted blanket authorizations in its regulations, thereby pre-authorizing certain transactions.¹³ However, as it is an ex

ante determination as to the appropriateness of a category of transactions under section 203, a blanket authorization can be granted only after the Commission is assured that the statutory standards will be met, including ensuring that the interests of captive customers are safeguarded and that public utility assets are protected under all circumstances.¹⁴

30. For instance, a blanket authorization has been granted under section 203(a)(2) for an acquisition of less than 10 percent of the outstanding voting securities of a public utility.¹⁵ In granting a blanket authorization for acquisitions of less than 10 percent of the voting securities of a utility, the Commission determined that such a blanket authorization would be consistent with the public interest and Congressional intent in repealing the Public Utility Holding Company Act of 1935 (PUHCA 1935) and encouraging incentives for additional investment.¹⁶ In considering a parallel blanket authorization under section 203(a)(1), the Commission declared a general policy, to be applied on a case-by-case basis, of presuming that a transfer of less than 10 percent of a public utility's outstanding voting securities is not a transfer of control if: (1) After the transaction, the acquirer and its affiliates and associate companies, directly or indirectly, in aggregate will own less than 10 percent of the outstanding voting securities of such public utility; and (2) the facts and circumstances do not indicate that such companies would be able to directly or indirectly exercise a controlling influence over the management or policies of the public utility.¹⁷

31. In several recent section 203 cases, the Commission has relied upon an applicant's eligibility to file statements of beneficial ownership with the SEC on Schedule 13G as one factor in the Commission's section 203 analysis of control.¹⁸ Under section 13(d)(1) of the 1934 Act and the SEC's rules

thereunder,¹⁹ any person who acquires beneficial ownership of more than five percent of any voting equity security of a class that is registered under section 12 of the 1934 Act (which would include securities that are listed for trading on a national securities exchange) must, within 10 days of such acquisition, file a statement on SEC Schedule 13D with the SEC containing information about the acquiring person and the amount of securities acquired, the source of the funds used to complete the acquisition, whether the purpose for the acquisition is to acquire control, and whether there are any contracts or understandings with respect to the securities acquired relating to various types of transactions, and such other information as the SEC may by rules and regulations prescribe as necessary and appropriate in the public interest or for the protection of investors. However, as noted above, the SEC's rules allow so-called "passive investors" to instead file a much abbreviated disclosure statement on Schedule 13G.²⁰

32. A "passive investor" filing Schedule 13G certifies only that the securities that are the subject of the filing "were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect." The SEC defines "control" as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."²¹ The Schedule 13G also does not provide information regarding the investor's other holdings. While the Commission has considered an applicant's eligibility to file a Schedule 13G with the SEC an indication that the applicant will not be able to assert control over a public utility, the Commission has not accepted Schedule 13G eligibility as a definitive statement regarding control.²²

3. Proposal

33. The Commission proposes to amend 18 CFR Part 33 (Applications Under Federal Power Act section 203) to provide a new blanket authorization under section 203(a)(2) for a holding company to acquire 10 percent or more, but less than 20 percent, of the

¹⁰ 16 U.S.C. 824b (2006).

¹¹ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 FR 68595 (Dec. 30, 1996), FERC Stats. & Regs. ¶ 31,044 (1996), reconsideration denied, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 FR 70984 (Nov. 28, 2000), FERC Stats. & Regs., Regulations Preambles July 1996–Dec. 2000 ¶ 31,111 (2000), order on reh'g, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

¹² 18 CFR 33.2(j).

¹³ See Order No. 669, FERC Stats. & Regs. ¶ 31,200, at P 141 (2005), order on reh'g, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, at P 55–133, order on reh'g, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225, at P 24–44 (2006). See also Order No. 708, 73 FR 11003 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,265, order on reh'g, Order No. 708–

A, 73 FR 43066 (Jul. 24, 2008), FERC Stats. & Regs. ¶ 31,273 (2008).

¹⁴ *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253, at P 33 (2007).

¹⁵ 18 CFR 33.1(c)(2)(ii).

¹⁶ Order No. 669, FERC Stats. & Regs. ¶ 31,200, at P 145.

¹⁷ *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253, at P 57.

¹⁸ See, e.g., *Horizon Asset Mgmt., Inc.*, 125 FERC ¶ 61,209, at P 45–50 (2008) (*Horizon*); *Goldman Sachs*, 121 FERC ¶ 61,059, at P 30–41; *Morgan Stanley*, 121 FERC ¶ 61,060, at P 37–49 (2007), clarified, 122 FERC ¶ 61,094 (2008) (*Morgan Stanley*); *Legg Mason, Inc.*, 121 FERC ¶ 61,061, at P 26–30 (2007) (*Legg Mason*); *Capital Research*, 116 FERC ¶ 61,267, at P 16–20.

¹⁹ 17 CFR 240.13d–1 et seq.

²⁰ See 17 CFR 240.13d–1(c). See also discussion at n.6.

²¹ 17 CFR 240.12b–2.

²² *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253, at P 41.

outstanding voting securities of a public utility, provided that the holding company files an Affirmation, on Form 519-C, within 10 days of the acquisition of such voting securities. The Affirmation would create a rebuttable presumption for purposes of section 203 that the investor does not control the public utility where the holding company acquires 10 percent or more, but less than 20 percent of the voting securities of the public utility. Therefore, the Commission believes that the acquisition by the holding company, and the disposition by the public utility, of 10 percent or more, but less than 20 percent of voting securities, with the filing of the Affirmation, will not harm competition, rates, regulation or captive customers. However, as explained above, the Affirmation is a representation by the filer and does not operate as a conclusive finding that the investor does not control the public utility, which the Commission finds would be necessary for an ownership interest of 10 percent or more, and less than 20 percent, of the outstanding voting securities of a public utility to fall outside of the definition of affiliate. Thus, while the affected companies are still considered technically affiliates, the affected companies would qualify for a waiver of the regulatory requirements pertaining to affiliated companies. The Commission seeks comments on this proposal.

34. The Commission also proposes to amend 18 CFR Part 33 to provide a parallel blanket authorization under FPA section 203(a)(1). Under the proposed section 203(a)(1) blanket authorization, a public utility whose outstanding voting securities are acquired in a transaction that falls within the proposed 203(a)(2) blanket authorization would be pre-authorized under 203(a)(1) to dispose of those securities. We believe that these new blanket authorizations, along with the proposed revised definitions of "affiliate" in Part 35 discussed in further detail below, will address EPSA's concerns, while at the same time provide the Commission with a mechanism to ensure that acquisitions are consistent with the public interest under section 203, are subject to effective monitoring, and do not present concerns under the Commission's market-based rate program. We believe that this proposal also addresses concerns raised by the FTC, APPA/NRECA, AAI, and TAPS, because the Affirmation will require the investor to abide by commitments to not take specific actions that would unduly influence the management of the utility,

interfere with the operation of the utility's facilities, or request or receive non-public information. We seek comments on this proposal.

a. Affirmation in Support of Exemption From Affiliation Requirements

35. EPSA's proposal relies on the filing of SEC Schedule 13G to demonstrate conclusively that an investor will not control the public utility in which it has invested. While the Commission has relied on these filings, in conjunction with other conditions and reporting requirements in the past for various purposes, we believe the Commission could better fulfill its statutory responsibilities if it did not rely exclusively on the Schedule 13G. The primary regulatory purpose of the beneficial ownership disclosure requirements under section 13(d) of the 1934 Act is to provide companies and their shareholders with information about large accumulations of a company's stock, which could be indicative of a possible takeover attempt which, in turn, could affect the market value of the issuer's securities. The requirements of section 13(d) do not bar an investor from acquiring control of a company, which is of utmost importance to this Commission.

36. Therefore, the Commission proposes that, to be eligible for the new blanket authorizations, the investor must file an Affirmation, which, as more fully described below, will serve a similar purpose to SEC Schedule 13G. As is the case with Schedule 13G, the investor, by signing the Affirmation, certifies that the securities referred to in the filing were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect. The Affirmation will provide information on the number of shares of voting securities (and percent of the total shares outstanding) of the public utility in respect of which the statement is filed. In addition, the Affirmation must include the name and location of any other public utility that is an affiliate of the investor and a description and the location of "inputs to electric power production" (as defined in section 35.36(a)(4) of the Commission's regulations) that are owned or controlled by the investor or by any affiliate of the investor. This latter information (which would not be disclosed in a Schedule 13G filing) will assist the Commission in its task of ensuring that investment in a public utility does not, in fact, create

opportunities or incentives for the investor or the public utility to engage in anti-competitive conduct. To be eligible for the blanket authorizations, an investor would need to file an Affirmation for each public utility in which the investor acquired securities.

37. In addition, by filing an Affirmation, the investor makes certain additional commitments. Specifically, the investor certifies that the acquisition was not for the purpose, or with the effect, of changing or influencing control over the public utility, and also commits:

- Not to seek or accept representation on the public utility's board of directors or otherwise serve in any management capacity;
- Not to request or receive non-public information, either directly or indirectly, concerning the business or affairs of the public utility;
- Not to solicit, or participate in any solicitation of, proxies involving the public utility; and
- Not to seek to influence the management or conduct of the day-to-day operations of the public utility in such areas as
 - Purchasing or selling electricity or inputs to generation,
 - Scheduling power production, including, but not limited to, the dispatching of generation units or scheduling outages,
 - Hiring or fixing compensation of the public utility's officers, directors and employees.²³

It is not intended that these restrictions would preclude the exercise of voting rights on any matter properly submitted for a vote of shareholders.

38. We propose to require that the Affirmation be filed within 10 days after the acquisition, that a copy thereof be provided to the company whose securities have been acquired, and that the information provided on share ownership in the initial filing be updated quarterly.²⁴

²³ These restrictions are similar to, and in fact, based on, restrictions that the Commission has imposed in orders approving 10 percent or greater investments in utilities. See *Cascade Investment, LLC*, 129 FERC ¶ 61,011, at P 20–21 (2009); *Mach Gen, LLC*, 127 FERC ¶ 61,127, at P 24–31 (2009); *Franklin Resources, Inc.*, 126 FERC ¶ 61,250, at P 21 (2009), order on reh'g, 127 FERC ¶ 61,224 (2009); *Entegra Power Group LLC*, 125 FERC ¶ 61,143, at P 40 (2008), order on clarification and reh'g denied, 129 FERC ¶ 61,156 (2009).

²⁴ This ongoing reporting obligation is also consistent with other Part 33 reporting requirements, as well as quarterly reporting obligations that the Commission routinely imposes under its section 203 orders granting blanket authorizations. See, e.g., 18 CFR 33.1(c)(4); *Horizon*, 125 FERC ¶ 61,209 at P 49; *Goldman Sachs*, 122 FERC ¶ 61,005 (2008).

39. Consistent with the case-specific blanket authorizations under section 203(a)(2),²⁵ the Commission believes that a blanket authorization for the acquisition of 10 percent or more, but less than 20 percent, of the outstanding voting securities of a utility, limited by the commitments of non-control set forth in the proposed Affirmation, would not result in any adverse effect on competition, rates, or regulation, or result in cross-subsidization of a non-utility associate company, or the pledge or encumbrance of utility assets for the benefit of an associate company. Under the companion blanket authorization under section 203(a)(1) that we are proposing, a public utility whose securities are acquired in a transaction that falls within the proposed 203(a)(2) blanket authorization would have no obligation to seek approval under section 203(a)(1). This parallel treatment of control issues under section 203(a)(1) with blanket authorizations under section 203(a)(2) follows the same approach that we have previously taken in Part 33²⁶ and is also consistent with blanket authorizations that we have granted by order.²⁷

b. Administration of Proposed Affirmation in Support of Exemption From Affiliation Requirements

40. Given the nature of the transaction, the limited ownership interest of the reporting person, and the continuing nature of the conditions and reporting obligations imposed (as described above), the Affirmation will enable the Commission to monitor the new affiliations that are created and provide the Commission with a sufficient basis to conclude that a transaction that is the subject of an Affirmation is consistent with the public interest because it will not have an adverse effect on competition, rates or effective regulation, or result in inappropriate cross-subsidization or an inappropriate pledge or encumbrance of utility assets. The Commission believes that the information, representations and commitments required of, and the conditions imposed on, the filer of the Affirmation (including the obligation to file quarterly updates to ownership of the issuer's voting securities) are consistent with those requirements imposed on an applicant seeking case-by-case section 203 authorization for a similar transaction. Specifically, the information provided in the Affirmation

is the same or similar to the information that would be required by section 33.2(a) of the Commission's regulations (name and business address of the reporting person), section 33.2(c)(2) (identity of and ownership interests in other energy affiliates), section 33.2(e) (description of the transaction, which, in the particular circumstances covered by the proposed new blanket authorization, would always be an acquisition of 10 percent or more but less than 20 percent of the issuing public utility's outstanding voting securities), and section 33.2(i) (other regulatory approvals). Other specific information requirements of an application under section 203 are unnecessary in the case of any transaction that is the subject of an Affirmation. For example, specific disclosure otherwise required by section 33.2(c)(5) of the Commission's regulations (identity of common officers or directors of parties to the transaction) is unnecessary since such management interlocks are precluded by the conditions imposed on the reporting person under the Affirmation. Similarly, statements concerning the impact of the transaction on the public interest and on competition, rates and regulation and whether the transaction will result in inappropriate cross-subsidization or an inappropriate pledge or encumbrance of utility assets, which would be required by sections 33.2(g) and 33.2(j) of the Commission's regulations in an application under section 203, are unnecessary given the specific conditions and restrictions imposed on the reporting person. Finally, the information contained in the initial Affirmation and quarterly updates will provide the Commission with the means to monitor the new affiliations created by any transaction that is the subject of an Affirmation and, to take further action as necessary.

41. The Commission seeks further comments on the procedures that should be in place to protect consumers and the marketplace if an investor, having filed an Affirmation, no longer can comply, or wishes not to comply, with the commitments made in the Affirmation. In the context of section 203, the Commission is proposing that, in any such case, the investor may file an application under section 203 to request authorization to retain the securities previously acquired under the blanket authorization if the investor determines that it no longer wishes to be bound by the terms of the commitments it has made in the Affirmation. During the pendency of any such proceeding, the investor may not acquire any

additional voting securities of the public utility and must continue to comply with all of the commitments made in the Affirmation. In addition, depending on the final disposition of the section 203 application, the public utility may be required to file a notice of change in status and the restrictions on affiliate transactions may become applicable.

c. Applicability of Proposed Blanket Authorization

42. EPSA's request for guidance related only to acquisitions of voting securities of publicly-held companies, that is, securities that are registered under section 12 of the 1934 Act and, therefore, subject to the beneficial ownership reporting requirements of section 13(d) of the 1934 Act. The Commission's proposed blanket authorization, however, makes no distinction between the securities of publicly-traded utilities or securities of privately-held utilities. On the one hand, this approach might be reasonable because the distinction between public utilities whose securities are publicly-held and public utilities whose securities are privately-held is not critical to the issues of control presented under the FPA, and the affirmations and ongoing commitments made in the form of Affirmation annexed hereto are not in any way dependent upon the status of the issuer as a publicly-held company. We note that Harbinger argues that the distinction that EPSA would make between publicly-traded securities and securities of privately-held companies would lead to a nonsensical situation, namely, that in the case where an investor owns interests in both non-publicly-held and publicly-held utilities, the non-publicly-held utility would have to presume an affiliation that the publicly-held utility would not.²⁸

43. On the other hand, expanding EPSA's request to apply to voting securities of privately-held utilities may impact existing blanket authorizations and their related conditions. For example, if the blanket authorizations under section 203 that we are proposing today could be relied upon for transactions that have previously been authorized by order,²⁹ then the

²⁸ Harbinger comments at 16–17 (EL08–87–000) (September 30, 2008).

²⁹ Specifically, in a series of orders, the Commission granted blanket authorizations for a period of two years for acquisitions and holdings of up to 20 percent of the voting securities of certain public utilities. Although the Commission made no findings on whether the acquisition of securities would result in a transfer of control of the public utility, it imposed conditions to address concerns over transfers in control and potential adverse effects on competition. Among these conditions is

²⁵ See *Horizon*, 125 FERC ¶ 61,209; *Capital Research*, 116 FERC ¶ 61,267 (2006).

²⁶ See, e.g., 18 CFR 33.1(c)(11)–(15).

²⁷ See, e.g., *Morgan Stanley*, 121 FERC ¶ 61,060 at P 34; *Legg Mason*, 121 FERC ¶ 61,061 at P 18.

conditions imposed in those orders, to limit the adverse impact on competition and create transparency through reporting requirements, would arguably no longer apply.³⁰

44. As proposed herein, the proposed blanket authorizations make no distinctions between the securities of publicly-traded utilities or securities of privately-held utilities. The Commission invites comment on whether its proposed blanket authorizations under section 203 should be limited to acquisitions of voting securities of publicly-traded utilities, or whether the proposed blanket authorizations should apply to acquisitions of voting securities of privately-traded companies as well.

45. Further, although the affiliate compliance issues that EPSA focused on in its petition result largely from secondary market purchases of a public utility's voting securities, the rules that we are proposing under Part 33 make no distinctions between secondary market purchases and direct acquisitions of securities from the issuing public utility. The Commission invites comment on whether the proposed blanket authorizations under section 203 should be limited to secondary market transactions or should apply regardless of the form of the transaction.

d. Filing of Affirmation in Support of Exemption From Affiliation Requirements

46. Most filings made under the blanket authorizations in Part 33 are submitted in dockets established for each blanket authorization, which are updated by year. For instance, a Schedule 13D, Schedule 13G, or Form 13F filed under 18 CFR § 33.1(c)(4) would be submitted in Docket No. HC09-5, if submitted in 2009, and Docket No. HC10-5, if submitted in 2010. For consistency, the Commission is proposing that one docket should be established for filing of all Affirmations and quarterly updates. In addition, because the acquisition of 10 percent or more of the outstanding voting

a requirement that the acquiring party must be a financial-type entity and not primarily engaged in an energy-related business. The Commission also restricted the acquiring party from holding more than five percent of another jurisdictional asset within the same market area. In addition, the Commission imposed certain reporting requirements on the public utility disposing of its securities under such a blanket authorization. *See, e.g., Entegra Power Group, LLC*, 115 FERC ¶ 62,038 (2006) (delegated letter order); *MACH Gen, LLC*, 113 FERC ¶ 61,138 (2005).

³⁰ Because the securities of these companies are traded privately and therefore there is less transparency of ownership interests, the Commission conditioned approval of requests for authorizations by imposing reporting requirements. *MACH Gen*, 113 FERC ¶ 61,138 at P 40.

securities of a public utility is likely to have broad implications for that company, the Commission is also proposing that the filer of an Affirmation be required to provide a paper copy of the Affirmation to the public utility whose securities are acquired at the same time as it is filed with the Commission. The Commission invites comment on these proposals.

C. Definition of Affiliate

1. Market-Based Rate Program

a. Market Power Analysis

47. Under the market-based rate regulations, an "affiliate" of a specified company includes, among other things, "[a]ny person that is under common control with the specified company."³¹ The Commission allows power sales at market-based rates if the seller and its affiliates lack or have adequately mitigated both horizontal and vertical market power. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen, both of which consider the generation assets owned or controlled by the seller and its affiliates. If a seller passes both of the screens, there is a rebuttable presumption that the seller lacks horizontal market power.

48. To demonstrate a lack of vertical market power, a seller that owns, operates or controls transmission facilities, or whose affiliates own, operate or control transmission facilities, must have an Open Access Transmission Tariff (OATT) on file with the Commission. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis. The Commission requires a seller to provide information describing its ownership or control of, or affiliation with an entity that owns or controls, inputs to electric power production.³² A seller must also make an affirmative statement that it has not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.

³¹ Order No. 697-A, 73 FR 25832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268, at P 182-83. "[O]wning, controlling or holding with power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control." 18 CFR 35.36(a)(9)(E).

³² Inputs to electric power production means intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; physical coal supply sources and ownership or control over who may access transportation of coal supplies.

b. Change in Status Reporting

49. As a condition of obtaining and retaining market-based rate authority, sellers must timely report to the Commission "any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority."³³ The Commission clarified in Order No. 697 that the change in status requirements are intended to track the requirements embedded in the horizontal and vertical analyses and the affiliate abuse representations.³⁴ Market-based rate sellers are required to file notices of change in status for ownership or control of generation capacity that results in net increases of 100 MW or more, or of inputs to electric power production, or ownership, operation or control of transmission facilities. In addition, "[a]ffiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation facilities or inputs to electric power production, affiliation with any entity not disclosed in the application for market-based rate authority that owns, operates or controls transmission facilities, or affiliation with any entity that has a franchised service area" are reportable changes in status.³⁵ In Order No. 652, the Commission concluded that the reporting obligation should extend only to changes in circumstances within the knowledge and control of the seller.³⁶

50. When submitting a notice of change in status regarding a change that impacts the pertinent assets held by a seller or its affiliates with market-based rate authorization, a seller must also include an asset appendix, which lists the filing entity and all of its energy affiliates and their associated generation assets as well as electric transmission assets, natural gas intrastate pipelines, and gas storage facilities owned or controlled by the entity or its energy affiliates.³⁷

c. Affiliate Restrictions

51. The concept of affiliation is also important in determining the scope of the Commission's restrictions on affiliate transactions. The Commission

³³ 18 CFR 35.42(a).

³⁴ *See* Order No. 697, 72 FR 39904 (Jul. 20, 2007), FERC Stats. & Regs. ¶ 31,252 at P 1018.

³⁵ 18 CFR 35.42(a)(2).

³⁶ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 FR 8253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, at P 27 (2005), *order on reh'g*, 111 FERC ¶ 61,413 (2005).

³⁷ Part 35, Subpart H, Appendix B. An asset appendix is required for new market-based rate applications and updated market analyses.

has adopted restrictions on affiliates in the market-based rate regulations.³⁸ These regulations govern power sales, sales of non-power goods and services, separation of functions, and information sharing between franchised public utilities with captive customers and their market-regulated power sales affiliates.

52. The Commission has also adopted cross-subsidization restrictions on affiliate transactions in Subpart I of its regulations, as discussed further below.³⁹ These regulations govern power and non-power goods and services transactions between franchised public utilities with captive customers and their market-regulated power sales and non-utility affiliates.

53. Both sets of rules regulate affiliate transactions to address the Commission's concern that a franchised public utility and an affiliate may be able to engage in transactions in ways that transfer benefits from the captive customers of the franchised public utility to the affiliate and its shareholders.⁴⁰ Any changes to the definition of affiliate would necessarily affect the scope of both of these sets of restrictions.

d. Other Implications of Affiliation in the Market-Based Rate Program

54. Affiliation also plays a key role in determining whether a seller qualifies as a Category 1 Seller, a limited category that is exempt from the requirement of filing a regularly scheduled updated market power analysis every three years.⁴¹ A Category 1 Seller cannot be affiliated with an entity that owns, operates or controls transmission facilities in the same region as the seller's generation assets and cannot be affiliated with a franchised public utility in the same region as the seller's generation assets. Moreover, a Category 1 Seller can only own or control 500 MW or less of generation in a region. Affiliate generation is included in the 500 MW or less determination. Finally, in order to qualify as a Category 1 Seller, a seller cannot raise "other vertical market power issues." In that regard, the Commission will consider whether the seller's affiliate has holdings that raise

vertical market power issues and can erect barriers to entry.

2. Cross-Subsidization Restrictions on Affiliate Transactions

55. In Order No. 707, the Commission added Subpart I to Part 35 of its regulations to codify affiliate restrictions applicable to all power and non-power goods and services transactions between franchised public utilities with captive customers and their market-regulated power sales and non-utility affiliates. The Commission also promulgated pricing restrictions on the sale of non-power goods and services.⁴² For purposes of Subpart I, the Commission also adopted a definition of "affiliate."⁴³ As is the case with the definition of "affiliate" in Subpart H, an "affiliate" of a specified company for purposes of Subpart I includes "[a]ny person that is under common control with the specified person."⁴⁴

3. Proposal

56. Under the Commission's current rules, an investor is an "affiliate" of a public utility if it "owns, controls, or holds with power to vote" 10 percent or more of the public utility's outstanding voting securities. Also under this analysis, the public utility is considered to be an affiliate of the investor, and two companies under common control are also considered affiliates. Owning, controlling or holding with power to vote less than 10 percent of the outstanding voting securities of a specified public utility company creates a rebuttable presumption of lack of control.

57. The Commission proposes to modify this definition so that an affiliate relationship exists when an investor is able to control a public utility. The proposed definition also provides that the Commission may, after appropriate notice and opportunity for hearing, determine that any person is an affiliate of a specified company if it finds that such person exercises directly or

indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a degree of influence (through ownership of voting securities or otherwise) over the management or policies or operations of the specified company as to make it necessary or appropriate in the public interest that the person be treated as an affiliate. Owning, controlling, or holding with power to vote less than 10 percent of the outstanding voting securities would continue to create a rebuttable presumption of lack of control.

58. Under the proposed amendments to Part 33, owning, controlling, or holding with power to vote 10 percent or more, but less than 20 percent, of the outstanding voting securities, as long as the Affirmation had been filed within 10 days after the acquisition, would create an affiliate relationship, but would qualify for a waiver of the regulatory requirements pertaining to affiliated companies.

59. As a consequence of this modified definition, a public utility subject to the Affirmation in Part 33 would not be required to file a notice of change in status or include the investor or the investor's other affiliates in its market power analysis, and would not be subject to the affiliate transaction rules for transactions with the investor or the investor's other affiliates. The Commission proposes these changes because it believes that the commitments required by the Affirmation, and the Commission's related enforcement of those commitments, will be rigorous enough to ensure adequate oversight of public utilities and protection of utility customers.

60. The Commission proposes to adopt the same definition of "affiliate" for purposes of the cross-subsidization rules in Subpart I so that the definitions of "affiliate" in Subparts H and I are consistent. We believe that the proposed changes to the definition of "affiliate" in the cross-subsidization regulations will not adversely impact our ability to protect against cross-subsidization. In connection with these changes, the Commission is also proposing to add a definition of "voting security" to both section 35.36 and section 35.43. As proposed, the term "voting security" would mean "any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company." This is the same meaning as given under the Public Utility Holding Company Act of 2005.⁴⁵

³⁸ These rules are codified at 18 CFR 35.39.

³⁹ These rules are codified at 18 CFR 35.43 and 35.44.

⁴⁰ For a discussion see *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, 73 FR 11013 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,264, at P 4-5, *order on rehearing*, Order No. 707-A, 73 FR 43072 (Jul. 24, 2008), FERC Stats. & Regs. ¶ 31,272 (2008).

⁴¹ 18 CFR 35.36(a)(2).

⁴² These rules are codified at 18 CFR 35.44.

⁴³ 18 CFR 35.43(a)(1).

⁴⁴ 18 CFR 35.43(a)(1)(D). The definitions of the term "affiliate" in Subpart H and Subpart I differ in other respects, such as the definition in Subpart I has a five percent threshold for affiliation for exempt wholesale generators, due principally to the fact that definitions were adopted in parallel rulemakings that were not synchronized. As discussed below, the Commission is proposing herein to conform the definition of "affiliate" used in Subpart I to the definition (as proposed to be amended) used in Subpart H. The five percent threshold for affiliation for exempt wholesale generators under Subpart H was eliminated in Order No. 697-B, FERC Stats. & Regs. ¶ 31,285, at P 48, and we propose to eliminate that separate threshold under Subpart I here, for the same reasons.

⁴⁵ 42 U.S.C. 16451(17) (2006); see also *AES Creative Resources, L.P.*, 129 FERC ¶ 61,239, at P 24 (2009) (confirming that the term "voting

Comment is also requested on this proposal.

61. We note that this framework will apply to public utilities whose outstanding voting securities have been acquired by a holding company that has filed an Affirmation as part of the blanket authorization under section 203. However, where the investor is not a holding company and therefore not subject to section 203(a)(2), the investor will not have filed an Affirmation with the Commission, and the public utility will be affiliated with the investor and its other holdings,⁴⁶ raising concerns related to the requirements of the market-based rate program discussed above. To address this situation, the Commission proposes to allow investors that are not subject to the blanket authorizations proposed above to also file the Affirmation with the Commission. Such an investor may have an incentive to file the Affirmation to protect the market-based rate authorization of the public utility in which it has invested. The public utility would then be relieved of the requirements discussed above. The Commission invites comment on its proposal.

IV. Information Collection Statement

62. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection and data retention requirements imposed by agency rules.⁴⁷ Therefore, the Commission is submitting the proposed modifications to its information collections to OMB for review and approval in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.⁴⁸

63. The "public protection" provisions of the Paperwork Reduction Act of 1995 require each agency to display a currently valid control number and inform respondents that a response is not required unless the information collection displays a valid OMB control number on each information collection or provides a justification as to why the information collection control number cannot be displayed. In the case of information collections published in

regulations, the control number is to be published in the **Federal Register**.

64. The Commission is proposing amendments to the Commission's regulations to provide for limited blanket authorizations under FPA section 203(a)(1) and FPA section 203(a)(2). Although the Affirmation constitutes a new reporting requirement, it is offset by the reduction in applications under section 203 and related reporting requirements under section 205 under the market-based rate program. In lieu of a section 203 application, the Affirmation would need to be filed with the Commission, reducing the filing burden. Moreover, the related filings under the market-based rate program under section 205, such as the notices of change in status, would also decrease. This would reduce the burden on the electric industry because it will reduce the number of filings that need to be made with the Commission.

65. The Commission estimates there will be 10 initial filers each filing an average of 1.2 Affirmations annually with an estimated time of response of 3.5 hours, for a total of 42 hours. The Commission further estimates that there will be 40 annual updates to the initial filings with an estimated time of response of 1 hour each, for a total of 40 hours. Therefore the Affirmation would create a total reporting burden of 82 hours annually. Since the Affirmation is voluntary for holding companies that wish to avoid filing a complete application of approval under section 203(a)(2) of the FPA, the Commission believes the preparation of the Affirmation will consume less time than preparation of an application for approval under section 203(a)(2).

Title: FERC-519C, Applications Under Federal Power Act Section 203; FERC-516, Electric Rate Schedule Filings.

Action: Proposed Collection.

OMB Control No.: To be determined by OMB following issuance of the final rule.

Respondents: Businesses or other for-profit institutions.

Frequency of Responses: Occasionally.

Necessity of the Information: The Commission is proposing limited blanket authorizations under section 203(a)(1) and section 203(a)(2), providing for a category of jurisdictional transactions under section 203 for which the Commission would not require applications seeking prior approval. Under the proposed blanket authorization, the public utility whose securities are acquired would be exempt from the requirements of the market-

based rate program and restrictions on affiliate transactions under Part 35. The information collected pursuant to this Affirmation will allow the Commission to monitor public utility holding companies that are granted an exemption of affiliate reporting requirements and to ensure that a holding company's acquisitions and subsequent conduct are consistent with the public interest. Commission enforcement staff may periodically review and seek to verify the statements made in filed Affirmations.

Internal Review: The Commission has conducted an internal review of the public reporting burden associated with the collection of information and assured itself, by means of internal review, that there is specific, objective support for its information burden estimate.

66. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502-8415, fax: (202) 273-0873, e-mail: michael.miller@ferc.gov].

67. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395-7345, fax: (202) 395-7285, e-mail: oir_submission@omb.eop.gov].

V. Environmental Analysis

68. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.⁴⁹ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. The proposed regulations are categorically excluded as they address actions under section 203⁵⁰ and section 205.⁵¹ Accordingly, no environmental assessment is necessary

security," as used in the market-based rate regulations, was intended to have the same meaning as the definition of "voting security" adapted from the PUHCA 1935 and set forth in PUHCA 2005).

⁴⁶ To the extent that the investor has holdings in, and the public utility becomes affiliated with, a company that controls, for instance, sources of coal supplies and the transportation of coal supplies such as barges and rail cars, then the public utility must account for these inputs in its market power analysis. 18 CFR 35.37.

⁴⁷ 5 CFR 1320.

⁴⁸ 44 U.S.C. 3507(d).

⁴⁹ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

⁵⁰ 18 CFR 380.4(a)(16).

⁵¹ 18 CFR 380.4(a)(15).

and none has been prepared in this NOPR.

VI. Regulatory Flexibility Act Analysis

69. The Regulatory Flexibility Act of 1980 (RFA)⁵² generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of small entity.⁵³ Moreover, as noted above, this proposed rule provides for a blanket authorization under section 203 that would extend to an exemption from certain filing requirements under Part 35 of the Commission's regulations. Thus, filing requirements are reduced by the rule. Therefore, the Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis is required.

VII. Comment Procedures

70. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 29, 2010. Comments must refer to Docket No. RM09-16-000, and must include the commenters' name, the organization they represent, if applicable, and their address in their comments.

71. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

72. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the

Commission, 888 First Street, NE., Washington, DC 20426.

73. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

74. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

75. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

76. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or e-mail at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

List of Subjects

18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements, Securities.

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.
Commissioner Norris voting present.
Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 33 and 35, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 33—APPLICATIONS UNDER FEDERAL POWER ACT SECTION 203

1. The authority citation for part 33 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; Pub. L. No. 109–58, 119 Stat. 594.

2. Section 33.1 is amended by revising paragraphs (c)(2), (c)(12), and (c)(17) to read as follows:

§ 33.1 Applicability, definitions, and blanket authorizations.

* * * * *

(c) * * *

(2) Any holding company in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to purchase, acquire, or take:

(i) Any non-voting security (that does not convey sufficient veto rights over management actions so as to convey control) in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company; or

(ii) Any voting security in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company if, after the acquisition:

(A) The holding company will own less than 10 percent of the outstanding voting securities of such company; or

(B) The holding company will own 10 percent or more but less than 20 percent of the outstanding voting securities of such company, provided that such holding company has not acquired, and does not hold, such securities for the purpose of or with the effect of changing or influencing the control of the specified company, and has not acquired, and does not hold, such securities in connection with or as a participant in any transaction having that purpose or effect, and must within 10 days following such acquisition file with the Commission an Affirmation in Support of Exemption from Affiliation Requirements, Form 519–C, and provide a copy to such company.

(1) The statement must be signed by a senior executive officer of the company filing the statement, and must be verified under oath.

(2) A public utility whose voting securities are acquired, directly or indirectly, in a transaction described in paragraph (c)(2)(ii)(B) of this section shall be exempt from the requirements of an “affiliate” in Part 35.

(3) If a holding company that has filed with the Commission an Affirmation in Support of Exemption from Affiliation Requirements subsequently determines that it no longer wishes to be bound by the commitments set forth in the Affirmation in Support of Exemption

⁵² 5 U.S.C. 601–12.

⁵³ 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a “small-business concern” as a business which is independently owned and operated and which is not dominant in its field of operation.

from Affiliation Requirements, the holding company must either reduce its ownership interest to below 10 percent of the outstanding voting securities of the company that has issued such securities or file with the Commission an application under section 203 of the Federal Power Act to request authorization to retain such securities, provided that, during the pendency of any application, it shall continue to comply with all of the commitments made in the Affirmation in Support of Exemption from Affiliation Requirements; or

(iii) Any security of a subsidiary company within the holding company system.

* * * * *

(12) A public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer its outstanding voting securities to:

(i) Any holding company granted blanket authorizations in paragraph (c)(2)(ii) of this section if, after the transfer, the holding company and any of its associate or affiliate companies in aggregate will own:

(A) Less than 10 percent of the outstanding voting securities of such public utility, or

(B) 10 percent or more and less than 20 percent of the outstanding voting securities of such public utility, provided that the holding company has complied with all requirements of paragraph (c)(2)(ii)(B) of this section; or

(ii) Any person other than a holding company if, after the transfer, the person and any of its associate or affiliate companies in aggregate will own:

(A) Less than 10 percent of the outstanding voting securities of the public utility and within 30 days after the end of the calendar quarter in which such transfer has occurred the public utility notifies the Commission in accordance with paragraph (c)(17) of this section, or

(B) 10 percent or more but less than 20 percent of the outstanding voting securities of the public utility, provided that the person has filed Form 519-C and continues to abide by the commitments stated in the form.

* * * * *

(17) A public utility granted blanket authorization under paragraph (c)(12)(ii)(A) of this section to transfer its outstanding voting securities shall, within 30 days after the end of the calendar quarter in which such transfer has occurred, file with the Commission a report containing the following information:

(i) The names of all parties to the transaction;

(ii) Identification of the pre- and post-transaction voting security holdings (and percentage ownership) in the public utility held by the acquirer and its associate or affiliate companies;

(iii) The date the transaction was consummated;

(iv) Identification of any public utility or holding company affiliates of the parties to the transaction; and

(v) A statement indicating that the proposed transaction will not result in, at the time of the transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company as required in § 33.2(j)(1).

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

3. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

4. In § 35.36, paragraph (a)(9) is revised, and paragraph (a)(10) is added, to read as follows:

§ 35.36 Generally.

(a) * * *

(9) *Affiliate* of a specified company means any person that controls, is controlled by, or is under common control with the specified company.

(i) Owning, controlling or holding with power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control.

(ii) The Commission may, after appropriate notice and opportunity for hearing, determine that any person is an affiliate of a specified company if it finds that the person exercises directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a degree of influence (through ownership of voting securities or otherwise) over the management or policies or operations of the specified company as to make it necessary or appropriate in the public interest that the person be treated as an affiliate.

(10) *Voting security* means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

* * * * *

6. In § 35.43, paragraph (a)(1) is revised and paragraph (a)(6) is added, to read as follows:

§ 35.43 Generally.

(a) * * *

(1) *Affiliate* of a specified company means any person that controls, is

controlled by, or is under common control with the specified company.

(i) Owning, controlling or holding with power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control.

(ii) The Commission may, after appropriate notice and opportunity for hearing, determine that any person is an affiliate of a specified company if it finds that the person exercises directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a degree of influence (through ownership of voting securities or otherwise) over the management or policies or operations of the specified company as to make it necessary or appropriate in the public interest that the person be treated as an affiliate.

* * * * *

(6) *Voting security* means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

* * * * *

[FR Doc. 2010–1544 Filed 1–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1340

[Docket No. NHTSA–2010–0002]

RIN 2127–AK41

Uniform Criteria for State Observational Surveys of Seat Belt Use

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes amendments to the regulations establishing the criteria for designing and conducting State seat belt use observational surveys, procedures for obtaining NHTSA approval of survey designs, and a new form for reporting seat belt use rates to NHTSA. NHTSA proposes these amendments so that future surveys will give States more accurate data to guide their occupant protection programs.

DATES: Written comments may be submitted to this agency and must be received no later than March 29, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number

NHTSA–2010–0002 by any of the following methods:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax*: 202–493–2251.

- *Mail*: Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery or Courier*: West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” section of this document. 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 the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/search/footer/privacyanduse.jsp>.

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

FOR FURTHER INFORMATION CONTACT:

For program issues: Mr. Jack Oates, Chief, Program Implementation, Regional Operations and Program Delivery, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–200, Washington, DC 20590. Telephone number: 202–366–2730; E-mail: Jack.Oates@dot.gov.

For statistical issues: Ms. Chou-Lin Chen, Chief, Mathematical Analysis Division, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NVS–421, Washington, DC 20590. Telephone number: 202–366–1048; E-mail: Chou-Lin.Chen@dot.gov.

For legal issues: Ms. Jin Kim, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic

Safety Administration, 1200 New Jersey Avenue, SE., NCC–113, Washington, DC 20590. Telephone number: 202–366–1834; E-mail: Jin.Kim@dot.gov.

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I. Background

Section 1403 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) authorized a seat belt incentive grant program that awarded grant funds to States based on a State’s seat belt use rate. On September 1, 1998, the National Highway Traffic Safety Administration (NHTSA) published as an interim final rule criteria to ensure accurate and representative measurements of a State’s seat belt use rate, known as the Uniform Criteria for State Observational Surveys of Seat Belt Use (Uniform Criteria). See 63 FR 46389. On March 14, 2000, NHTSA published a final rule, adopting the Uniform Criteria with one clarifying change.¹ See 65 FR 13679.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59) did not reauthorize the seat belt incentive grant program. However, SAFETEA–LU established new administrative requirements relating to a State’s qualification for a highway

safety grant under 23 U.S.C. 402. One such requirement is that the State must provide satisfactory assurances that it will conduct an annual Statewide seat belt use survey in accordance with the criteria for State seat belt use rate measurement established by the Secretary of Transportation. In August 2005, NHTSA notified the States and Territories that the Statewide surveys conducted in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, as published at 23 CFR part 1340, would satisfy the administrative requirements of Section 402. In addition, the implementing guidelines for the incentive grant program under 23 U.S.C. 406 provide that seat belt use surveys conducted in accordance with the Uniform Criteria serve as the basis for an award under the seat belt performance provisions of that grant program.

Since the adoption of the Uniform Criteria in 1998, NHTSA and the States have accumulated substantial experience in the design and implementation of seat belt use surveys. This experience has provided insight into factors that could affect survey accuracy and reliability. In addition, technological improvements in road inventories have made it possible to select observation sites in a more cost effective manner. For these reasons, NHTSA proposes to revise the Uniform Criteria so that future surveys will give States more accurate data to guide their occupant protection programs.

As articulated in detail below, NHTSA proposes several key changes to the existing criteria. In particular, the agency proposes to revise the sampling frame from the population-based criterion to a fatality-based criterion and to identify road types to be included in the road inventory. The proposal also changes the precision requirement from a five percent relative error to a 2.5 percentage point standard error. In addition, the agency proposes quality control procedures to help ensure accuracy and consistency across all State surveys. Finally, the agency proposes to require States to submit additional information from the survey results as part of their annual certifications, including data source of the sampling frame, exclusions applied to the sampling frame, procedures for collecting additional data to reduce the nonresponse rates, explanation of imputation methods, procedures to adjust the sampling weight, and procedures to be followed if the standard error is exceeded.

Accordingly, the agency is issuing this NPRM to propose changes to the Uniform Criteria, describe approval

¹ In 2000, NHTSA clarified that States are permitted to group observation sites according to geographic areas to minimize travel time and distance required to conduct the observations.

procedures for seat belt survey designs, and specify the reporting requirements for seat belt use rates.

II. Proposed Amendments to the Uniform Criteria

A. Purpose; Applicability; Definitions (23 CFR 1340.1; 23 CFR 1340.2; 23 CFR 1340.3)

This proposal would amend the purpose and applicability sections to update the statutory reference, specify the effective date for the revised uniform criteria, and note the addition of proposed survey designs approval procedures and administrative requirements. The agency proposes that the revised Uniform Criteria would be effective for seat belt surveys conducted starting in calendar year 2011.

The agency also proposes adding a definition section to define certain terms used in the proposed rule. For example, the agency proposes definitions for road types (access ramp, cul-de-sac, non-public road, service drive, traffic circle, unnamed road, vehicular trail) and “passenger motor vehicle” which are commonly used terms. Although the agency also adds a definition for “nonresponse rate,” other statistical terms, such as probability sampling, precision requirement, imputation, sampling weights, variance estimation, are not added as definitions as they have meanings that are generally understood in the field of statistics.

B. Selection of Observation Sites (23 CFR 1340.5)

In § 1340.5(a)(1), the agency proposes to amend the current demographics requirement in the sampling frame. Currently, States must include the most populous counties or other areas accounting for at least 85 percent of the State’s population in the sampling frame. Because NHTSA believes that this sampling frame may result in an unintended bias in seat belt use rates, we propose to change from a population-based criterion to a fatality-based criterion. We believe that using a fatality-based sampling frame would enable the States to focus on areas with traffic safety concerns. Under the revised criterion at § 1340.5(a)(1), a State would be able to exclude any counties or county-equivalents accounting for up to 15 percent of the State’s motor vehicle crash fatalities during the last three years, as measured by the Fatality Analysis Reporting System (FARS) data. NHTSA believes that this 15 percent exclusion would allow the States to reduce survey costs with minimum impact to the survey result. In other words, States must

include counties or county-equivalents in which at least 85 percent of the motor vehicle crash fatalities occurred during the three most recent years for which FARS data are available. Each time a State updates its survey design (at least every five years, or more frequently if the State so elects), the geographic distribution of motor vehicle fatalities from the three most recent years will be re-examined to identify the counties or county-equivalents to be included in the updated survey. To assist States in this effort, FARS data is available on NHTSA’s Web site at <http://www.nhtsa.dot.gov>. Also, NHTSA would provide a county-by-county breakout of fatalities during the three most recent years to any State that requested it. Based on a statistical simulation of the impact, the agency believes that the proposed fatality-based criterion would improve State seat belt use estimates by reducing the statistical bias towards urban areas that tend to have higher seat belt use rates. For this reason, we believe that the revised criterion would provide a more representative sample for the survey.

In § 1340.5(a)(2), we propose to add a road coverage requirement to the sampling frame criterion. Specifically, all roads except those explicitly excluded would be required to be eligible for sampling. The existing Uniform Criteria do not specify the types of roads that must be eligible in the sampling frame. At the time the current criteria were adopted, a comprehensive and affordable database of roads was not available to many States. Most States relied on State-provided inventories of roads, which in many cases captured only subsets of roads in the State, such as State-maintained roads. As a result, road inventories used by the States varied widely. In many cases, the resulting observation sites were not representative of all roads. Because all States currently do not have a database of all roads in the State, NHTSA would make a database of roads available for each State. Alternatively, a State could choose to use its own database of roads if approved by NHTSA. The agency believes that using a more comprehensive database would result in more representative and consistent seat belt use estimates.

Under the proposed rule, the following roads would be permitted to be excluded from the sample: Non-public roads, unnamed roads, unpaved roads, vehicular trails, access ramps, cul-de-sacs, traffic circles and service drives. The agency believes that exclusion of these road types from sampling and observation is appropriate

for reasons of safety and practicality. These road types are excluded from NHTSA’s own nationwide survey of seat belt use, the National Occupant Protection Use Survey (NOPUS).

In § 1340.5(b), the agency’s proposal retains the existing requirement that survey designs be probability-based. Specifically, the observation sites and observation schedule (day and time) for the data collection would be required to be selected based on probability sampling, *i.e.*, randomly. The proposal, however, clarifies that deterministic, *i.e.*, non-random, selection would be permitted in the selection of specific locations on the sampled road segments, *i.e.*, the specific location on the road segment where observers are positioned could be chosen based on such factors as safety and visibility. The proposal also would allow alternate observation sites to be used under certain conditions. The proposal identifies “alternate observation site” as a replacement observation site that must (1) be located in the same county or county-equivalent as the observation site; and (2) have the same roadway classification as the observation site (*e.g.*, local road segment, collector road segment).

In § 1340.5(c), the agency proposes that States include a protocol to follow when they cannot collect data at an observation site at the scheduled time. The agency proposes certain minimum conditions depending on whether the observation site is temporarily or permanently unavailable for data collection. Under the existing uniform criteria, there is no requirement for a protocol. However, it is likely that many States have protocols for selecting alternate observation sites even though the protocol is not included in the State’s current survey design. The proposed protocol requirement for selecting alternate observation sites would promote efficiency and consistency in data collection.

First, the agency anticipates that observations may not be conducted at some observation sites for temporary reasons. For example, weather conditions, traffic incidents, or road construction may prevent an observer from making observations in a safe manner. Under such temporary conditions, the agency suggests two options for data collection. The State may return to the observation site at another time provided it is on the same day of the week and at the same time of day. The State may also select an alternate observation site provided the data is collected on the same day and approximately at the same time as the originally scheduled observation site.

The agency recommends that the State pre-select alternate observation sites before the start of data collection. Notwithstanding the availability of the protocol, the agency proposes to require that data collection be conducted at the original observation site at all times when it is available. The agency believes that giving States these options will allow them to determine which method is most efficient and convenient for the State while providing greater consistency across State survey collections.

Second, the agency anticipates that some observation sites may become permanently unavailable because the road on which the observation site is located is permanently closed. Under these circumstances, the agency proposes that the State may select a permanent replacement observation site based on probability sampling. However, if the State cannot select a permanent replacement observation site during the current data collection, the agency proposes that it may select an alternate observation site, provided that the data is collected on the same day and at approximately the same time as the originally scheduled observation site. The agency proposes that data collection for future years must be conducted at an observation site that has been selected based on probability sampling. (See Section II, B., above for further discussion.) The agency believes that this proposal would provide States flexibility under unexpected circumstances.

In § 1340.5(d), we propose to change the precision requirement from the current 5 percent relative error (standard error divided by the estimate) to a 2.5 percentage point standard error. In some cases, the existing criterion allows margins of error (using 95 percent confidence) up to plus or minus 10 percentage points, and it also requires States with lower seat belt use rates to meet a smaller margin of error than States with higher seat belt use rates. NHTSA believes that a uniform margin of error requirement would be equitable for all States. The proposed criterion would require a standard error not to exceed 2.5 percentage points.

States should closely monitor their survey results to assure that they will be able to meet these more stringent precision requirements. If the standard error proves to be too large, States may need to conduct additional observations to obtain an adequate sample. These additional observations must be conducted in the same calendar year as the sample. Therefore, we encourage States to conduct their surveys early enough in the year to allow for

additional sampling if necessary, and to closely monitor the survey results so that they can quickly determine whether extra sampling will be required. Surveys which fail to meet these requirements will not be accepted by NHTSA. NHTSA believes that the likelihood for additional sampling is very small with a well-planned and implemented sample design. NHTSA seeks comment on this requirement, whether it would impose a significant burden on States, and if there are other methods of ensuring the reliability of the results that are equitable to all States.

C. Assignment of Observation Times (23 CFR 1340.6)

The existing Uniform Criteria require all daylight hours and all days of the week to be eligible for data collection.² The agency proposes to allow States to restrict their data collection to all daylight hours between 7 a.m. and 6 p.m. Daylight hours during the summer vary, and can begin as early as 5 a.m. and end as late as 9:15 p.m. or later. NHTSA believes it would be more equitable to States if the times eligible for data collection were specified. This proposal does not change the current requirement that all days of the week, including Saturdays, Sundays and holidays, be eligible for data collection.

The existing Uniform Criteria require the schedule for any given data collection to be determined in a random manner. The agency proposes to continue this requirement—States must randomly select both the day of the week and the time of the day. However, NHTSA allows States to group observation sites in close geographic proximity, *i.e.*, cluster assignments of observation sites, for efficiency reasons. The agency proposes to continue to allow cluster assignments of observation sites. For example, after selecting observation sites randomly, the State may identify observation sites in close geographic proximity where data could be collected on the same day by the

² Although nighttime observations of seat belt use may provide States with useful data, the agency believes that several factors weigh against extending the sampling requirements under this proposal. First, extending the sampling requirement to nighttime observations would reduce the value of survey results from previous years' data. States and other interested parties use this information to determine the impact of various seat belt use programs and activities. In addition, nighttime observations are more difficult than daytime observations because seat belt use is not as easy to observe in the dark, even in the most well lit sites. Nighttime observations are also less safe for observers than daytime observations because observers are less conspicuous and the increase of impaired drivers makes nighttime observations inherently more dangerous than daytime observations.

same survey crew. States must randomly select the day of the week that data will be collected for the geographically-grouped cluster of observation sites. States must randomly select one observation site from the geographically-grouped cluster of observation sites and must randomly assign the time of day for the data collection. Data collection at all other observation sites in the cluster must take place on the same day or adjacent days of the week and at times of the day that ensure efficient use of data collection resources. We believe that this proposal allows for the efficient use of data collection resources and limits the introduction of a judgment bias.

D. Observation Procedures (23 CFR 1340.7)

The existing Uniform Criteria require all survey data to be collected through direct observation and during the calendar year reported for the Statewide seat belt use rate. We propose no change to this requirement in § 1340.7(a).

Under the existing Uniform Criteria, the State may choose to observe data from one or both directions of traffic. We propose no change to this provision in § 1340.7(b), but propose clarifying language. Specifically, if data will be collected from traffic traveling in one direction, that direction should be chosen randomly. If a State chooses to observe traffic from both directions at the same time, the State should provide at least one person to observe traffic from each direction.

In § 1340.7(c), the agency proposes to clarify the requirement regarding the vehicles that must be covered in the survey. The existing Uniform Criteria require that all passenger motor vehicles be included in the survey. The agency's proposal clarifies that this requirement includes passenger motor vehicles being used for commercial purposes, and vehicles that are exempt from the State's seat belt use law or that bear out-of-state license plates.

In § 1340.7(d), the agency proposes to include clarifying language regarding the data that must be collected on occupants in passenger motor vehicles. The existing criteria state that drivers and front seat outboard passengers must be observed. We propose to include language specifying that data on all drivers and right front passengers, except passengers in child safety seats, must be collected. Child safety seats include forward-facing and rear-facing child safety seats, but do not include booster seats. NHTSA believes that children should not be placed in the front seat. However, the agency believes that data on passengers in child safety

seats should be excluded because it is difficult to observe whether a child safety seat is properly installed or the child is properly restrained in the child safety seat. However, right front passengers in booster seats must be included in the survey because booster seats require the use of a readily-observable shoulder belt to secure the passenger.

The existing Uniform Criteria require that shoulder belt use by the driver and right front passenger in passenger vehicles be recorded. In § 1340.7(e), the agency leaves unchanged the survey variables that are existing requirements of the Uniform Criteria—belt status of driver, presence of right front passenger, and belt status of right front passenger if present. However, we propose to clarify when to record an occupant as “belted.” We propose that observers record an occupant as “belted” if they see that a shoulder belt is in front of the occupant’s shoulder; record an occupant as “unbelted” if they see that a shoulder belt is not in front of the occupant’s shoulder; and record the belt use of the occupant as “unknown” if it cannot reasonably be determined that the shoulder belt is in front of the occupant’s shoulder. Thus, an occupant using a lap-only belt or using a lap/shoulder belt with the shoulder belt behind the shoulder would be counted as “unbelted.” A motorist with a shoulder belt under the arm near the shoulder belt anchor would be counted as “unbelted.”

In § 1340.7(f), the agency proposes to specify certain prohibited practices that could artificially raise seat belt use rates at observation sites. Specifically, we propose to prohibit observers from wearing law enforcement uniforms and prohibit the presence of law enforcement vehicles visible to motorists at observation sites. We also propose to prohibit advance specific warning to motorists approaching observation sites that a seat belt use survey is being or will be conducted. NHTSA believes that this will help ensure more accurate estimates of seat belt use rates.

E. Quality Control (23 CFR 1340.8)

The existing Uniform Criteria do not specifically address quality control procedures. Because it is likely that States vary in their use of quality control measures, we propose to add criteria establishing a uniform baseline of quality control procedures to ensure reliability and consistency in State survey results. First, in § 1340.8(a), we propose that States assign quality control monitors to conduct random, unannounced site visits to ensure that

observers are conducting the survey properly. NHTSA proposes that States conduct these observation site visits to no less than five percent of the observation sites. The same individual may not serve as both the observer and the quality control monitor at the same observation site at the same time.

Second, in § 1340.8(b), we propose that all observers and quality control monitors must have been trained in data collection protocols, including observation protocols as provided in § 1340.7 and substitution and rescheduling of observation sites as provided in § 1340.5(c), within twelve months prior to data collection. Finally, we propose in § 1340.8(c) that survey results be reviewed by persons knowledgeable in the design of complex probability samples and estimation and variance estimation from such samples. NHTSA believes such uniform measures are necessary for accurate and reliable survey results.

F. Computation of Estimates (23 CFR 1340.9)

In §§ 1340.9(a) and 1340.9(b), NHTSA’s proposal specifies that States must use all data collected at observation sites and must not use statistical editing procedures that would alter the values of observed data. NHTSA believes that these requirements are necessary to ensure accurate representation of seat belt use estimates.

In § 1340.9(c), we propose to allow States to employ imputation of unknown values, provided the State’s proposed imputation procedure is submitted to and approved by NHTSA in advance. Although NHTSA does not require or encourage the imputation of unknown values, we would allow States to propose methods of imputation for unknown values provided the proposed methods are approved by NHTSA prior to data analysis.

In § 1340.9(d), NHTSA makes no changes to the current requirement that observation site data be weighted by sampling weights (inverses of selection probabilities).

In § 1340.9(e), NHTSA proposes that States include a procedure to adjust for observation sites with no usable data, including observation sites where no data were collected and observation sites where data were discovered to be falsified. If data is discovered to be falsified, the data must be discarded and the observation site treated as if no data were collected. For observation sites for which no data were collected, States should consider the following approaches for adjusting for the lack of data: discard the observation site from data analysis and adjust the remaining

observation sites’ sampling weights accordingly; return to the observation site on the same day of the week and at the same time of day to collect data; or select an alternate observation site as described in Section II, B. of this preamble. However, the State may propose another procedure to adjust for observation sites with no usable data. NHTSA believes that requiring States to include a minimum protocol is necessary to provide a more accurate seat belt use rate estimate.

In § 1340.9(f)(1), we propose to add a new requirement that the nonresponse rates for (1) the ratio of the total number of recorded unknown values of passenger presence to the number of passenger vehicles observed, and (2) the ratio of the total number of recorded unknown values of belt use to the total number of drivers and right front seat passengers observed not exceed 10 percent. In other words, the presence or absence of a right front seat passenger must not be “unknown” for more than 10 percent of the vehicles observed in the entire survey; and the belt use status must not be “unknown” for more than 10 percent of the drivers and right front seat passengers in the entire survey. NHTSA believes that this new requirement is necessary to reduce potential bias in the survey results.

In § 1340.9(f)(2), we propose to add a new requirement that States include a procedure for collecting additional observations to reduce the nonresponse rates to no more than 10 percent. One possible procedure to adjust for nonresponse rates in excess of 10 percent would be to return to observation sites with the highest numbers of unknown values on the same day of the week and same time of day as the original data collection schedule to observe additional data. States must not discard the data from the original data collection. States may take additional measures to reduce the number of unknown values, such as assigning additional observers to return to those observation sites with the highest numbers of unknown values. As proposed in Section II, D. above, all data collection must be conducted during the calendar year in which the seat belt use rate estimate is reported to NHTSA. States should plan their surveys in order to allow the State sufficient time to conduct additional observations in the event that the nonresponse rate exceeds 10 percent.

In § 1340.9(g), we propose to change the allowable margin of error in the survey from the existing five percent *relative error* to a 2.5 percentage point *standard error*. As discussed in Section II, B. of this preamble above, the

existing criterion allows margins of error up to plus or minus 10 percentage points. NHTSA also proposes to clarify that in the event that the standard error exceeds this threshold, the State must conduct additional observations during the same calendar year until the standard error does not exceed 2.5 percentage points. As discussed in Section II, B. of this preamble, States should conduct surveys early enough in the year to allow for additional sampling if necessary, and to closely monitor the survey results so that they can quickly determine whether extra sampling will be required. NHTSA believes that the likelihood for additional sampling is very small with a well-planned and implemented sample design.

III. Administrative Requirements

A. Submission and Approval of Seat Belt Survey Design (23 CFR 1340.10)

Section 1340.5 of the existing Uniform Criteria details the documentation requirements for proposed sample survey designs and reporting annual seat belt use estimates. We propose to require additional documentation in the proposed sample survey designs submitted to NHTSA for approval. Specifically, we propose to require States to (1) define all sampling units, with their measures of size; (2) identify the data source of the sampling frame; (3) specify any exclusions applied to the sampling frame; (4) identify the name and describe the qualifications of the State seat belt statistician; (5) detail the procedures for collecting additional data to reduce the nonresponse rates that exceed 10 percent; (6) include the number of observers and quality control monitors; (7) explain any imputation methods that will be used; (8) specify any procedures to adjust the sampling weight for observation sites with no usable data; and (9) describe the procedures to be followed if the standard error exceeds 2.5 percentage points.

The agency also proposes to require documentation of data collection and estimation of seat belt use rate. For data collection, we propose to require States to (1) define an observation period; (2) specify the procedures to be implemented to reschedule or substitute observation sites when data collection is not possible on the date and time assigned; (3) specify the procedures for collecting additional data to reduce the nonresponse rate when the nonresponse rates exceeds 10 percent; (4) describe the data recording procedures; and (5) specify the number of observers and quality control monitors. For estimation,

we propose to require States to (1) describe how seat belt use rate estimates will be calculated; (2) describe how variances will be estimated; (3) specify imputation methods, if any; (4) specify the procedures to adjust sampling weight for observation sites with no usable data; and (5) specify the procedures to be followed if the standard error exceeds 2.5 percentage points. NHTSA believes that additional documentation is necessary for the agency to determine accurately if the State's proposed survey design meets the Uniform Criteria.

Under the existing Uniform Criteria, States must submit their survey designs to NHTSA in advance of data collection in order for NHTSA to determine whether the designs meet the Uniform Criteria. The agency retains this requirement, but adds a deadline.

Currently, no State survey design meets all the requirements of the proposed Uniform Criteria. Under this proposal, all States would revise their seat belt use survey designs before conducting seat belt use surveys in calendar year 2011, and must submit new survey design proposals to NHTSA no later than January 3, 2011. The agency believes most States conduct seat belt use surveys in the late-spring to early summer of the year. Submission of proposed survey designs by this date will allow the agency sufficient time to review the State design and provide guidance well in advance of States conducting survey data collection.

B. Post-Approval Alterations to Survey Designs (23 CFR 1340.11)

We propose to continue the requirement that States submit proposals to alter their survey design to NHTSA at least three months prior to data collection if the alteration would impact the Statewide seat belt use rate or its standard error. Examples of changes that would impact the Statewide seat belt use rate estimate or its standard error include, but are not limited to, changes in sample design, seat belt use rate estimation method, variance estimation method, and data collection protocols.

C. Re-Selection of Observation Sites (23 CFR 1340.12)

The existing Uniform Criteria do not specify how frequently observation site samples should be refreshed, *i.e.*, updated to reflect new road construction, changes in traffic volume, and population shifts. Accordingly, some States use survey designs that are more than 20 years old. We believe that this diminishes the accuracy of survey results. We propose that the State re-

select its sample of observation sites from a NHTSA-provided road database or another road database approved by NHTSA no less than once every five years. We further propose States submit the updated sampling frame data to NHTSA for approval no later than March 1 of the re-selection year. NHTSA believes that this proposal balances the need for a more accurate estimate of seat belt use with the burdens of re-selecting the sample of observation sites.

D. Annual Reporting Requirements (23 CFR 1340.13; Appendix A)

Under the existing Uniform Criteria, States report the annual Statewide seat belt use rate and standard error, and certify that their Statewide seat belt use rates were obtained in accordance with the Uniform Criteria. For oversight purposes, we propose to expand the certification to include additional information. Specifically, we propose that States would provide the following additional information: (1) A spreadsheet in electronic format containing the raw data for each observation site and the observation site weight; (2) nonresponse rates for survey variables—seat belt use and passenger presence; (3) the dates of the data collection; (4) observation sites, identified by type of site (*i.e.*, observation site selected in the original survey design, alternate observation site selected subsequent to the original survey design), and by characteristics of the observation site visit (*i.e.*, at least one vehicle observed, no vehicles observed); and (5) name of the State seat belt survey statistician.

In § 1340.13, NHTSA proposes that the Governor's Highway Safety Representative (GR) or if delegated in writing by the GR, the Coordinator of the State Highway Safety Office sign the certification included in the annual reporting requirement. That individual must certify that (1) [name of GR] has been designated by the Governor as the GR, and if applicable, the GR has delegated the authority to sign the certification in writing to [name of Coordinator], the State Highway Safety Coordinator; (2) the reported Statewide seat belt use rate is based on a survey design that was approved by NHTSA, in writing, as conforming to the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340; (3) the survey design has remained unchanged since the survey was approved by NHTSA; and (4) the individual named in the reporting form is a qualified statistician who has reviewed and approved the seat belt use rate and standard error reported.

In addition, NHTSA proposes that the State seat belt survey statistician also sign the reporting form certifying that (s)he meets the qualification requirements in § 1340.8(c), and the information being reported is correct and is in compliance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340.

NHTSA also proposes that States retain certain records for five years and make them available to NHTSA within four weeks of request. We believe that retention of these records would not pose an additional burden on States because these are records that States would normally retain in the course of designing a seat belt use survey and conducting annual seat belt use surveys.

IV. Public Participation

A. How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your primary comments must not be more than 15 pages long. (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically on the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

B. How can I be sure my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

C. Will the agencies consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

D. How can I read the comments submitted by other people?

You may read the comments received by the Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location. To read the comments on the Internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the docket.

Please note that even after the comment closing date, we will continue to file relevant information on the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

V. Statutory Basis for This Action

The agency's proposal would implement changes to the uniform criteria for the measurement of State seat belt use rates that a State is required to conduct annually under a grant program in accordance with 23 U.S.C. 402(b)(1)(E)(iii).

VI. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866. The rulemaking action is not considered to be significant within the meaning of E.O. 12866 or the Department of Transportation's

Regulatory Policies and Procedures (44 FR 11034 (Feb. 26, 1979)).

The agency's proposal would not affect amounts over the significance threshold of \$100 million each year. The agency's proposal would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The agency's proposal would not create an inconsistency or interfere with any actions taken or planned by other agencies. The agency's proposal would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Finally, the agency's proposal does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Currently, States are required to provide satisfactory assurances that they will conduct an annual Statewide seat belt use survey as part of the administrative requirements for a highway safety grant under 23 U.S.C. 402(b)(1)(E)(iii). The outcome of the State's annual Statewide seat belt use survey provides one of the core performance measures—observed seat belt use by drivers and front outboard seat passengers of passenger motor vehicles—that were developed as a collaborative effort by the National Highway Traffic Safety Administration and the Governors Highway Safety Association (GHSA), with assistance from other partners. Through these assurances, every State Highway Safety Office has committed to conducting an annual Statewide seat belt use survey.

The agency's proposal would not change the statutory requirement to provide assurances that the State will conduct an annual Statewide seat belt use survey, but would change the way States collect and report survey data. Specifically, the proposed rule would make two changes to the sampling frame—draw observation sites from a sampling frame based on traffic fatalities instead of population, and include all roads with a few exceptions in the sampling frame. In addition, the proposed rule would change the standard error to not to exceed 2.5 percentage points. The proposed rule also would improve quality control of the data collected by requiring States to train observers before data collection, to have quality control monitors conduct unannounced visits, and to have a statistician review the data collected. Finally, the proposed rule would require States to submit additional

information in their annual certifications.

The agency has determined that if it is made final, this rulemaking action would not be significant. If a State does not provide assurances that it will conduct an annual Statewide seat belt use survey in accordance with the uniform criteria in a given year, Section 402 grant funds could be withheld. However, States rely on statistically valid observational surveys of seat belt use to plan and evaluate their highway safety programs and have committed, through their highway safety offices, to conduct annual Statewide seat belt use surveys as part of the core performance measurement process. The agency believes that no State will decline to provide the required assurances, and that the impacts of the rule would be minimal and not require the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

Pursuant to 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 publishes 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 governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rulemaking action would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposal under the Regulatory Flexibility Act. This proposal applies to States and they are not considered to be small businesses under the Regulatory Flexibility Act. States may employ contractors to collect survey data (which may be small businesses), but this proposal merely changes the procedures of collecting survey data and will not have a significant impact on the costs or profits of small businesses. Therefore, I certify that this notice of proposed rulemaking would not have a significant

economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. The agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that this proposed rule would not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. Moreover, the proposed rule would not preempt any State law or regulation or affect the ability of States to discharge traditional State government functions.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This rulemaking action would not have any retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to

respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This NPRM, if made final, would result in a new collection of information that would require OMB clearance pursuant to 5 CFR part 1320. Before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) The accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collections 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, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, the agencies ask for public comments on the following proposed collections of information:

Title: Uniform Criteria for State Observational Surveys of Seat Belt Use.

OMB Control Number: N/A.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: New collection.

Affected Public: State Governments (the 50 States, the District of Columbia, Puerto Rico and 4 territories).

Form Number: N/A.

Abstract: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59) provides that the Secretary of Transportation may not approve for Section 402 funding a State highway safety program which does not provide satisfactory assurances that the State will implement an annual statewide seat belt use survey in accordance with criteria established by

the Secretary to ensure that the measurements of seat belt use are accurate and representative. In addition, in 2008, the National Highway Traffic Safety Administration (NHTSA) and the Governors Highway Safety Association (GHSA) partnered to develop a voluntary minimum set of performance measures to be used by States and federal agencies in the development and implementation of behavioral highway safety plans and programs, including observed seat belt use of front seat outboard occupants in passenger vehicles.

Currently, States use the information collected in their seat belt use surveys to evaluate the effectiveness of their occupant protection countermeasures programs and to identify relatively low seat belt use areas and sub-populations requiring increased program emphasis. In addition, NHTSA uses the collected information, pooled across the States, to determine the relative impact of various countermeasures and program strategies and to provide guidance to assist the States in achieving the highest possible seat belt use. NHTSA also uses the collected information from individual States to identify those States whose occupant protection programs would most benefit from special management reviews, countermeasure demonstration projects and other forms of technical assistance.

The information collected for the States' seat belt observational surveys is to include a seat belt survey design for approval and any subsequent changes to the seat belt survey design. The survey design will include a description of the methodology used to select the survey observational sites, the selection probability of each site, the survey observational procedures and protocols, observer training and quality control procedures. In addition, each State is to submit the survey results annually, including a certification regarding the survey, name of the State statistician, seat belt use rate, standard error, nonresponse rate and for each observational site, the number of front seat outboard occupants that were observed, the number observed to be wearing the seat belt, and the site weighting factor used to combine the individual site data into the measure of Statewide seat belt use.

Estimated Annual Burden: 19,026 hours.

Estimated Number of Respondents: 56 (50 States, District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands).

Comments Are Invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Comments must refer to the docket and notice numbers cited at the beginning of this NPRM and be submitted to one of the addresses identified at the beginning of this NPRM.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with a base year of 1995 (about \$118 million in 2004 dollars)). This proposed rule does not meet the definition of a Federal mandate because the resulting annual State expenditures would not exceed the \$100 million threshold.

G. National Environmental Policy Act

NHTSA has reviewed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that this proposal would not have a significant impact on the quality of the human environment.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The agency has analyzed this proposed rule under Executive Order 13175, and has determined that the proposed action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

I. Regulatory 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.

J. 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 the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/search/footer/privacyanduse.jsp>.

List of Subjects in 23 CFR Part 1340

Grant programs—transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to revise 23 CFR part 1340 to read as follows:

PART 1340—UNIFORM CRITERIA FOR STATE OBSERVATIONAL SURVEYS OF SEAT BELT USE

Subpart A—General

Sec.

1340.1 Purpose.

1340.2 Applicability.

1340.3 Definitions.

Subpart B—Survey Design Requirements

1340.4 In general.

1340.5 Selection of observation sites.

1340.6 Assignment of observation times.

1340.7 Observation procedures.

1340.8 Quality control.

1340.9 Computation of estimates.

Subpart C—Administrative Requirements

1340.10 Submission and approval of seat belt survey design.

1340.11 Post-approval alterations to survey design.

1340.12 Re-selection of observation sites.

1340.13 Annual reporting requirements.

Appendix A to Part 1340—State Belt Use Survey Reporting Form

Authority: 23 U.S.C. 402; delegation of authority at 49 CFR 1.50.

Subpart A—General

§ 1340.1 Purpose.

This part establishes uniform criteria for State surveys of seat belt use conducted under 23 U.S.C. 402, procedures for NHTSA approval of survey designs, and administrative requirements relating to State seat belt surveys.

§ 1340.2 Applicability.

This part applies to State surveys of seat belt use, beginning in calendar year 2011 and continuing annually thereafter.

§ 1340.3 Definitions.

As used in this part—

Access ramp means the segment of a road that forms a cloverleaf or limited access interchange.

Cul-de-sac means the closed end of a road that forms a loop or turn-around.

Non-public road means a road on which members of the general public are not allowed to drive motor vehicles.

Nonresponse rate means, for any survey variable, the percentage of unknown values recorded for that variable.

Observation site means the physical location where survey data are collected.

Passenger motor vehicle means a passenger car, pickup truck, van, minivan or sport utility vehicle.

Service drive means the segment of a road that provides access to businesses and rest areas.

Traffic circle means the segment of a road or intersection of roads forming a roundabout.

Unnamed road means a road, public or private, that has no name or number designation and is often a farm or logging road.

Vehicular trail means a road designed or intended primarily for use by motor vehicles with four-wheel drive.

Subpart B—Survey Design Requirements**§ 1340.4 In general.**

This subpart sets forth the minimum design requirements to be incorporated in surveys conducted under this part.

§ 1340.5 Selection of observation sites.

(a) *Sampling frame requirements*—(1) *County coverage.* The sampling frame from which observation sites are selected shall include counties or county-equivalents (including tribal territories), as defined by the U.S. Census Bureau, that account for at least 85 percent of the State's passenger vehicle occupant fatalities, provided that the average of the last three years of available Fatality Analysis Reporting System (FARS) data shall be used to determine the State's passenger vehicle occupant fatalities.

(2) *Road coverage.* (i) States shall select observation sites from a database of road inventories approved by NHTSA or provided by NHTSA.

(ii) Except as provided in paragraph (a)(2)(iii) of this section, all roads in the State shall be eligible for sampling. The sampling frame may not be limited only to roads having a stop sign, stop light or State-maintained roads.

(iii) The sampling frame need not include non-public roads, unnamed

roads, unpaved roads, vehicular trails, access ramps, cul-de-sacs, traffic circles and service drives.

(b) *Sampling selection requirements.* The set of road segments selected for observation sites shall be chosen based on probability sampling, except that—

(1) The specific observation site locations on the sampled road segments may be deterministically selected;

(2) An alternate observation site may be used to replace an observation site selected based on probability sampling if it is located in the same county or county-equivalent, and has the same roadway classification (e.g., local road segment, collector road segment) when using the protocol of substitution and rescheduling of observation sites pursuant to paragraph (c) of this section.

(c) *Requirements for substitution and rescheduling of observation sites.* The survey design shall include at a minimum the following protocols:

(1) *Protocol when observation site is temporarily unavailable for data collection.*

(i) Observers shall return to the observation site at another time provided that it is on the same day of the week and at the same time of the day or select an alternate observation site, as described in paragraph (b)(2) of this section, provided the data is collected on the same day and at approximately the same time as the originally scheduled observation site.

(ii) The original observation site must be used for future data collections.

(2) *Protocol when observation site is permanently unavailable for data collection.*

(i) Except as provided in paragraph (c)(2)(ii) of this section, another observation site shall be selected in accordance with paragraph (b) of this section.

(ii) If it is not feasible to select another observation site based on probability sampling for the current data collection, an alternate observation site, as described in paragraph (b)(2) of this section, may be selected provided the data is collected on the same day and at approximately the same time as the originally scheduled observation site.

(iii) For future data collections, another observation site must be selected based on probability sampling in accordance with paragraph (b) of this section.

(d) *Precision requirement.* The estimated seat belt use rate must have a standard error of no more than 2.5 percentage points.

§ 1340.6 Assignment of observation times.

(a) *Daylight hours.* All daylight hours between 7 a.m. and 6 p.m. for all days

of the week shall be eligible for inclusion in the sample.

(b) *Random assignment.* Except as provided in paragraph (c) of this section, the day-of-the-week and time-of-the-day shall be randomly assigned to observation sites.

(c) *Grouping of observation sites in close geographic proximity.* Observation sites in close geographic proximity may be grouped to reduce data collection burdens if:

(1) The first assignment of an observation site within the group is randomly selected; and

(2) The assignment of other observations sites within the group is made in a manner that promotes administrative efficiency and timely completion of the survey.

§ 1340.7 Observation procedures.

(a) *Data collection dates.* All survey data shall be collected through direct observation completely within the calendar year for which the Statewide seat belt use rate will be reported. Except as provided in § 1340.5(c), the survey shall be conducted in accordance with the schedule determined in § 1340.6.

(b) *Roadway and direction(s) of observation*—(1) *Intersections.* If an observation site is located at an intersection of road segments, the data shall be collected from the sampled road segment, not the intersecting road segment(s).

(2) *Roads with two-way traffic.* If an observation site is located on a road with traffic traveling in two directions, one or both directions of traffic may be observed, provided that—

(i) If only one direction of traffic is observed, that direction shall be chosen randomly;

(ii) If both directions of traffic are observed at the same time, States shall assign at least one person to observe each direction of traffic.

(c) *Vehicle coverage.* Data shall be collected by direct observation from all passenger motor vehicles, including but not limited to commercial passenger motor vehicles, and vehicles that are exempt from the State's seat belt use law or that bear out-of-State license plates.

(d) *Occupant coverage.* Data shall be collected by direct observation of all drivers and right front passengers, including right front passengers in booster seats, but excluding right front passengers in child safety seats. Observers shall record—

(1) The driver and right front passenger as belted if the shoulder belt is in front of the person's shoulder.

(2) A person as unbelted if the shoulder belt is not in front of the person's shoulder.

(3) The belt status of that person as unknown if it cannot reasonably be determined whether the driver or right front passenger is belted.

(e) *Survey variables.* At a minimum, the seat belt use variables to be collected by direct observation shall include—

- (1) Seat belt status of driver;
- (2) Presence of right front passenger; and

(3) Seat belt status of right front passenger, if present.

(f) *Data collection environment.* When collecting seat belt survey data—

- (1) Observers shall not wear law enforcement uniforms;
- (2) Police vehicles and persons in law enforcement uniforms shall not be positioned at observation sites;
- (3) No communications by signage or any other means that a seat belt survey is being or will be conducted may be present in the vicinity of the observation site.

§ 1340.8 Quality control.

(a) *Quality control monitors.* Monitors shall conduct random, unannounced visits to no less than five percent of the observation sites for the purpose of quality control. The same individual shall not serve as both the observer and quality control monitor at the same observation site at the same time.

(b) *Training.* Observers and quality control monitors involved in seat belt use surveys shall have received training in data collection procedures within the past twelve months. Observers and quality control monitors shall be trained in the observation procedures of § 1340.7 and in the substitution and rescheduling requirements of § 1340.5(c).

(c) *Statistical review.* Survey results shall be reviewed and approved by a seat belt survey statistician, *i.e.*, a person with knowledge of the design of probability-based multi-stage samples, statistical estimators from such designs, and variance estimation of such estimators.

§ 1340.9 Computation of estimates.

(a) *Data used.* Except as otherwise provided in this section, all data collected for the survey's variables shall be used, without exclusion, in the computation of the Statewide seat belt use rate, standard error, and nonresponse rates.

(b) *Data editing.* Known values of data contributing to the Statewide seat belt use rate shall not be altered or statistically edited in any manner.

(c) *Imputation.* Unknown values of variables shall not be imputed unless NHTSA has approved the State's imputation procedure prior to data analysis.

(d) *Sampling weights.* The estimation formula shall weight observed data by the inverse of the selection probability of the observation site at which the data were obtained.

(e) *Sampling weight adjustments for observation sites with no usable data.* States shall include a procedure to adjust the sampling weights for observation sites with no usable data, including observation sites where no data were collected and observation sites where data were discovered to be falsified.

(f) *Nonresponse rate.* (1) Subject to paragraph (f)(2) of this section, the nonresponse rates, for the entire survey, shall not exceed 10 percent for—

(i) The ratio of the total number of recorded unknown values of passenger presence to the number of passenger vehicles observed; or

(ii) The ratio of the total number of recorded unknown values of belt use to the total number of drivers and passengers observed.

(2) The State shall include a procedure for collecting additional observations in the same calendar year of the survey to reduce the nonresponse rate to no more than 10 percent, in the event the nonresponse rate in paragraph (f)(1)(i) or (f)(1)(ii) of this section exceeds 10 percent.

(g) *Variance estimation.* (1) Subject to paragraph (g)(2) of this section, the estimated standard error, using the variance estimation method in the survey design, shall not exceed 2.5 percentage points.

(2) If the standard error exceeds this threshold, additional observations shall be conducted in the same calendar year of the survey until the standard error does not exceed 2.5 percentage points.

Subpart C—Administrative Requirements

§ 1340.10 Submission and approval of seat belt survey design.

(a) *Contents:* The following information shall be included in the State's seat belt survey design submitted for NHTSA approval:

(1) *Sample design.*—The State shall—

(i) Define all sampling units, with their measures of size, as provided in § 1340.5(a)(1);

(ii) Specify the data source of the sampling frame, as provided in § 1340.5(a)(2)(i);

(iii) Specify any exclusions that have been applied to the sampling frame, as provided in § 1340.5(a)(2)(iii);

(iv) Define what stratification was used at each stage of sampling and what methods were used for allocation of the sample units to the strata;

(v) Define an observation site;

(vi) List all observation sites and their probabilities of selection;

(vii) Explain how the sample size at each stage was determined, as provided in § 1340.9(g);

(viii) Describe how observation sites were assigned to observation time periods, as provided in § 1340.6; and

(ix) Identify the name and describe the qualifications of the State seat belt statistician meeting the requirements in § 1340.8(c).

(2) *Data collection.*—The State shall—

(i) Define an observation period;

(ii) Specify the procedures to be implemented to reschedule or substitute observation sites when data collection is not possible on the date and time assigned, as provided in § 1340.5(c);

(iii) Specify the procedures for collecting additional data to reduce the nonresponse rate of the variables "passenger presence" and "belt use" if either of those nonresponse rates exceeds 10 percent, as provided in § 1340.9(f)(2);

(iv) Describe the data recording procedures; and

(v) Specify the number of observers and quality control monitors.

(3) *Estimation.*—The State shall—

(i) Describe how seat belt use rate estimates will be calculated;

(ii) Describe how variances will be estimated, as provided in § 1340.9(g);

(iii) Specify imputation methods, if any, that will be used, as provided in § 1340.9(c);

(iv) Specify the procedures to adjust sampling weight for observation sites with no usable data, as provided in § 1340.9(e); and

(v) Specify the procedures to be followed if the standard error exceeds 2.5 percentage points, as required in § 1340.5(d).

(b) *Survey design submission deadline.* States shall submit proposed survey designs to NHTSA for approval no later than January 3 of the calendar year during which the survey is to be conducted, beginning in calendar year 2011.

§ 1340.11 Post-approval alterations to survey design.

After NHTSA approval of a survey design, States shall submit for NHTSA approval any proposed alteration to their survey design that would impact the Statewide seat belt use rate estimate or standard error, including, but not limited to, sample design, seat belt use rate estimation method, variance estimation method and data collection protocols, at least three months before data collection begins.

§ 1340.12 Re-selection of observation sites.

(a) *Re-selection of observation sites.* States shall re-select observation sites using an updated sampling frame data, as described in § 1340.5(a), no less than once every five years.

(b) *Re-selection submission deadline.* States shall submit an updated sampling frame data meeting the requirements of § 1340.5(a) for NHTSA approval no later than March 1 of the re-selection year.

§ 1340.13 Annual reporting requirements.

(a) *Survey data.* States shall report the following information no later than March 1 of each year for the preceding calendar year's seat belt use survey, using the reporting form in Appendix A to this part:

(1) A spreadsheet in electronic format containing the raw data for each observation site and the observation site weight;

(2) The Statewide seat belt use rate estimate and standard error;

(3) Nonresponse rates for two variables—belt use and passenger presence—as provided in § 1340.9(g);

(4) Dates of the reported data collection;

(5) Observation sites, identified by type of observation site (i.e., observation site selected in the original survey design, alternate observation site selected subsequent to the original survey design), and by characteristics of the observation site visit (i.e., at least one vehicle observed, no vehicles observed); and

(6) Name of the State seat belt survey statistician meeting the qualification requirements, as provided in § 1340.8(c).

(b) *Certifications by Governor's Highway Safety Representative.* The Governor's Highway Safety Representative (GR) or if delegated in writing, the Coordinator of the State Highway Safety Office, shall sign the reporting form certifying that—

(1) _____ has been designated by the Governor as the GR,

and if applicable, the GR has delegated the authority to sign the certification in writing to _____, the Coordinator of the State Highway Safety Office;

(2) The reported Statewide seat belt use rate is based on a survey design that was approved by NHTSA, in writing, as conforming to the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340;

(3) The survey design has remained unchanged since the survey was approved by NHTSA; and

(4) The individual named in the reporting form is a qualified statistician who has reviewed and approved the seat belt use rate and standard error reported.

(c) *Certification by survey statistician.* The State seat belt survey statistician shall sign the reporting form certifying that —

(1) (S)he meets the qualifications of a State seat belt use survey statistician, as provided in § 1340.8(c), and

(2) The information reported is correct and is in compliance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340.

(d) *Audits.* NHTSA may audit State survey results and data collection. The State shall retain the following records for five years and make them available to NHTSA in electronic format within four weeks of request:

(1) Computation programs used in the sample selection;

(2) Computation programs used to estimate the Statewide seat belt use rate and standard errors for the surveys conducted since the last NHTSA approval of the sample design; and

(3) Sampling frame(s) for design(s) used since the last NHTSA approval of the sample design.

Appendix A to Part 1340—State Seat Belt Use Survey Reporting Form

PART A: To be completed by the Governor's Highway Safety Representative (GR) or if applicable, the Coordinator of the State Highway Safety Office

State: _____

Calendar Year of Survey: _____

Statewide Seat Belt Use Rate: _____

I hereby certify that:

- _____, has been designated by the Governor as the State's Highway Safety Representative (GR), and if applicable, the GR has delegated the authority to sign the certification in writing to _____, the Coordinator of the State Highway Safety Office.
- The reported Statewide seat belt use rate is based on a survey design that was approved by NHTSA, in writing, as conforming to the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340.
- The survey design has remained unchanged since the survey was approved by NHTSA.
- The individual named below is a qualified Statistician, who has reviewed and approved the seat belt use rate and standard error reported above.

Signature _____

Date _____

Printed name of signing official _____

PART B: To be completed by the State Seat Belt Survey Statistician

I hereby certify that I meet the qualifications of a State seat belt use survey statistician as provided in § 1340.8(c) and the information reported in Part C below is correct and is in compliance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340.

Signature of State seat belt survey statistician _____

Date _____

Printed name of State seat belt survey statistician _____

PART C: To be completed by the State Seat Belt Survey Statistician

DATA COLLECTED AT OBSERVATION SITES

Site ID	Site type ¹	Date observed	Sample weight	Number vehicles observed	Number front passengers	Number unknown passengers	Number belted occupants	Number unbelted occupant	Number unknown

¹ Identify if the observation site is an original observation site or an alternate observation site.

DATA COLLECTED AT OBSERVATION SITES—Continued

Site ID	Site type ¹	Date observed	Sample weight	Number vehicles observed	Number front passengers	Number unknown passengers	Number belted occupants	Number unbelted occupant	Number unknown
Total									

Standard Error of Statewide Belt Use Rate ²:

Nonresponse Rates, ³ as provided in § 1340.9(f)

Nonresponse rate for the survey variable seat belt use:

Nonresponse rate for the survey variable passenger presence:

Issued on: January 21, 2010.

David L. Strickland,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 2010-1613 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA-2010-0009]

Uniform Carrier Registration Plan Board of Directors; Request for Nominations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice Requesting Public Comment on Motor Carrier Industry Nominations to the Board of Directors.

SUMMARY: The FMCSA solicits nominations and applications from interested persons to serve as motor carrier industry representatives on the Board of Directors of the Unified Carrier Registration Plan, which governs the Uniform Carrier Registration Agreement (UCRA), as authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The Agency will appoint five members from the motor carrier industry. The UCRA governs the registration and the collection and distribution of fees paid by for-hire and private motor carriers, brokers, freight forwarders, and leasing companies. The UCRA replaced the Single State Registration System (SSRS), which was repealed January 1, 2008.

DATES: Nominations to the Board of Directors must be received on or before February 12, 2010.

ADDRESSES: You may submit comments to this notice, identified by docket number FMCSA-2010-0009, by any of the following methods—Internet, facsimile, regular mail, or hand-deliver.

Federal eRulemaking Portal: Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov>. The FDMS is the preferred method for submitting comments, and we urge you to use it. In the “Comment” or “Submission” section, type Docket ID Number “FMCSA-2010-0009”, select “Go”, and then click on “Send a Comment or Submission.” You will receive a tracking number when you submit a comment.

Fax: 1-202-493-2251.

Mail, Courier, or Hand-Deliver: U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Docket: Comments and material received from the public, as well as background information and documents mentioned in this preamble, are part of docket FMCSA-2010-0009, and are available for inspection and copying on the Internet at <http://www.regulations.gov>. You may also view and copy documents at the U.S. Department of Transportation’s Docket Operations Unit, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC.

Privacy Act: All comments will be posted without change including any personal information provided to the FDMS at <http://www.regulations.gov>. Anyone can search the electronic form of all our dockets in FDMS, by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The Department of Transportation’s (DOT) complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19476), and can be viewed at <http://docketsinfo.dot.gov>. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule

at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Otto, Office of Enforcement and Program Delivery, (202) 366-0710, FMCSA, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590 or by e-mail at: FMCSAregs@dot.gov.

Background

Section 4305(b) of SAFETEA-LU [Pub. L. 109-59, 119 Stat. 1144, August 10, 2005] enacted 49 U.S.C. 14504a titled “Unified carrier registration system plan and agreement.” Under the UCRA, motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies register and pay certain fees. The Unified Carrier Registration Plan Board of Directors must issue rules and regulations to govern the UCR. Section 14504a(a)(9) defines the Unified Carrier Registration Plan as the organization of State, Federal, and industry representatives responsible for developing, implementing, and administering the UCRA. Section 14504a(d)(1)(B) directed the Secretary to establish a Unified Carrier Registration Plan Board of Directors made up of 15 members from FMCSA, State government, and the motor carrier industry. The Board also must recommend initial annual fees to be assessed against carriers, leasing companies, brokers, and freight forwarders under the UCRA, as well as any annual adjustments to those fees. Section 14504a(d) stipulates that the Unified Carrier Registration Plan Board of Directors must consist of directors from the following groups:

U.S. Department of Transportation (the Department): One individual, either the FMCSA Deputy Administrator or such other Presidential appointee from the Department, must represent the Department.

Federal Motor Carrier Safety Administration: One director must be selected from each of the FMCSA service areas (as defined by FMCSA on January 1, 2005) from among the chief administrative officers of the State agencies responsible for administering the UCRA.

State Agencies: The five directors selected to represent State agencies must be from among the professional

² The standard error may not exceed 2.5 percent.

³ Either nonresponse rate may not exceed 10 percent.

staffs of State agencies responsible for overseeing the administration of the UCRA and must be nominated by the National Conference of State Transportation Specialists (NCSTS), a non-profit organization founded in 1959 and consisting of State agencies involved in transportation safety, insurance and consumer protection.

Motor Carrier Industry: Five directors must be from the motor carrier industry. Today's publication serves as a notice for public comment and recommendations for the five members of the UCRA Board of Directors from the motor carrier industry in accordance with 49 U.S.C. 14504a(d). At least one of the five motor carrier industry directors must be from "a national trade association representing the general motor carrier of property industry" and one of them must be from "a motor carrier that falls within the smallest fleet fee bracket."

The establishment of the Board was announced in the **Federal Register** on May 12, 2006 (71 FR 27777). In that notice, the Agency recognized the American Trucking Associations, Inc. (ATA) as the national trade association representing the general motor carrier of property industry. ATA is a national affiliation of State trucking

organizations representing the national, State and local interests of the 50 affiliated State trucking associations; and the interests of specialized areas of the trucking industry through conferences and councils. The Agency selected the Owner-Operator Independent Drivers Association (OOIDA) as the organization from which to appoint an individual to represent motor carriers comprising the smallest fleet fee bracket. OOIDA is a national trade association representing the interests of small trucking companies and drivers. The Secretary has discretion to appoint the remaining three industry representatives. In order to ensure participation on the Board by segments of the industry newly subject to the SSRS replacement system, the Secretary previously appointed three members as follows: (1) One member from the Transportation Intermediaries Association (TIA), (2) one member from the National Private Truck Council (NPTC), and (3) one member from Wal-Mart Stores, Inc. (Wal-Mart). TIA represents transportation intermediaries such as brokers, freight forwarders, and shippers doing business in domestic and international commerce. NPTC is a national trade association representing private motor carrier fleets. With nearly

7,000 tractors, over 40,000 trailers, and annual sales over \$285 billion, Wal-Mart is the nation's largest private motor carrier.

Each of the five current Directors from the motor carrier industry served an initial term of 3 years. Those terms expired, but the directors continue to serve until their replacements are appointed; each of them may be reappointed (49 U.S.C. 14504a(d)(1)(D)(iii) and (iv)).

Board Member Nominations

FMCSA seeks either nominations of, or expressions of interest from, individuals to serve as members of the board of directors for the UCR Plan from the motor carrier industry. Nominations or expressions of interest should be transmitted by means of the procedures for comments specified earlier in this notice. FMCSA and the Department will make the appointments for the five members from the motor carrier industry for three-year terms, expiring on May 31, 2012.

Issued on: January 15, 2010.

William A. Quade,

Associate Administrator, Enforcement and Program Delivery.

[FR Doc. 2010-1772 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-EX-P

Notices

Federal Register

Vol. 75, No. 18

Thursday, January 28, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 21, 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.

National Agricultural Statistics Service

Title: Fruits, Nut, and Specialty Crops.

OMB Control Number: 0535-0039.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official state and national estimates of crop and livestock production. Estimates of fruit, tree nuts, and specialty crops are an integral part of this program. These estimates support the NASS strategic plan to cover all agricultural cash receipts. The authority to collect these data activities is granted under U.S. Code title 7, Section 2204. Information is collected on a voluntary basis from growers, processors, and handlers through surveys.

Need and Use of the Information: Data reported on fruit, nut, specialty crops and Hawaii tropical crops are used by NASS to estimate acreage, yield, production, utilization, and crop value in States with significant commercial production. These estimates are essential to farmers, processors, and handlers in making production and marketing decisions. Estimates from these inquiries are used by market order administrators in their determination of expected supplies of crop under federal and state market orders as well as competitive fruits and nuts.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 63,305.

Frequency of Responses: Reporting: On occasion; Annually; Quarterly; Semi-annually; Monthly.

Total Burden Hours: 16,489.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010-1541 Filed 1-27-10; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

Forest Service

North Central Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Central Idaho RAC will meet in Grangeville, Idaho. The committee is meeting as authorized under the Secure Rural Schools and Community Self Determination Act (Pub. L. 110-343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to discuss potential projects for the new fiscal year.

DATES: The meeting will be held February 18, 2010, at 9 a.m. (PST) and continue on February 19, 2010, at 9 a.m. (PST).

ADDRESSES: The meeting will be held at Nez Perce National Forest Supervisor's Office, 104 Airport Road, Grangeville, Idaho. Written comments should be sent to Laura Smith at 104 Airport Road in Grangeville, Idaho 83530. Comments may also be sent via e-mail to lasmith@fs.fed.us or via facsimile to Laura at 208-983-4099.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Designated Forest Official at 208-983-5143.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. A public forum will begin on February 18th at 3 p.m. (PST). The following business will be conducted: Discussion of projects for FY10 approval. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: January 19, 2010.

Rick Brazell,

Forest Supervisor.

[FR Doc. 2010-1611 Filed 1-27-10; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2009-0040]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Additives

AGENCY: Office of the Acting Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Acting Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration

(FDA), U.S. Department of Health and Human Services, are sponsoring a public meeting on February 8, 2010. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 42nd Session of the Codex Committee on Food Additives (CCFA) of the Codex Alimentarius Commission (Codex), which will be held in Beijing, China March 15–19, 2010. The Acting Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 42nd Session of the CCFA and to address items on the agenda.

DATES: The public meeting is scheduled for Monday, February 8, 2010, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in the Auditorium (1A003), FDA, Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740.

Documents related to the 42nd Session of the CCFA will be accessible via the World Wide Web at the following address: <http://www.codexalimentarius.net/current.asp>.

The U.S. Delegate to the 42nd Session of the CCFA, Dennis Keefe, and FDA, invite interested U.S. parties to submit their comments electronically to the following e-mail address: cfsan-ccfa@fda.hhs.gov.

Registration

Attendees may register electronically at the same e-mail address provided above by February 4, 2010. Early registration is encouraged because it will expedite entry into the building and its parking area. If you require parking, please include the vehicle make and tag number when you register. Because the meeting will be held in a Federal building, you should also bring photo identification and plan for adequate time to pass through security screening systems.

Attendees that are not able to attend the meeting in-person but wish to participate may do so by phone. Those wishing to participate by phone should request the call-in number and conference code when they register for the meeting.

For Further Information About the 42nd Session of the CCFA Contact: Dennis M. Keefe, Ph.D., Manager, International Activities Office of Food Additive Safety, Center for Food Safety and Applied Nutrition, FDA, 5100 Paint Branch Parkway, College Park, MD

20740, Telephone: (301) 436–1284, Fax: (301) 436–2972, e-mail: dennis.keefe@fda.hhs.gov.

For Further Information About the Public Meeting Contact: Paul Honigfort, Ph.D, Consumer Safety Officer, Division of Food Contact Notifications, Office of Food Additive Safety CFSAN/FDA, 5100 Paint Branch Parkway HFS–275, College Park, MD 20740, Telephone: (301) 436–1206, Fax: (301) 436–2965, e-mail: paul.honigfort@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFA establishes or endorses permitted maximum levels for individual additives; prepares priority lists of food additives for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); assigns functional classes to individual food additives; recommends specifications of identity and purity for food additives for adoption by Codex; considers methods of analysis for the determination of additives in food; and considers and elaborates standards or codes for related subjects such as labeling of food additives when sold as such. The CCFA is hosted by China.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 42nd Session of the CCFA will be discussed during the public meeting:

- Matters referred by Codex and other Codex committees and task forces.
- Matters of interest arising from FAO/WHO and from the 71st Meeting of the JECFA.
- Endorsement and/or revision of maximum levels for food additives and processing aids in codex standards.
- Draft and proposed draft food additive provisions of the General Standards for Food Additives (GSFA).
- Comments and information on several food additive provisions of the GSFA.
- Comments and information on the reporting basis of the provisions for aluminum containing food additives included in the GSFA.

- Comments and information on several aspects of the Food Category System of the GSFA.

- Discussion paper on innovative proposals to expedite the work on the GSFA.

- Proposed draft guidelines and principles for substances used as processing aids.

- Inventory of substances used as processing aids, updated list.

- Proposals for changes or additions to the International Numbering System (INS) for food additives.

- Discussion paper on principles regarding the need for justification for proposals of changes to the INS.

- Specifications for the identity and purity of food additives arising from the 71st JECFA meeting.

- Proposals for additions and changes to the priority list of food additives proposed for evaluation by the JECFA.

- Discussion paper on mechanisms for re-evaluation of substances by the JECFA.

- Discussion paper on the identification of problems and recommendations related to the inconsistent presentation of food additives provisions in Codex commodity standards.

- Discussion paper on the Codex standard for food grade salt.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Executive Secretariat prior to the meeting. Members of the public may access these documents (*see ADDRESSES*).

Public Meeting

At the February 8, 2010, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 42nd Session of the CCFA, Dr. Dennis Keefe, (*see ADDRESSES*). Written comments should state that they relate to activities of the 42nd Session of the CCFA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at http://www.fsis.usda.gov/regulations/2010/Notices_Index/.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information

regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at http://www.fsis.usda.gov/news_and_events/email_subscription/. Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on January 20, 2010.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2010-1666 Filed 1-27-10; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the National Handbook of Conservation Practices for the Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of revised conservation practice standards in the National Handbook of Conservation Practices. These standards include: Air Filtration and Scrubbing (Code 371), Animal Trails and Walkways (Code 575), Combustion System Improvement (Code 372), Conservation Crop Rotation (Code 328), Diversion (Code 362), Dust Control on Unpaved Roads and Surfaces (Code 373), Forage Harvest Management (Code 511), Herbaceous Weed Control (Code 315), Range Planting (Code 550), and

Riparian Herbaceous Cover (Code 390). NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their respective electronic Field Office Technical Guides. These practices may be used in conservation systems that treat highly erodible land (HEL) or on land determined to be a wetland. Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out HEL and wetland provisions of the law.

DATES: *Effective Date:* This is effective January 28, 2010.

Comment date: Submit comments on or before March 1, 2010. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day period, and after consideration of all comments.

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

- *Mail:* Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6136 South Building, Washington, DC 20250.

- *E-mail:* wayne.bogovich@wdc.usda.gov.

FOR FURTHER INFORMATION CONTACT:

Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6136 South Building, Washington, DC 20250.

Electronic copies of these standards can be downloaded or printed from the following Web site: <ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/federal-register/>. Requests for paper versions or inquiries may be directed to Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6136 South Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The amount of the proposed changes varies considerably for each of the Conservation Practice Standards addressed in this notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with each standard's current version as shown at: <http://www.nrcs.usda.gov/technical/>

Standards/nhcp.html. To aid in this comparison, following are highlights of the proposed revisions to each standard:

Air Filtration and Scrubbing (Code 371)—This is a new standard which is a device or system for reducing emissions of air contaminants from a structure.

Animal Trails and Walkways (Code 575)—Proposed revisions are limited but include greater emphasis of potential impacts to water courses and other environmental and cultural resources.

Combustion System Improvement (Code 372)—This is a new standard to improve the air quality and energy efficiency of agricultural combustion systems.

Conservation Crop Rotation (Code 328)—The revised standard adds a purpose for cropping system diversity and pollinator habitat. Additional criteria have been added to improve soil quality and nutrient balance.

Diversion (Code 362)—Revisions include expansion of the Plans and Specifications section along with updated references.

Dust Control on Unpaved Roads and Surfaces (Code 373)—This is a new standard for controlling direct particulate matter emissions produced by vehicle and machinery traffic or wind action from unpaved roads and other surfaces by applying a palliative on the surface.

Forage Harvest Management (Code 511)—Revisions are minor in nature with updated references included.

Herbaceous Weed Control (Code 315)—This is a new standard to provide for herbaceous weed control on lands not actively in crop production. Requirements are included for biological, chemical, and mechanical control.

Range Planting (Code 550)—Revisions incorporate Ecological Site Description use for planning purposes and updates the reference section. Minor changes in wording occur throughout the standard.

Riparian Herbaceous Cover (Code 390)—Proposed revisions expand the practice purpose to include more habitat functions, including providing habitat for pollinator conservation. Use of ecological site descriptions for planning and monitoring this practice has been added. Additional references have been included.

Signed this January 25, 2010, in Washington, DC.

Dave White,

Chief, Natural Resource Conservation Service.

[FR Doc. 2010-1745 Filed 1-27-10; 8:45 am]

BILLING CODE 3410-16-P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance; Office of Food for Peace; Announcement of FFP Guidance for FY2010 Title II Proposals for Emergency Relief and Recovery Activities in Zimbabwe; Notice

Pursuant to the Food for Peace Act of 2008, notice is hereby given that the FFP Guidance for FY2010 Title II Proposals for Emergency Relief and Recovery Activities in Zimbabwe will be available to interested parties for general viewing.

For individuals who wish to review, the FFP Guidance for FY2010 Title II Proposals for Emergency Relief and Recovery Activities in Zimbabwe will be available via the Food for Peace Web site: http://www.usaid.gov/our_work/humanitarian_assistance/ffp/zimbab.html on or about February 2, 2010. Interested parties can also receive a copy of the FFP Response to Zimbabwe Country Specific Guidance Comments by contacting the Office of Food for Peace, U.S. Agency for International Development, RRB 7.06–152, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7600.

Juli Majernik,

Grants Manager, Policy and Technical Division, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. 2010–1776 Filed 1–27–10; 8:45 am]

BILLING CODE P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance; Office of Food for Peace; Announcement of FFP Response to Zimbabwe Country Specific Guidance Comments; Notice

Pursuant to the Food for Peace Act of 2008, notice is hereby given that the FFP Response to Zimbabwe Country Specific Guidance Comments will be available to interested parties for general viewing.

For individuals who wish to review, the FFP Response to Zimbabwe Country Specific Guidance Comments will be available via the Food for Peace Web site: http://www.usaid.gov/our_work/humanitarian_assistance/ffp/zimbab.html on or about February 2, 2010. Interested parties can also receive a copy of the FFP Response to Zimbabwe Country Specific Guidance Comments by contacting the Office of Food for Peace, U.S. Agency for

International Development, RRB 7.06–152, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7600.

Juli Majernik,

Grants Manager, Policy and Technical Division, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. 2010–1777 Filed 1–27–10; 8:45 am]

BILLING CODE P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974, System of Records

AGENCY: United States Agency for International Development.

ACTION: Notice of new system of records.

SUMMARY: The United States Agency for International Development (USAID) is issuing public notice of its intent to establish a new system of records maintained in accordance with the Privacy Act of 1974, (5 U.S.C. 552a), as amended, entitled “USAID–029, On-Line Collaboration Records”. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency (5 U.S.C. 522a(e)(4)).

DATES: Public comments must be received on or before March 1, 2010. Unless comments are received that would require a revision, this update to the system of records will become effective on March 9, 2010.

ADDRESSES: You may submit comments:

Paper Comments

* *Mail:* Deputy Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue, NW., Suite 2.12–003, Washington, DC 20523–2120.

Electronic Comments

* *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions on the Web site for submitting comments.

* *E-mail:* privacy@usaid.gov.

FOR FURTHER INFORMATION CONTACT: For general questions please contact, Rhonda Turnbow, Deputy Chief Privacy Officer (202) 712–0106.

SUPPLEMENTARY INFORMATION: The On-Line Collaboration Records system is being established as an Agency-wide system of record to cover all USAID on-line collaboration activities to include, public webinars, videoconferencing, social networking, on-line project Web

sites, and other on-line partnership efforts funded by USAID. USAID Offices, Bureaus, Missions, or Teams, that desire to collect, maintain or store personnel data under the scope of this system of record will be required to undergo a compliance review and register their system with the USAID Privacy Office.

The On-Line Collaboration Records is being established to collect and maintain information about the participants of USAID sponsored on-line collaborative activities. The information may include name, e-mail address, country, work address, professional affiliations, age, gender, phone number, and other professional biographical information. The information will be collected to register individuals wishing to participate in USAID sponsored on-line collaborative activities. This information will be used to perform statistical analysis of the types of participants engaging in collaboration activities such as, participation of certain age groups, and analysis of differences between genders and region. The results of the statistical analysis will help USAID determine if we are targeting the proper participants. Certain information may be made available to other participants during the collaborative activity such as name, affiliation and e-mail address to help foster partnerships and facilitate participation. In some instances, transcripts of the content and information presented during a collaborative activity may be made publicly available. In these cases, individuals will be provided appropriate notice and have the opportunity to choose whether or not they want to participate. USAID may also use this information to contact individuals after an event has ended to follow-up on comments, opinions or ideas.

Dated: January 25, 2010.

Rhonda L. Turnbow,

Deputy Chief Privacy Officer.

USAID–029

SYSTEM NAME:

USAID On-Line Collaboration Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

Records are maintained at USAID, 1300 Pennsylvania Avenue, NW., Ronald Reagan Building Suite 2.12, Washington, DC 20523.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will contain records of any individual who participates in a USAID sponsored on-line collaboration activity, for which registration is required.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records include, name, e-mail address, phone number, affiliation, title, role, company, country, age, gender, username, password, professional biographical information, such as program areas of expertise, foreign language skills, professional affiliations, professional certifications, photograph, regional or country-based experience, operational experience and educational experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Records in this system may be used:

- (1) To perform content analysis by participant;
- (2) To perform aggregated statistical analysis of collaborative participants, such as, age, gender, country;
- (3) To create an on-line business card and identify individuals as they participate to promote collaboration;
- (4) To register participants for collaborative activities;
- (5) To perform analysis to determine if agency needs to conduct outreach or marketing to encourage participation in a specific area, age group, region, area of expertise;
- (6) To follow up with individuals to clarify thoughts, opinions or comments provided during an on-line session.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

These records are not disclosed to consumer reporting agencies.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to USAID's routine uses, detailed transcripts of webinars, conferences and other public forums may be posted publicly to allow interested parties to perform analysis of the information presented. Aggregated data may also be publicly available through Web site postings, fact sheets, brochures or other means to encourage and generate public interest and for general informational purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

All records will be stored electronically in a database within USAID's firewall.

RETRIEVABILITY:

Records are retrievable by name, location or any other identifier listed in the categories of records cited above.

SAFEGUARDS:

All records will be maintained within USAID's security perimeter. Physical security controls include secured space monitored by guards. Access to the database will be authorized, set up and monitored by the information system security officer.

RETENTION AND DISPOSAL:

Individual records will be destroyed when their use is no longer required.

SYSTEM MANAGER AND ADDRESS:

USAID, Chief Information Officer, 1300 Pennsylvania Ave., NW., RRB Suite 2.12, Washington, DC 20253.

NOTIFICATION PROCEDURES:

Individuals requesting notification of the existence of records on them must send the request in writing to the USAID Chief Privacy Officer, 1300 Pennsylvania Ave., NW, RRB Suite 2.12-003, Washington, DC 20253. The request must include the requestor's full name, his/her current address and a return address for transmitting the information. The request shall be signed by either notarized signature or by signature under penalty of perjury and reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

Individuals requesting access to a record maintained on them must address the request to the USAID Chief Privacy Officer as described in "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment of a record maintained on them must identify the information to be changed and the corrective action sought. Requests must be sent to the USAID Chief Privacy Officer as described in "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

The records contained in this system should be provided by the individual who is the subject of the record. Additional sources may include a supervisor, personal assistant or other individual assigned by the individual to provide the information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010-1775 Filed 1-27-10; 8:45 am]

BILLING CODE P**COMMISSION ON CIVIL RIGHTS****Sunshine Act Notice**

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of closed portions of meeting.

SUMMARY: On January 7, 2010 (75 FR 969) the U.S. Commission on Civil Rights announced a business meeting to be held on Friday, January 15, 2010 at the Commission's headquarters. On Friday, January 15, 2010 the Commission's General Counsel, David Blackwood, and Solicitor, Emma Monroig, certified that portions of the meeting were appropriate to be closed pursuant to exemptions 9 and 10 of 45 CFR 702.53. A majority of the Commissioners present voted to close portions of the meeting pursuant to this certification. The Presiding Officer, Chairman Gerald Reynolds, issued a statement setting forth the time and location of the closed meeting and the persons present in closed session. A complete verbatim transcript and/or electronic recording of the closed proceedings will be maintained by the Commission.

The decision to close portions of the meeting was too close in time to the day of the meeting for the publication of a revised notice to appear in advance of the scheduled meeting date. The details of the meeting, including the portions which were closed to the public, are:

DATE AND TIME: Friday, January 15, 2010; 9:30 a.m. EST.

PLACE: 624 9th St., NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting was open to the public, except for discussion of the agenda item: "Update on Status of the 2010 Enforcement Report," which was held in closed session pursuant to exemptions 9 and 10 of 45 CFR 702.53.

I. Approval of Agenda.

II. Program Planning.

- Approval of Briefing Report on the Impact of Illegal Immigration on the Wages and Employment of Black Workers.
- Approval of Briefing Report on Covert Wiretapping in the War on Terror.
- Multi-Ethnic Placement Act Briefing Report.

- Consideration of Findings & Recommendations.
 - Motion to Approve MEPA Finding #9.
 - Motion to Approve MEPA Recommendation #3.
 - Motion to Approve MEPA Recommendation #8.
 - Consideration of Timeline for MEPA Concurring/Dissenting Opinions & Rebuttals.
 - Approval of Follow-up Letter regarding Louisiana Justice of the Peace.
 - Discussion and possible letter involving new SEC corporate disclosure rule re: diversity.
 - Update & Action on Status of Collection and Web Posting of Documents for Commission Clearinghouse Project.
 - Update on Status of the 2010 Enforcement Report. [Discussion of this agenda item was held in closed session.]
 - Consideration of Reporting Procedures for the Discovery Subcommittee on the 2010 Enforcement Report.
 - Update on Status of Title IX Project.
- III. State Advisory Committee Issues.
- Pennsylvania.
- IV. Approval of December 16, 2009 Meeting Minutes.
- V. Staff Director's Report.
- VI. Adjourn.

CONTACT PERSON FOR FURTHER

INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376-8591. TDD: (202) 376-8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202-376-8105. TDD: (202) 376-8116.

Dated: January 26, 2010.

David Blackwood,
General Counsel.

[FR Doc. 2010-1874 Filed 1-26-10; 4:15 pm]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-955]

Certain Magnesia Carbon Bricks From the People's Republic of China: Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is aligning the final

countervailing duty (CVD) determination for Certain Magnesia Carbon Bricks (Bricks) from the People's Republic of China (PRC) with the final determinations of the antidumping duty (AD) investigations of Bricks from the PRC and Mexico.

DATES: *Effective Date:* January 28, 2010.

FOR FURTHER INFORMATION CONTACT: Toni Page and Summer Avery, AD/CVD Operations, Office 6, Operations, Import Administration, U.S. Department of Commerce, Room 7867, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1398 and (202) 482-4052, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On August 18, 2009, the Department initiated the CVD investigation of Bricks from the PRC and the AD investigations of Bricks from the PRC and Mexico. *See Certain Magnesia Carbon Bricks from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 42858 (August 25, 2009) and *Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 74 FR 42852 (August 25, 2009). The CVD investigation and the AD investigations have the same scope with regard to the merchandise covered. On December 23, 2009, the Department published its preliminary CVD determination. *See Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Negative Countervailing Duty Determination*, 74 FR 68241 (December 23, 2009) (*CVD Preliminary Determination*). On January 7, 2010, Petitioner¹ submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final CVD determination with the final AD determinations of Bricks from the PRC and Mexico. In the letter, Petitioner acknowledges that it missed the regulatory deadline for filing the request and explained the extenuating circumstances.² Petitioner goes on to state that under these extenuating circumstances, the Department should accept its belated request for alignment.

¹ The Petitioner in the instant investigation is Resco Products Inc.

² These circumstances included the Department's partial or full closure during the five-day period after the *CVD Preliminary Determination* was published (from December 23, 2009 through December 28, 2009), and the firm's closure due to relocation from December 28, 2009 until January 5, 2010, which resulted in the firm's inability to access its computer systems until the completion of that move.

Alignment of the CVD Final Determination With the Final AD Determinations

According to 19 CFR 351.210(i), a petitioner must submit a written request to postpone the final CVD determination to the date of final determination in a companion AD investigation within five days of the date of publication of the preliminary CVD determination. However, because the five-day deadline is not a statutory deadline, the Department has discretion, pursuant to 19 CFR 351.302(b), to extend the deadline for filing an alignment request. The Department has decided to accept Petitioner's belated request to align the final CVD determination with the final AD determinations. The alignment of the final determination in this CVD investigation will ensure that the Department can thoroughly analyze the complicated and novel issues, which have arisen. In addition, the alignment will allow interested parties adequate time to comment on the Department's analyses.

Therefore, in accordance with 19 CFR 351.302(b), we are hereby extending the deadline for filing the alignment request and, in accordance with section 705(a)(1) of the Act, we are aligning the final CVD determination with the final AD determinations in the companion Bricks AD investigations. Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than May 10, 2010, unless the final AD determinations are extended.

This determination is issued and published pursuant to Section 705(a)(1) of the Act.

Dated: January 22, 2010.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-1796 Filed 1-27-10; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XU02

Endangered and Threatened Species: Notice of Intent to Prepare a Recovery Plan for Cook Inlet Beluga Whales

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

ACTION: Notice of Intent to prepare recovery plan; request for information.

SUMMARY: NMFS is required by the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), to develop plans for the conservation and survival of federally listed species, i.e., recovery plans. NMFS is announcing its intent to prepare a recovery plan for the Cook Inlet beluga whale (*Delphinapterus leucas*) and requests information from the public.

DATES: All information must be received no later than 5 p.m. Alaska Time by March 29, 2010.

ADDRESSES: Submit materials by any of the following methods:

- E-mail: The mailbox address for submitting e-mail information for recovery planning is CIBRP@noaa.gov. Please include "Cook Inlet Beluga Recovery Plan Information" in the subject line of the e-mail.
- Mail: Submit written comments and information to National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, ATTN: Ellen Sebastian.
- Hand Delivery/Courier: National Marine Fisheries Service, 709 West 9th Street, Room 420, Juneau, AK 99802. Business hours are 8 a.m. to 5 p.m., Monday through Friday, except federal holidays.
- Fax: (907) 586-7557. Please identify the fax comments as "Cook Inlet Beluga Recovery Plan Information."

FOR FURTHER INFORMATION CONTACT:

Mandy Migura, Marine Mammal Specialist, Anchorage Field Office, (907) 271-1332.

SUPPLEMENTARY INFORMATION:

Background

Management responsibility for beluga whales in Alaska lies with the Secretary of Commerce and has been delegated to NMFS. As such, NMFS is charged with the recovery of Cook Inlet belugas, which are listed as endangered under the ESA. The recovery planning process is guided by the statutory language of section 4(f) of the ESA and NMFS policies. Recovery is the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the ESA are no longer necessary. The ESA specifies that recovery plans must include: (1) a description of management actions as may be necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would result in the species being removed from the list; and (3) estimates of time and costs required to achieve the plan's goal and the intermediate steps towards that goal.

In an effort to expedite the recovery plan process, NMFS will work towards incorporating relevant portions of the final Conservation Plan for the Cook Inlet Beluga Whale into the draft Recovery Plan.

Section 4(f) of the ESA, as amended in 1988, requires that public notice—and an opportunity for public review and comment—be provided during recovery plan development. NMFS is hereby soliciting relevant information on Cook Inlet beluga whales and their habitats. Upon completion, the draft Recovery Plan will be available for public review and comment through the publication of a **Federal Register** Notice. NMFS requests relevant information from the public during preparation of the draft Recovery Plan. Such information should address: (a) criteria for removing the Cook Inlet beluga whales from the list of threatened and endangered species; (b) factors that are presently limiting, or threaten to limit, the survival of the belugas; (c) actions to address limiting factors and threats; (d) estimates of time and cost to implement recovery actions; and (e) research, monitoring, and evaluation needs.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 22, 2010.

Therese Conant,

Deputy Chief, Division of Endangered Species, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010-1769 Filed 1-27-10; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-502]

Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 31, 2009, the Department of Commerce (the Department) published the preliminary results of a semiannual new shipper review under the antidumping duty order on circular welded carbon steel pipes and tubes (pipes and tubes) from Thailand. *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 44825 (August 31, 2009) (*Preliminary Results*). This new shipper review covers one producer/exporter of the subject merchandise to the United States,

Pacific Pipe Public Company Limited (Pacific Pipe). The period of review (POR) is March 1, 2008 through September 30, 2008. Subsequent to the *Preliminary Results*, we conducted verification and provided parties with an opportunity to comment. We received timely case and rebuttal briefs, and have made changes to our calculation as a result of verification and based on our analysis of the comments. Therefore, the final results differ from those published in the Department's *Preliminary Results*. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

DATES: *Effective Date:* January 28, 2010.

FOR FURTHER INFORMATION CONTACT:

Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2371.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2009, the Department published the preliminary results of a semiannual new shipper review under the antidumping duty order covering pipes and tubes from Thailand. *See Preliminary Results*. The domestic interested parties for this proceeding are Allied Tube & Conduit Corporation and Wheatland Tube Company (petitioners).

On September 17, 2009, the Department issued a third supplemental questionnaire to Pacific Pipe in order to evaluate further the *bona fide* nature of Pacific Pipe's U.S. sale and to seek clarification on sales information previously submitted. Pacific Pipe timely responded on September 29, 2009. The Department conducted a verification of Pacific Pipe in Bangkok, Thailand in October 2009 and issued a verification report. *See Memorandum to File from Myrna Lobo, International Trade Compliance Analyst, Office 6, Verification of the Sales Response of Pacific Pipe Public Company, Limited in the Antidumping New Shipper Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand*, dated November 5, 2009 (*Verification Report*). We invited parties to comment on the *Preliminary Results* and *Verification Report*. We received a timely filed case brief from Pacific Pipe and a timely filed rebuttal brief from petitioners. The Department did not receive a request for a hearing.

On November 19, 2009, the Department published a notice

extending the deadline for the final results to January 21, 2009. *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Extension of Time Limit for Final Results of Antidumping Duty New Shipper Review*, 74 FR 59961 (November 19, 2009).

Scope of the Order

The products covered by this antidumping order are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipes and tubes." The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and purposes of U.S. Customs and Border Protection (CBP), our written description of the scope of the order is dispositive.

Bona Fides Analysis of U.S. Sale

In the *Preliminary Results*, we determined that Pacific Pipe's U.S. sale was a *bona fide* transaction. *See Memorandum to Dana Mermelstein, Program Manager, from Myrna Lobo, Case Analyst, regarding Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand: Pacific Pipe Public Company, Limited*, dated August 24, 2009 (*Bona Fides Preliminary Memorandum*). The Department also stated it would continue to examine, through the remainder of the review, all factors relating to the *bona fides* of the sale. We have further examined the *bona fides* of Pacific Pipe's U.S. sale, and for these final results we continue to find the sale to be a *bona fide* transaction. For further details, see *Memorandum to Dana Mermelstein, Program Manager, from Myrna Lobo, Case Analyst, Bona Fide Analysis of Pacific Pipe's U.S. Sale for the Final Results of Antidumping Duty New Shipper Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand: Pacific Pipe Public Company, Limited*, dated concurrently with this notice (*Bona Fides Final Memorandum*).

Verification

As provided in 19 CFR 351.307(b)(1)(iv), the Department conducted verification of Pacific Pipe's

questionnaire responses at the company's offices in Bangkok, Thailand from October 5 through 8, 2009. Our verification results are detailed in the *Verification Report*.

Analysis of Comments Received

All issues raised in Pacific Pipe's case brief and petitioners' rebuttal brief are addressed in the Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, *Antidumping Duty New Shipper Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand—Pacific Pipe Public Company, Limited: Issues and Decision Memorandum for the Final Results*, dated concurrently with this notice (*Issues and Decision Memorandum*), which is hereby adopted by this notice. A list of the issues raised, all of which are addressed in the *Issues and Decision Memorandum*, is appended to this notice. Parties can find a complete discussion of all issues raised in the case and rebuttal briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room 1117 of the main Department of Commerce building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at <http://www.trade.gov/ia/>. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on the results of verification and our analysis of the comments received from the interested parties, we have made changes where appropriate, to the margin calculation for Pacific Pipe. Specifically, we have excluded certain sales from the margin calculation which we consider to be scrap sales; we have included expenses incurred on U.S. packing and other U.S. direct selling expenses (such as certain bank charges) identified at verification; and finally, we have combined ASTM A53 Grade A and Grade B sales in the home market, consistent with the product matching criteria. For a complete discussion of the changes which the Department has made to the margin calculation for Pacific Pipe, see *Memorandum to Dana Mermelstein, Program Manager, from Myrna Lobo, Case Analyst, Analysis of Pacific Pipe Public Company, Limited, for the Final Results of the Antidumping Duty New Shipper Review of Circular Welded*

Carbon Steel Pipes and Tubes from Thailand for the period 03/01/2008 through 09/30/2008, dated January 21, 2010 (*Final Analysis Memorandum*). A public version of this memorandum is on file in the CRU.

Final Results of the Review

We determine the following percentage weighted-average margin exists for the period March 1, 2008 through September 30, 2008:

Manufacturer/exporter	Margin (percent)
Pacific Pipe Public Co., Ltd	5.14

Disclosure

We will disclose the calculations used in our analysis to parties to these proceedings within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 751(a)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), the Department normally calculates an assessment rate for each importer of the subject merchandise covered by the review. Pacific Pipe reported the entered value of its sale of subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific duty assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of new shipper review for all shipments of circular welded carbon steel pipes and tubes entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Pacific Pipe, the cash deposit rate will be the rate established in the final results of this new shipper review; (2) if the exporter is not a firm

covered in this review, a prior review, or the original less-than-fair value investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash-deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 15.67 percent, which is the all-others rate established in the less than fair value investigation. *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Determination of Sales at Less Than Fair Value*, 51 FR 3384 (January 27, 1986). These cash deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding 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 or 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 that is subject to sanction.

The final results of this new shipper review are issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214.

Dated: January 21, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

Comments in the Issues and Decision Memorandum

Comment 1: Whether the Department Should Use Invoice Date as the Date of Sale for the U.S. Sale in the Final Results.

Comment 2: Whether the Department Should Continue to Treat Home Market Pre-Sale Freight and Warehousing Expenses as Movement Expenses.

Comment 3: Whether Pacific Pipe Has Established that Transportation Rates Paid to its Affiliated Carrier Are at Arm's Length.

[FR Doc. 2010-1783 Filed 1-27-10; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-965]

Drill Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigations

EFFECTIVE DATE: January 28, 2010.

FOR FURTHER INFORMATION CONTACT: Toni Dach or Scot T. Fullerton, AD/CVD Operations, Office 9, (202) 482-1655 or (202) 482-1386, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On December 31, 2009¹, the Department of Commerce (the "Department") received a petition concerning imports of drill pipe from the People's Republic of China ("PRC") filed in proper form by VAM Drilling USA, Inc., Texas Steel Conversion, Inc., Rotary Drilling Tools, TMK IPSCO, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC ("Petitioners"). *See* "Petitions for the Imposition of Antidumping and Countervailing Duties: Drill Pipe from the People's Republic of China," dated December 31, 2009 ("Petition"). On January 6, 2010, the Department issued additional requests for information and clarification of certain areas of the Petition. Petitioners timely filed additional information on January 11, 2010. *See* "Drill Pipe from the People's Republic of China," dated January 11,

¹ The Petitioners filed the Petition at the International Trade Commission ("ITC") after 12:00 noon on December 30, 2009, therefore, pursuant to 19 CFR 207.10(a), the ITC deemed the Petition to have been filed on the next business day, December 31, 2009. Section 732(b)(2) of the Tariff Act of 1930, as amended (the "Act") requires simultaneous filings of antidumping duty petitions with the Department and the ITC, therefore, we deem the Petition to have been filed with the Department on December 31, 2009. This file date will change the initiation date from January 19, 2009, to January 20, 2009. *See* Memorandum to Ronald K. Lorentzen, entitled "Decision Memorandum Concerning Petitions Filing Date," dated concurrently with this checklist.

2010 ("Supplement to the PRC AD Petition"). In addition, Petitioners further timely filed additional information pertaining to general issues in the Petition on January 11, 2010. *See* "Petition for the Imposition of Antidumping Duties on Drill Pipe from the PRC: Response to Department's Letter of January 6, 2010," dated January 11, 2010 ("Supplement to the AD/CVD Petitions"). On January 14, 2010, the Department issued a second request for information and clarification of certain areas of the Petition. Petitioners timely filed additional information on January 15, 2010. *See* "Petitions for the Imposition of Antidumping and Countervailing Duties: Response to the Department's Letter of January 14, 2010," dated January 15, 2010 ("Second Supplement to the AD/CVD Petitions"); *see also* "Petitions for the Imposition of Antidumping and Countervailing Duties: Drill Pipe from the PRC: Response to Department's Letter of January 14, 2010: Additional Affidavit, dated January 15, 2010 ("Third Supplement to the AD/CVD Petitions"). On January 19, 2010, Petitioners filed further clarifications related to general issues. *See* "Petitions for the Imposition of Antidumping and Countervailing Duties: Drill Pipe from the PRC: Response to the Department's letter of January 14, 2010: Additional Affidavit," dated January 19, 2010 ("Fourth Supplement to the AD/CVD Petitions").

In addition, on both January 15, and January 19, 2010, we received comments filed by Lehnardt & Lehnardt, LLC, on behalf of Downhole Pipe & Equipment, LP ("Downhole Pipe") and Command Energy Services International ("Command Energy"), U.S. importers of drill pipe from China. Downhole Pipe and Command Energy are interested parties as defined by section 771(9)(A) of the Act.

The period of investigation ("POI") is April 1, 2009, through September 30, 2009. *See* 19 CFR 351.204(b)(1).

In accordance with section 732(b) of the Act, Petitioners allege that imports of drill pipe from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are an interested party, as defined in section 771(9)(C) and (D) of the Act, and have demonstrated sufficient industry support with respect to the antidumping duty investigation that Petitioners are requesting the Department to initiate

(see “Determination of Industry Support for the Petition” section below).

Scope of the Investigation

The product covered by this investigation is drill pipe from the PRC. For a full description of the scope of the investigation, please see “Scope of Investigation,” in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by Wednesday, February 10, 2010, which is twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration’s APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of drill pipe to be reported in response to the Department’s antidumping questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: 1) general product characteristics; and 2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences

among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe drill pipe, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by February 10, 2010. Additionally, rebuttal comments must be received by February 17, 2010.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The IITC, which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section

771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that drill pipe constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see Antidumping Duty Investigation Initiation Checklist: Drill Pipe from the People’s Republic of China (“Checklist”), at Attachment II, Industry Support, on file in the Central Records Unit, Room 1117 of the main Department of Commerce building.

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of Investigations” section above. To establish industry support, Petitioners provided their production of the domestic like product in 2008, and compared this to the estimated total production of the domestic like product for the entire domestic industry. See Volume I of the Petition at 2–3; *see also* Supplement to the AD/CVD Petitions at 6–13 and Exhibit 3; Second Supplement to the AD/CVD Petitions at 1–4 and Exhibits 1–3; Third Supplement to the AD/CVD Petitions at Exhibit 1; and Fourth Supplement to the AD/CVD Petitions at Exhibit 1. To estimate 2008 production of the domestic like product, Petitioners used their own data and

industry specific knowledge. *See* Second Supplement to the AD/CVD Petitions at 1–4 and Exhibits 1–3; *see also* Checklist at Attachment II. We have relied upon data Petitioners provided for purposes of measuring industry support. For further discussion, *see* Checklist at Attachment II.

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Because the Petition and supplemental submissions did not establish support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, the Department was required to take further action in order to evaluate industry support. *See* section 732(c)(4)(D) of the Act. In this case, the Department was able to rely on other information, in accordance with section 732(c)(4)(D)(i) of the Act, to determine industry support. *See* Checklist at Attachment II. Based on information provided in the Petition and other submissions, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Checklist at Attachment II.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) and (D) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigations that it is requesting the Department initiate. *Id.*

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal

value (“NV”). In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry’s injured condition is illustrated by reduced market share, reduced production, reduced shipments, reduced capacity and capacity utilization, underselling and price depression or suppression, reduced employment, hours worked, and wages paid, decline in financial performance, lost sales and revenue, and increase in import penetration. *See* Vol. I of the Petition, at 13–25. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Checklist at Attachment III, Injury.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of drill pipe from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the initiation checklist. *See* Checklist.

U.S. Price

Petitioners calculated export price (“EP”) based on documentation of offers for sale obtained from a confidential source. *See* Checklist; *see also* Vol. II of the Petition, at 2–4 and Exhibits II–3–B and II–3–C. Based on the terms of sale, Petitioners adjusted the export price for brokerage and handling and foreign domestic inland freight. *See* Checklist; *see also* Supplement to the AD PRC Petition at 4–5 and Exhibit 5.

Petitioners also calculated margins based on the weighted average unit value data for the POI of imports from the PRC of drill pipe. Based on the terms of sale, Petitioners adjusted the export price for brokerage and handling and foreign domestic inland freight. *Id.*

Normal Value

Petitioners claim the PRC is a non-market economy (“NME”) country and that no determination to the contrary has been made by the Department. *See* Vol. I of the Petition, at 1. In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the

Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on factors of production valued in a surrogate market–economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issue of the PRC’s NME status and the granting of separate rates to individual exporters.

Petitioners contend that India is the appropriate surrogate country for the PRC because: 1) it is at a level of economic development comparable to that of the PRC and 2) it is a significant producer and exporter of comparable merchandise. *See* Vol. II of the Petition, at 1–2. Based on the information provided by Petitioners, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioners calculated NV and the dumping margins using the Department’s NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated NV based on consumption rates of the factors of production on the average consumption rates of a drill pipe producer in the United States (“Surrogate Domestic Producer”) for identical or similar merchandise. *See* Vol. II of the Petition, at 5–6 and Exhibit II–1–B. In calculating NV, Petitioners based the quantity of each of the inputs used to manufacture drill pipe in the PRC on product-specific production costs and/or consumption rates of the Surrogate Domestic Producer during the POI. *See* Vol. II of the Petition, at 6–12 and Exhibits II–1–B, II–4. Petitioners state that the actual usage rates of the foreign manufacturers of drill pipe are not reasonably available; however, Petitioners note that according to the information available, the production of drill pipe relies on similar production methods to the Surrogate Domestic Producer. *See* Vol. II of the Petition, at 5; *see also* Supplement to the AD/CVD Petitions at 3–4.

As noted above, Petitioners determined the consumption quantities of all raw materials based on the

production experience of the Surrogate Domestic Producer. Petitioners valued the factors of production based on reasonably available, public surrogate country data, specifically, Indian import statistics from the Global Trade Atlas ("GTA").² See Vol. II of the Petition, at 6; see also Supplement to the AD/CVD Petitions at 5 and Exhibit 5. Petitioners excluded from these import statistics imports from countries previously determined by the Department to be NME countries. Petitioners also excluded import statistics from Indonesia, the Republic of Korea, and Thailand, as the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies.³ *Id.* In addition, Petitioners made currency conversions, where necessary, based on the POI-average rupee/U.S. dollar exchange rate, as reported on the Department's web site. See Vol. II of the Petition, at Exhibit II-5. Petitioners determined labor costs using the labor consumption, in hours, derived from the Surrogate Domestic Producer's experience. See Vol. II of the Petition, at 12 and Exhibit II-4-C-1. Petitioners valued labor costs using the Department's NME Wage Rate for the PRC at <http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html>. *Id.* For purposes of initiation, the Department determines that the surrogate values used by Petitioners are reasonably available and, thus, acceptable for purposes of initiation.

Petitioners determined electricity costs using the electricity consumption, in kilowatt hours, derived from the Surrogate Domestic Producer's experience. See Vol. II of the Petition, at 11-12 and Exhibit II-4-C-1; see also Supplement to the AD/CVD Petitions at 3 and Exhibit 3. Petitioners valued electricity using the Indian electricity rate reported by the Central Electric Authority of the Government of India. See Vol. II of the Petition, at 11-12 and Exhibit II-4-C-2.

Petitioners did not identify packing materials used in preparing finished drill pipe. Consequently, Petitioners did not include packing materials in its calculation of normal value. See Second Supplement to the AD/CVD Petitions at 5.

² Petitioners also provided NV calculations based on their purchase price for tool joints. *Id.*; see also Checklist for more discussion on these calculations, as well as the "Fair-Value Comparison" section below.

³ We adjusted Petitioners' data to exclude the inflators used to inflate the contemporaneous GTA data.

Petitioners based factory overhead, selling, general and administrative, and profit on data from Oil Country Tubular Ltd., a producer of similar merchandise, for the 2008 - 2009 fiscal year. See Vol. II of the Petition, at 12 and Exhibit II-4-D-1.

Fair-Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of drill pipe from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. prices and NV calculated in accordance with section 773(c) of the Act, the estimated dumping margins for drill pipe from the PRC, using GTA values for all inputs, range from 429.53 percent to 496.93 percent. See Checklist and Second Supplement to the AD/CVD Petitions at Exhibit 5. In addition, Petitioners provided estimated dumping margins using POI average-unit values for imports of PRC-origin drill pipe into the United States, and Petitioners' own cost data for tool joints. See Checklist at 10.

Initiation of Antidumping Investigation

Based upon the examination of the Petition on drill pipe from the PRC, the Department finds the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of drill pipe from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Targeted-Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted-dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted-dumping allegations, 19 CFR 351.301(d)(5). See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008). The Department stated that "withdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area." *Id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted-dumping allegation in either of these investigations pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection

For this investigation, the Department will request quantity and value information from known exporters and producers identified with complete contact information in the Petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005). On the date of the publication of this initiation notice in the **Federal Register**, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html>, and a response to the quantity and value questionnaire is due no later than February 11, 2010. Also, the Department will send the quantity and value questionnaire to those PRC companies identified in the Petition at Exhibit I-7 and in the Second Supplement to the AD/CVD Petitions at Exhibit 4.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's web site at <http://ia.ita.doc.gov/apo>.

Separate Rates Application

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries, dated April 5, 2005 ("Policy Bulletin"), available on the Department's web site at <http://ia.ita.doc.gov/policy/bull05->

1.pdf. Based on our experience in processing the separate-rate applications in previous antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. *See, e.g., Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China*, 72 FR 43591, 43594–95 (August 6, 2007). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the "Respondent Selection" section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate-rate status.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Policy Bulletin states:

{W}hile 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 applies 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 at 6 (emphasis added).

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the representatives of the Government of the PRC. Because of the large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, no later than February 16, 2010, whether there is a reasonable indication that imports of drill pipe from the PRC are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated January 20, 2010.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The products covered by the investigation are steel drill pipe, and steel drill collars, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes suitable for drill pipe), without regard to the specific chemistry of the steel (*i.e.*, carbon, stainless steel, or other alloy steel), and without regard to length or outer diameter. The scope does not include tool joints not attached to the drill pipe, nor does it include

unfinished tubes for casing or tubing covered by any other antidumping or countervailing duty order.

The subject products are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) categories: 7304.22.0030, 7304.22.0045, 7304.22.0060, 7304.23.3000, 7304.23.6030, 7304.23.6045, 7304.23.6060, 8431.43.8040 and may also enter under 8431.43.8060, 8431.43.4000, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.49.0015, 7304.49.0060, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, and 7304.59.8055.⁴

While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the investigation is dispositive. [FR Doc. 2010-1795 Filed 1-27-10; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XU07

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); data workshop for yellowedge grouper and tilefish.

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

ACTION: Notice of SEDAR Data Workshop for Gulf of Mexico yellowedge grouper and tilefish.

SUMMARY: The SEDAR assessments of the Gulf of Mexico stocks of yellowedge grouper and tilefish will consist of a series of workshops and webinars: a Data Workshop, a series of Assessment webinars, and a Review Workshop. This is the twenty-second SEDAR. See **SUPPLEMENTARY INFORMATION**.

DATES: The Data Workshop will take place March 15–19, 2010. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The Data Workshop will be held at Quorum Hotel Tampa, 700 N. Westshore Blvd, Tampa, FL; telephone: (813) 289-8200.

⁴ Prior to February 2, 2007, these imports entered under different tariff classifications, including 7304.21.3000, 7304.21.6030, 7304.21.6045, and 7304.21.6060.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571-4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and

database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

**SEDAR 22 Data Workshop Schedule:
March 15–19, 2010; SEDAR 22 Data Workshop**

March 15, 2010: 1 p.m. - 8 p.m.; March 16–18, 2010: 8 a.m. - 8 p.m.; March 19, 2010: 8 a.m. - 12 p.m.

An assessment data set and associated documentation will be developed during the Data Workshop. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: January 22, 2010.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010-1658 Filed 1-27-10; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

**LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT
12/18/2009 THROUGH 1/20/2010**

Firm	Address	Date accepted for filing	Products
Air Systems International, Inc.	829 Juniper Crescent, Chesapeake, VA 23320.	12/28/2009	Air Systems manufactures low and high pressure breathing air filtration products, small compressors, industrial vacuums, and portable equipment used in confined spaces such as emergency response equipment and fans and blowers.
E.C. Phillips & Son, Inc	1775 Tongass Ave., Ketchikan, AK 99901.	12/29/2009	Salmon/fresh, whole and frozen fillets. Materials, salmon, water, ice, knives, packaging; Process HG salmon clean package for fresh fish.
ModuForm, Inc	172 Industrial Road, Fitchburg, MA 01420.	12/30/2009	Solid wood furniture, tables, chairs and upholstered seating.
Nutron Manufacturing, Inc	5 Wisconsin Avenue, Norwich, CT 06360.	12/30/2009	Manufacture lighting fixtures. Fabrication, finishing, assembly, warehouse, packaging and shipping.
Quabbin Wire & Cable Co., Inc	10 Maple Street, Ware, MA 01082.	12/30/2009	Wire and electrical current carrying wiring devices.
Euclid Precision Grinding Co., Inc.	4896 E. 345th St., Willoughby, OH 44094.	12/31/2009	High precision flat and parallel grinding and abrasive waterjet cutting with emphasis on refractory metals work.
Dutchland Plastics Corp	54 Enterprise Court, Oostburg, WI 53070.	12/31/2009	Blow molded and rotational molded plastic products.
Henson Company, Inc	8 Corporate Blvd., Sinking Spring, PA 19608.	1/7/2010	Custom apparel for the sports industry.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT
12/18/2009 THROUGH 1/20/2010

Firm	Address	Date accepted for filing	Products
Brusic-Rose, Inc	7300 S. Central Avenue, Bedford Park, IL 60638.	1/7/2010	Private label high-end custom upholstered furniture.
HK Systems	2855 S. James Drive, New Berlin, WI 53151.	1/7/2010	Material handling and logistic systems.
Midwest Tool, Inc	3637 Enterprise Ave., Joplin, MO 64801.	1/7/2010	Fabricated metal products.
Dugas Bower Plating Company.	7965 Main Street, NE., Fridley, MN 55432.	1/8/2010	Electroplating services for stamped metal products.
K & S Tool, Die and Manufacturing.	N8145 Maple Street, Ixonia, WI 53036.	1/8/2010	The firm manufactures metal stamping dies, weldments and fixtures, metal stamped and fabricated parts and assemblies.
Hydraulic Warehouse Inc	0121 9th St., Lewiston, ID 83501.	1/8/2010	Hydraulic pumps and motors.
Scott Lift Truck Corporation	1400 E. Higgins Road, Elk Grove, IL 60007.	1/8/2010	Distributor of material handling products and services, specifically forklifts and storage equipment.
Timesavers, Inc	11123 89th Ave., Maple Grove, MN 55369.	1/8/2010	Industrial sanding and woodworking equipment.
Energy Dynamics, Inc	5029 Willow Creek Road, Machesney, IL 61115.	1/14/2010	Metal machined products for hydraulics.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: January 21, 2010.

Bryan Borlik,
Program Director.

[FR Doc. 2010-1731 Filed 1-27-10; 8:45 am]

BILLING CODE 3510-24-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearings for the Draft Environmental Impact Statement for the Silver Strand Training Complex, San Diego, CA

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality Regulations for implementing the procedural provisions

of NEPA (Title 40 Code of Federal Regulations Parts 1500-1508), the Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for public release on January 22, 2010. The National Marine Fisheries Service (NMFS) is a cooperating agency for the EIS.

The DEIS evaluates the potential environmental impacts associated with training activities within the Navy's Silver Strand Training Complex (SSTC) and southern nearshore areas of the Naval Air Station North Island (NASNI). The DEIS addresses ongoing and proposed military training activities, introduction of new platforms and equipment for training, and increased access and availability to existing beach and inland training areas. The proposed action serves to achieve and maintain Fleet readiness using the SSTC to support and conduct current, emerging, and future training activities. A Notice of Intent for this EIS was published in the **Federal Register** on August 6, 2001 (66 FR 41009).

The Navy will conduct two public hearings to receive oral and written comments on the DEIS. An open house session will precede the scheduled public hearing where Navy representatives will be available to clarify information related to the DEIS. Federal, State, and local agencies, elected officials, and other interested individuals and organizations are invited to be present or represented at the public hearings. This notice announces the dates and locations of the public hearings.

Dates and Addresses: Two public hearings will be held in San Diego County, CA to receive oral and written comments on the DEIS. All meetings will start with an open house session from 4 p.m. to 6 p.m., followed by a presentation and formal public comment period from 6 p.m. to 7:30 p.m. Public hearings will be held on the following dates and at the following locations:

1. Tuesday, February 22, 2010, at the Imperial Beach City Hall Community Room, 825 Imperial Beach Boulevard, Imperial Beach, CA; and

2. Wednesday, February 23, 2010, at the Coronado Community Center, 1845 Strand Way, Coronado, CA.

FOR FURTHER INFORMATION CONTACT:

Naval Facilities Engineering Command Southwest, Attention: Mr. Kent Randall, SSTC EIS Project Manager, 1220 Pacific Highway, Building 1, 5th Floor, San Diego, CA 92132; or <http://www.silverstrandtrainingcomplexeis.com>.

SUPPLEMENTARY INFORMATION: The SSTC has been used by the Navy for training over 60 years. It is located on, and adjacent to, the Silver Strand, a narrow, sandy isthmus separating the San Diego Bay from the Pacific Ocean. SSTC is divided into two non-contiguous areas: SSTC-North (SSTC-N) and SSTC-South (SSTC-S). SSTC-N includes land areas on the northern-half of the Silver Strand peninsula, as well as adjacent nearshore waters of the Pacific Ocean and the San Diego Bay. SSTC-N is composed of 10 oceanside beach and boat training lanes, ocean anchorage areas, bayside water training areas, and bayside beaches. SSTC-S includes land on the southern-end of the Silver Strand

peninsula, as well as adjacent nearshore waters of the Pacific Ocean. SSTC-S consists of four oceanside beach lanes, four boat training lanes, and inland training areas and facilities inside a fenced area. SSTC-N and SSTC-S are separated by the Silver Strand State Beach. A training area located in the southern near shore area of NASNI, separate from SSTC, is used for similar types of training, and is also part of the DEIS. This NASNI training area is composed of the beaches and near shore waters from Breakers Beach to Zuniga Jetty, west of the city of Coronado. The Navy is not proposing to expand the geographic area of SSTC or the NASNI training area.

The purpose of the proposed action is to improve the availability and quality of training opportunities at SSTC to achieve required levels of operational readiness. The proposed action is needed to provide a training environment consisting of training areas and range facilities with the capacity and capabilities to fully support required training tasks for operational units and military schools and meet the operational readiness requirements of Title 10, Section 5062 of the United States Code (10 U.S.C. 5062).

Accordingly, the proposed action will meet training requirements by: (1) Continuing current training and increasing the number of existing training activities and introduce new training activities and platforms in support of Fleet Response Training Plan (FRTTP) and surge requirements; (2) providing assured year-round access and unencumbered use of training areas to meet current and future training needs per the Navy Tactical Task List; and (3) providing a training range and training facilities that afford operational commands the flexibility to achieve diverse and realistic training at SSTC.

Under the No Action Alternative, training activities would continue at baseline levels. SSTC would not accommodate an increase in training tempo or type required to execute the FRTTP or introduce new platforms or equipment into training on SSTC. Under the No Action Alternative, the Navy would not accommodate training requirements for repositioned forces in the Southern California area. In addition, under the No Action Alternative, training access restrictions, including seasonal restrictions on SSTC beach lanes and in inland areas of SSTC-S would remain unchanged.

Alternative 1, the Navy's preferred alternative, is designed to meet Navy and DoD current and near-term operational training requirements. Under Alternative 1, the Navy would

increase the tempo and types of training, conduct existing routine training at additional locations within established SSTC training areas, introduce new platforms and equipment into training, and increase access and availability to SSTC training areas. New platforms and equipment would include replacement of Amphibious Assault Vehicles with Expeditionary Fighting Vehicles, an updated Offshore Petroleum Discharge System, and the MH-60R/S Seahawk Multi-Mission helicopter. Access and availability to SSTC training areas would be increased in three ways: (1) SSTC-N oceanside beach training lanes Blue 2, Orange 1 and Orange 2 (that are currently restricted during the nesting season) would be opened for training during the nesting season if other lanes are not available or if the lanes provide attributes more appropriate for training than other available lanes; (2) a maximum of 22 concurrent western snowy plover nests would be buffered for avoidance on SSTC oceanside beaches; and (3) training involving foot traffic, but not vehicle traffic, would be allowed in the vernal pools when vernal pool conditions are determined to be dry.

Alternative 2 consists of all elements of Alternative 1. Alternative 2 includes the same increase in the number and types of training activities over No Action Alternative levels, training in additional locations within established SSTC training areas, and introduction of new platforms and equipment into training. In addition, under Alternative 2, the Navy would fully utilize all oceanside beach lanes along SSTC-N and SSTC-S for continuous, year-round training. The Navy would continue to conduct existing management practice on the SSTC training beaches including nest relocation, predator management and control, habitat modification, site preparation for maintenance, nest substrate enhancement, signage and education, recreational use restrictions, and rearing of collected eggs, injured and sick individuals.

The SSTC DEIS is posted online at <http://www.silverstrandtraining.complexeis.com> and available to Federal, State, and local agencies, elected officials, and other interested individuals and organizations. The public comment period will end on March 9, 2010. Copies of the DEIS are available for public review at the following libraries:

1. Coronado Public Library, 640 Orange Avenue, Coronado, CA; and
2. Imperial Beach Branch Library, 810 Imperial Beach Boulevard, Imperial Beach, CA.

Federal, State, and local agencies, elected officials, and interested individuals and organizations are invited to be present or represented at the public hearing. Written comments can also be submitted during the open house sessions preceding the public hearings.

Oral statements will be heard and transcribed by a court reporter. All statements, both oral and written, will become part of the public record on the DEIS and will be responded to in the Final EIS (FEIS). Equal weight will be given to both oral and written statements; however, to ensure the accuracy of the record, it is recommended that statements be submitted in writing. In the interest of available time, and to ensure all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three (3) minutes. If you have prepared a written statement, you may read it out loud if you can do so within the three minute time limit, or you may turn it in at the public hearing or mail the statement to Naval Facilities Engineering Command Southwest, Attention: Mr. Kent Randall, Silver Strand Training Complex EIS Project Manager, 1220 Pacific Highway, Building 1, 5th Floor, San Diego, CA 92132. In addition, comments may be submitted online at <http://www.silverstrandtraining.complexeis.com> during the comment period. All written comments must be postmarked by March 9, 2010, to ensure they become part of the official record. All comments will be addressed in the FEIS.

Dated: January 22, 2010.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010-1768 Filed 1-27-10; 8:45 am]

BILLING CODE 3810-FF-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 29, 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 25, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Application To Participate in the Leveraging Educational Assistance and Partnership (LEAP), Special-LEAP, and Grants for Access and Persistence (GAP) Programs.

Frequency: Annually.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden

Responses: 56.

Burden Hours: 448.

Abstract: The officially designated educational agency in each of the 50 States, the District of Columbia, Puerto Rico, and four island jurisdictions use this form to apply annually to participate in the Leveraging Educational Assistance and Partnership (LEAP), Special Leveraging Educational Assistance and Partnership (SLEAP), and Grants for Access and Persistence (GAP) Programs. On this application the States provide information the Department requires to obligate funds and for program management.

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 4210. 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. 2010-1747 Filed 1-27-10; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[Case No. RF-012]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Notice of Granting the Application for Interim Waiver of Electrolux From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Petition for Waiver, Notice of Granting Application for Interim Waiver, and request for public comments.

SUMMARY: This notice announces receipt of and publishes the Electrolux Home Products, Inc. (Electrolux) petition for waiver (hereafter, "Petition") from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. The waiver request pertains to Electrolux's product lines that utilize a control logic that changes the wattage of the anti-sweat heaters based upon the ambient relative humidity conditions to prevent condensation. The existing test procedure does not take humidity or adaptive control technology into account. Therefore, Electrolux has suggested an alternate test procedure that takes adaptive control technology into account when measuring energy consumption. DOE solicits comments, data, and information concerning Electrolux's Petition and the suggested alternate test procedure. DOE also publishes notice of the grant of an interim waiver to Electrolux.

DATES: DOE will accept comments, data, and information with respect to the Electrolux Petition until, but no later than March 1, 2010.

ADDRESSES: You may submit comments, identified by case number "RF-012," by any of the following methods:

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

- *E-mail:*

AS Waiver Requests@ee.doe.gov.

Include either the case number [Case No. RF-012], and/or "Electrolux Petition" in the subject line of the message.

- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2/J/ 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.

- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC, 20024; (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the

Petition for Waiver and Application for Interim Waiver; and (4) prior DOE rulemakings regarding similar refrigerators and refrigerator-freezers. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-9611. E-mail: Michael.Raymond@ee.doe.gov.

Ms. Francine Pinto or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 586-8145. E-mail: Francine.Pinto@hq.doe.gov or Michael.Kido@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act ("EPCA") sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291-6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential refrigerators and refrigerator-freezers is contained in Title 10 of the Code of Federal Regulations (10 CFR) Part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so

unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. (10 CFR 430.27(a)(2); 430.27(g)) An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner, and may be extended for an additionally 180 days, if necessary. (10 CFR 430.27(h))

II. Petition for Waiver of Test Procedure

On December 4, 2009, Electrolux filed a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Electrolux is designing new refrigerators and refrigerator-freezers that contain variable anti-sweat heater controls that detect a broad range of temperature and humidity conditions, and respond by activating adaptive heaters, as needed, to evaporate excess moisture. According to the petitioner, Electrolux's technology is similar to that used by General Electric Company (GE) and Whirlpool Corporation (Whirlpool) for refrigerator-freezers which were the subject of petitions for waiver published April 17, 2007 (72 FR 19189) and July 10, 2008, respectively (73 FR 39684). GE's waiver was granted on February 27, 2008 (73 FR 10425). Whirlpool's waiver was granted on May 5, 2009 (74 FR 20695). On November 6, 2008, Electrolux filed a Petition for Waiver, similar to the current Electrolux Petition, from the test procedures applicable to additional basic models of residential refrigerators and refrigerator-freezers. Electrolux's November 2008 Petition was published in the **Federal Register** on June 4, 2009. 74 FR 26853. In that notice, DOE announced its grant of an interim waiver to Electrolux, and expanded that waiver to include four additional models after receiving supplemental information from the

company. DOE granted Electrolux's November 2008 petition for waiver on December 15, 2009. 74 FR 66338.

In its December 2009 petition, as in its November 2008 petition, Electrolux seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure takes neither ambient humidity nor adaptive technology into account. Therefore, Electrolux states that the test procedure does not accurately measure the energy consumption of Electrolux's new refrigerators and refrigerator-freezers that feature variable anti-sweat heater controls and adaptive heaters. Consequently, Electrolux has submitted to DOE for approval an alternate test procedure that would allow it to correctly calculate the energy consumption of this new product line. Electrolux's alternate test procedure is the same in all relevant particulars as that prescribed for GE, Whirlpool and Electrolux itself for refrigerators and refrigerator-freezers that are equipped with the same type of technology. The alternate test procedure applicable to these products simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the Decision and Order that DOE published in the **Federal Register** on February 27, 2008. 73 FR 10425. DOE believes that it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

III. Application for Interim Waiver

Electrolux also requests an interim waiver from the existing DOE test procedure. Under 10 CFR 430.27(b)(2), each Application for Interim Waiver "shall demonstrate likely success of the Petition for Waiver and shall address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver." An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the Application for interim waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the Petition for Waiver. (10 CFR 430.27(g))

DOE determined that Electrolux's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic

hardship Electrolux might experience absent a favorable determination on its application for interim waiver. DOE understands, however, that absent an Interim Waiver, Electrolux's products would not otherwise be tested and rated for energy consumption on a comparable basis with equivalent GE and Whirlpool products where DOE previously granted waivers, and would be required to represent a higher energy consumption for essentially the same product. Furthermore, it appears likely that Electrolux's Petition for Waiver will be granted, and it is desirable for public policy reasons to grant Electrolux immediate relief pending a determination on the petition for waiver. As stated above, DOE has already granted similar waivers to GE, Whirlpool and Electrolux because the

test procedure does not accurately represent the energy consumption of refrigerator-freezers containing relative humidity sensors and adaptive control anti-sweat heaters. The rationale for granting these waivers is equally applicable to Electrolux, which has products containing similar relative humidity sensors and anti-sweat heaters. DOE has also concluded that it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

For the reasons stated above, DOE grants Electrolux's application for interim waiver from testing of its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters. Therefore, *it is ordered that:*

The Application for interim waiver filed by Electrolux is hereby granted for

Electrolux's refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters, subject to the specifications and conditions below.

1. Electrolux shall not be required to test or rate its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters on the basis of the test procedure under 10 CFR part 430 subpart B, appendix A1.

2. Electrolux shall be required to test and rate its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters according to the alternate test procedure as set forth in section IV, "Alternate test procedure."

The interim waiver applies to the following basic model groups:

CRS23***	FFCU23***	FGHS26***	FGUN23***	FGHB28***
CRS26***	FGHC23***	FGUS26***	FPHN23***	FGUB28***
FFHS23***	FGCU23***	FPHS26***	FPUN23***	FPHB28***
FFUS23***	FPHC23***	FPUS26***	EI23BC***	FPUB28***
FGHS23***	FPCU23***	EI26SS***	EW23BC***	FGHN28***
FGUS23***	FFSC23***	EW26SS***	E23BC***	FGUN28***
FPHS23***	EI23CS***	FGHF23***	FFHB26***	FPHN28***
FPUS23***	EW23CS***	FGUB23***	FFUB26***	FPUN28***
EI23SS***	E23CS***	FPHF23***	FFHN26***	EI28BS***
EW23SS***	FFHS26***	FPUB23***	FFUN26***	EW28BS***
FFHC23***	FFUS26***	FGHN23***	EI26BS***	

This interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

Electrolux's new line of refrigerators and refrigerator-freezers contains sensors that detect ambient humidity and interact with controls that vary the effective wattage of anti-sweat heaters to evaporate excess moisture. The existing DOE test procedure cannot be used to calculate the energy consumption of these features. The variable anti-sweat heater contribution to the refrigerator's energy consumption is entirely dependent on the ambient humidity of the test chamber, which the DOE test procedure does not specify. The energy consumption of the anti-sweat heaters will be modeled and added to the energy consumption measured with the anti-sweat heaters disabled. The anti-sweat contribution to the product's total

energy consumption will be calculated by the same methodology that was set forth in the GE Petition. The objective of this approach is to simulate the average energy used by the adaptive anti-sweat heaters as activated in refrigerators and refrigerator-freezers of typical consumer households across the United States.

To determine the conditions in a typical consumer household, GE compiled historical data on the monthly average outdoor temperatures and humidities for the top 50 metropolitan areas of the U.S. over approximately the last 30 years. In light of the similarity of technologies at issue, Electrolux is using the same data compiled by GE for its determination of the anti-sweat heater energy use. Like GE and Whirlpool, Electrolux includes in its test procedure a "system-loss factor" to calculate system losses attributed to operating anti-sweat heaters, controls, and related components.

For the duration of the interim waiver, Electrolux shall be required to test the products listed above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, Appendix A1, except that, for the Electrolux products listed above only:

(A) The following definition is added at the end of Section 1:

1.13 "Variable anti-sweat heater control" means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF-1-1979, section 7.2 through section 7.4.3.3. except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be "off" during one test and "on" during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the "on" test will be the result of the calculation described in

6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the "on" position (E_{on}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

$$E_{ON} = E + (\text{Correction Factor})$$

Where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the "off" position.

$$\text{Correction Factor} = (\text{Anti-sweat Heater Power} \times \text{System} - \text{loss Factor}) \times (24 \text{ hrs/1 day}) \times (1 \text{ kW/1000 W})$$

Where:

$$\text{Anti-sweat Heater Power} = A1 * (\text{Heater Watts at 5\%RH})$$

$$\begin{aligned} &+ A2 * (\text{Heater Watts at 15\%RH}) \\ &+ A3 * (\text{Heater Watts at 25\%RH}) \\ &+ A4 * (\text{Heater Watts at 35\%RH}) \\ &+ A5 * (\text{Heater Watts at 45\%RH}) \\ &+ A6 * (\text{Heater Watts at 55\%RH}) \\ &+ A7 * (\text{Heater Watts at 65\%RH}) \\ &+ A8 * (\text{Heater Watts at 75\%RH}) \\ &+ A9 * (\text{Heater Watts at 85\%RH}) \\ &+ A10 * (\text{Heater Watts at 95\%RH}) \end{aligned}$$

Where A1–A10 are from the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72°F ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F and freezer (FZ) average temperature of 5 °F.

System-loss Factor = 1.3

V. Summary and Request for Comments

Through today's notice, DOE grants Electrolux an interim waiver from the specified portions of the test procedure applicable to Electrolux's new line of refrigerators and refrigerator-freezers with variable anti-sweat heater controls and adaptive heaters and announces receipt of Electrolux's petition for waiver from those same portions of the test procedure. DOE publishes Electrolux's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure and calculation methodology to determine the energy consumption of Electrolux's specified refrigerators and refrigerator-freezers with adaptive anti-sweat heaters. Electrolux is required to follow this alternate procedure as a condition of its

interim waiver, and DOE is considering including this alternate procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Ms. Sheila A. Millar, Keller and Heckman, LLP, 1001 G Street, NW., Washington, DC 20001. Telephone: (202) 434–4100. E-mail: millar@khlaw.com. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on January 22, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

December 4, 2009

Via Overnight Delivery

The Honorable Catherine Zoi, Assistant Secretary

Office of Energy Efficiency and Renewable Energy

U.S. Department of Energy

Mail Station EE–10

Forrestal Building

1000 Independence Avenue, SW Washington, DC 20585–0121

Writer's Direct Access

Sheila A. Millar

(202) 434–4143

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Re: Petition for Waiver and Application for Interim Waiver from the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures by Electrolux Home Products, Inc.

Dear Secretary Zoi:

On behalf of our client, Electrolux Home Products, Inc. ("Electrolux"), we respectfully submit this Petition for Waiver and Application for Interim Waiver requesting exemption by the Department of Energy from certain parts of the test procedure for determining residential refrigerator and refrigerator-freezer energy consumption under 10 CFR § 430.27. The requested waiver will allow Electrolux to test its refrigerator-freezer to the amended procedure set out by this petition.

This petition for waiver contains no confidential business information and may be released pursuant to Freedom of Information Act requests.

I. Petition for Waiver

Electrolux seeks the Department's approval of this proposed amendment to the refrigerator test procedure to be assured of properly calculating the energy consumption and properly labeling its new refrigerator. On February 27, 2008 and May 5, 2009, the Department granted Petitions for Waiver filed respectively by General Electric Corporation ("GE") and Whirlpool Corporation ("Whirlpool") to establish a new methodology to calculate the energy consumption of a refrigerator-freezer when such a product contains adaptive anti-sweat heaters.¹

Electrolux has developed its own adaptive anti-sweat system that uses a humidity sensor to operate the anti-sweat heaters. On November 6, 2008, Electrolux filed a Petition for Waiver and Application for Interim Waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers. Having determined that Electrolux is seeking a waiver similar to the one granted to GE, and that the Electrolux Petition is likely to be granted, the Department on March 3, 2009, granted Electrolux an Interim Waiver, which was expanded on June 4, 2009, to cover four additional models.² On July 13, 2009, Electrolux filed a second Petition for Waiver and Application for Interim Waiver for residential electric refrigerators and

¹ *Decision and Order Granting a Waiver to the General Electric Company From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure (Case No. RF-007)*, 73 Fed. Reg. 10,425; *Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Whirlpool Corporation From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure*, 74 Fed. Reg. 20,695.

² *See Publication of the Petition for Waiver and Notice of Granting the Application for Interim Waiver of Electrolux From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures*, 74 Fed. Reg. 26,853 (June 4, 2009).

refrigerator freezers with the Department that is still pending.

Department regulations make clear that once a waiver has been granted, the Department must take steps to incorporate the new procedure and eliminate the need for continuing waivers:

Within one year of the granting of any waiver, the Department of Energy will publish in the Federal Register a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department of Energy will publish in the Federal Register a final rule. Such waiver will terminate on the effective date of such final rule.³ In the interim, however, Electrolux is developing and planning to shortly introduce into the marketplace new models that use adaptive anti-sweat technology. Accordingly, Electrolux is filing this Petition for Waiver and Application for Interim Waiver to address these new models.

The Department's regulations provide that the Assistant Secretary will grant a petition for waiver upon "determination that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data."⁴

Electrolux respectfully submits that sufficient grounds exist for the Assistant Secretary to grant this Petition on both points. First, the refrigerator energy test

procedure does not allow the energy used by Electrolux's new refrigerator to be accurately calculated. The new refrigerator contains adaptive anti-sweat heaters (*i.e.*, anti-sweat heaters that respond to humidity conditions found in consumers' homes). Since the test conditions specified by the test procedure neither define required humidity conditions nor otherwise take ambient humidity conditions into account in calculating energy consumption, the adaptive feature of Electrolux's new refrigerator models cannot be properly tested.

Second, testing Electrolux's new refrigerator models according to the existing test procedure would provide results that do not accurately measure the energy used by the new refrigerator.

A. The Refrigerator Energy Test Procedure

The test procedure for calculating energy consumption specifies that the test chamber must be maintained at 90° Fahrenheit ("F").⁵ This ambient temperature is not typical of conditions in most consumers' homes. Rather, it is intended to simulate the heat load of a refrigerator in a 70 °F ambient with typical usage by the consumer. But the test procedure does not specify test chamber humidity conditions. Sweat occurs on refrigerators when specific areas on the unit are below the local dew point. Higher relative humidity levels result in an increase of the dew point. Sweat has been addressed by installing anti-sweat heaters on mullions and other locations where sweat accumulates. Previous anti-sweat heaters operated at a fixed amount of power, and turned on or off regardless

of the humidity or amount of sweat on the unit.

B. Electrolux's Proposed Modifications

The circumstances of this petition are similar to those in the Department's earlier decisions granting waiver petitions, including the 2001 waiver granted in *In the Matter of Electrolux Home Appliances*.⁶ The test procedure at issue in Electrolux's 2001 waiver request was originally developed when simple mechanical defrost timers were the norm. Accordingly, Electrolux sought a test procedure waiver to accommodate its advanced defrost timer. The Assistant Secretary, in granting the waiver, acknowledged the role of technology advances in evaluating the need for test procedure waivers. With this current petition, Electrolux again seeks to change how it tests its new models to take into account advances in sensing technology, *i.e.*, sensors that detect temperature and humidity conditions and interact with controls to vary the effective wattage of anti-sweat heaters to evaporate excess sweat.

The following basic Electrolux refrigerator and refrigerator-freezer models featuring anti-sweat technology are subject to this Petition and include, but are not limited to, bottom mount, bottom mount French door, and side by side models, with and without through the door ice and water. The actual model numbers will vary to account for year of manufacture, product color, or other features (*e.g.*, whether or not the unit has through the door ice and water or other features), but will always include anti-sweat technology whose energy impact is calculated in accordance with this Petition.

CRS23***	FFCU23****	FGHS26****	FGUN23****	FGHB28****
CRS26***	FGHC23****	FGUS26****	FPHN23****	FGUB28****
FFHS23****	FGCU23****	FPHS26****	FPUN23****	FPHB28****
FFUS23****	FPHC23****	FPUS26****	EI23BC****	FPUB28****
FGHS23****	FPCU23****	EI26SS****	EW23BC****	FGHN28****
FGUS23****	FFSC23****	EW26SS****	E23BC****	FGUN28****
FPHS23****	EI23CS****	FGHF23****	FFHB26****	FPHN28****
FPUS23****	EW23CS****	FGUB23****	FFUB26****	FPUN28****
EI23SS****	E23CS****	FPHF23****	FFHN26****	EI28BS****
EW23SS****	FFHS26****	FPUB23****	FFUN26****	EW28BS****
FFHC23****	FFUS26****	FGHN23****	EI26BS****	

As with the models covered by the prior petitions, Electrolux proposes to run the energy-consumption test with the anti-sweat heater switch in the "off" position and then, because the test

chamber is not humidity-controlled, to add to that result the kilowatt hours per day derived by calculating the energy used when the anti-sweat heater is in the "on" position. This contribution will

be calculated by the same method that was proposed by GE and Whirlpool in their Petitions for Waiver,⁷ as well as by

³ 10 CFR § 430.27(m).

⁴ 10 CFR § 430.27(l).

⁵ 10 CFR Part 430, Subpart B, App. A1.

⁶ Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of

Electrolux Home Products from the DOE Refrigerator and Refrigerator-Freezer Test Procedure (Case No. RF-005), 66 Fed. Reg. 40,689 (Aug. 3, 2001).

⁷ Publication of the Petition for Waiver of General Electric Company From the Department of Energy Refrigerator and Refrigerator/Freezer Test Procedures, 72 Fed. Reg. 19,189 (Apr. 17, 2007); Publication of the Petition for Waiver of Whirlpool

Electrolux in its earlier Petition. The objective of the proposed approach is to simulate the average energy used by the adaptive anti-sweat heaters as activated in typical consumer households across the United States.

In formulating its Petition, GE conducted research to determine the average humidity level experienced across the United States. The result of this research was that GE was able to determine the probability that any U.S. household would experience certain humidity conditions during any month of the year. This data was consolidated into 10 bands each representing a 10% range of relative humidity. In submitting this Petition, Electrolux is confirming the validity of using such bands to represent the average humidity experienced across the United States and will adopt the same population weighting as proposed by GE. The bands proposed by GE are as follows:

% Relative humidity	Probability (percent)	Constant designation
1. 0–10	3.4	A1
2. 10–20	21.1	A2
3. 20–30	20.4	A3
4. 30–40	16.6	A4
5. 40–50	12.6	A5
6. 50–60	11.9	A6
7. 60–70	6.9	A7
8. 70–80	4.7	A8
9. 80–90	0.8	A9
10. 90–100	1.5	A10

Since system losses are involved with operating anti-sweat heaters, Electrolux proposes to include in the calculation a factor to account for such energy. This additional energy includes the electrical energy required to operate the anti-sweat heater control and related components, and the additional energy required to increase compressor run time to remove heat introduced into the refrigerator compartments by the anti-sweat heater. Based on Electrolux's experience, this "System-loss Factor" is 1.3. Simply stated, the Correction Factor that Electrolux proposes to add to the energy-consumption test results obtained with the anti-sweat heater switch in the "off" position is calculated as follows:

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hours/1 day) × (1 kW/1000 W)

Continue by calculating the national average power in watts used by the anti-sweat heaters. This is done by totaling the product of constants A1–A10 multiplied by the respective heater

watts used by a refrigerator operating in the median percent relative humidity for that band and the following standard refrigerator conditions:

- ambient temperature of 72 °F;
- fresh food (FF) average temperature of 45 °F; and
- freezer (FZ) average temperature of 5 °F.

Anti-sweat Heater Power = A1 * (Heater Watts at 5% RH)
+ A2 * (Heater Watts at 15% RH)
+ A3 * (Heater Watts at 25% RH)
+ A4 * (Heater Watts at 35% RH)
+ A5 * (Heater Watts at 45% RH)
+ A6 * (Heater Watts at 55% RH)
+ A7 * (Heater Watts at 65% RH)
+ A8 * (Heater Watts at 75% RH)
+ A9 * (Heater Watts at 85% RH)
+ A10 * (Heater Watts at 95% RH)

As explained above, bands A1–A10 were selected as representative of humidity conditions in all U.S. households. Utilizing such weighed bands will allow the calculation of the national average energy consumption for each product.

Based on the above, Electrolux proposes to test its new models as if the test procedure were modified to calculate the energy of the unit with the anti-sweat heaters in the on position as equal to the energy of the unit tested with the anti-sweat heaters in the off position plus the Anti-Sweat Heater Power times the System Loss Factor (expressed in KWH/YR).

II. Application for Interim Waiver

Pursuant to Department regulations, the Assistant Secretary will grant an Interim Waiver "if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver."⁸

The DOE letter granting the Electrolux Interim Waiver recognized that:

* * * public policy would favor granting Electrolux an Interim Waiver, pending determination of the Petition for Waiver. On February 27, 2008, DOE granted the General Electric Company ("GE") a waiver from the refrigerator-freezer test procedure because it takes neither ambient humidity nor adaptive technology into account. 73 FR 10425. The test procedure would not accurately represent the energy consumption of refrigerator-freezers containing relative

humidity sensors and adaptive control anti-sweat heaters. This argument is equally applicable to Electrolux, which has products containing similar relative humidity sensors and anti-sweat heaters. Electrolux is seeking a very similar waiver to the one DOE granted to GE, with the same alternate test procedure, and it is very likely Electrolux's Petition for Waiver will be granted. As Electrolux noted in its November 6, 2008 and July 13, 2009, Petitions for Waiver and Applications for Interim Waiver, the Company could have designed its adaptive anti-sweat system so that the anti-sweat heaters showed no impact during energy testing. However, like GE and Whirlpool Corporation, Electrolux is following the intent of the regulations to more accurately represent the energy consumed by the new refrigerators when used in the home.

In addition to more fairly and accurately representing the actual energy usage of appliances equipped with this technology, anti-sweat heaters are now a well-recognized and widely used technology in the industry. The alternate test procedure that is the subject of this Waiver request is now the established method by which the energy performance of anti-sweat heaters is measured, and Electrolux has invested heavily to implement this procedure for its new models. Consequently, requiring Electrolux to use the energy test procedure at 10 CFR § 430.27 would impose an economic hardship on the Company. The adaptive anti-sweat system in the Electrolux models referenced above is similar to those addressed by the March 3, 2009 Interim Waiver granted to Electrolux by the Department, and June 4, 2009, **Federal Register** notice.⁹ Accordingly, Electrolux respectfully submits that sufficient grounds exist for the Assistant Secretary to grant the Electrolux Application for Interim Waiver.

III. Conclusion

Electrolux urges the Assistant Secretary to grant its Petition for Waiver and Application for Interim Waiver to allow Electrolux to test its new refrigerator models as noted above. Granting Electrolux's Petition for Waiver will encourage the introduction of advanced technologies while providing proper consideration of energy consumption.

IV. Affected Persons

Primarily affected persons in the refrigerator-freezer category include BSH Home Appliances Corp. (Bosch-

Corporation From the Department of Energy Refrigerator and Refrigerator/Freezer Test Procedures, 73 Fed. Reg. 39,684 (July 10, 2008).

⁸ 10 CFR § 430.27(g).

⁹ See *supra* note 2.

Siemens Hausgerate GmbH), Equator, Fisher & Paykel Appliances Inc., GE Appliances, Haier America Trading, L.L.C., Heartland Appliances, Inc., Liebherr Hausgerate, LG Electronics Inc., Northland Corporation, Electrolux Electronics America, Inc., Sanyo Fisher Company, Sears, Sub-Zero Freezer Company, U-Line, Viking Range, W. C. Wood Company, and Whirlpool Corporation. The Association of Home Appliance Manufacturers is also generally interested in energy efficiency requirements for appliances. Electrolux will notify all these entities as required by the Department's rules and provide them with a version of this Petition. Sincerely,

Sheila A. Millar,

cc: Michael Raymond, DOE Office of Energy Efficiency and Renewable Energy

[FR Doc. 2010-1756 Filed 1-27-10; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: Office of International Regimes and Agreements, Department of Energy.

ACTION: Subsequent Arrangement.

SUMMARY: This notice has been issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation between the United States of America and the Government of Canada Concerning Peaceful Uses of Nuclear Energy and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns the retransfer of 229,290 kg of U.S.-origin natural uranium hexafluoride (67.6%), 155,000 kg of which is uranium, from Cameco in Saskatoon, Saskatchewan, Canada to Urenco in Capenhurst Works, Chester, United Kingdom. The material, which is currently located at Cameco, Blind River, will be transferred to Urenco for toll enrichment at their Capenhurst UK facility. The natural uranium hexafluoride was originally obtained by Cameco from Crowe Butte Resources Inc. pursuant to export license XSOU8798.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be

inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: January 21, 2010.

For the Department of Energy.

Richard Goorevich,

Director, Office of International Regimes and Agreements.

[FR Doc. 2010-1750 Filed 1-27-10; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: Office of International Regimes and Agreements, Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: This notice has been issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation between the United States of America and the Government of Canada Concerning Peaceful Uses of Nuclear Energy and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns the retransfer of 229,290 kg of U.S.-origin natural uranium hexafluoride (67.6%), 155,000 kg of which is uranium, from Cameco in Saskatoon, Saskatchewan, Canada to Urenco in Capenhurst Works, Chester, United Kingdom. The material, which is currently located at Cameco, Blind River, will be transferred to Urenco for toll enrichment at their Capenhurst UK facility. The natural uranium hexafluoride was originally obtained by Cameco from Crowe Butte Resources Inc. pursuant to export license XSOU8798.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: January 21, 2010.

For the Department of Energy.

Richard Goorevich,

Director, Office of International Regimes and Agreements.

[FR Doc. 2010-1754 Filed 1-27-10; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7481-145]

NYSD Limited Partnership; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 21, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of recreation plan.

b. *Project No:* 7481-145.

c. *Date Filed:* October 27, 2009.

d. *Applicant:* Boralex Hydro Operations, Inc., on behalf of NYSD Limited Partnership.

e. *Name of Project:* New York State Dam Hydroelectric Project.

f. *Location:* Mohawk River in Albany and Saratoga Counties, NY.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Daniel McCarty, Boralex Hydro Operations, Inc., 39 Hudson Falls Road, South Glens Falls, New York 12803. Tel: (518) 747-0930.

i. *FERC Contact:* Mark Carter, (202) 502-6554, and e-mail mark.carter@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests:* February 22, 2010.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P-7481-145) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The licensee filed an application to amend the project's recreation plan. Specifically, the licensee proposes to: (1) Relocate the access road to the South Shore recreation facility; and (2) eliminate the gazebo, and relocate the picnic tables at the North Shore recreation facility.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P-7481) to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3372 or e-mail FEROnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010-1670 Filed 1-27-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2205-051]

Central Vermont Public Service Corporation; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 21, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Amendment to Recreation Plan.

b. *Project No.:* 2205-051.

c. *Dated Filed:* December 7, 2009.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Lamoille River Project.

f. *Location:* The Clark Falls development is located on the Lamoille River, in Chittenden County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Application Contact:* Mr. Michael Scarzello, P.E., Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701, telephone: (802) 747-5207.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502-8674.

j. *Deadline for filing comments and/or motions:* February 22, 2010. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Request:* The licensee requests to relocate a carry-in access for canoes and car-top boats about one mile from the south end of Arrowhead Mountain Reservoir to Rugg Avenue in Milton, Vermont, near the east end of Clark Falls dam. Improvements at the canoe portage point would include parking for four vehicles.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P-2205) to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3372 or e-mail FEROnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's e-mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically, via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-1677 Filed 1-27-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10-43-000]

High Island Offshore System, L.L.C.; Notice of Application

January 21, 2010.

Take notice that on January 12, 2010, High Island Offshore System, L.L.C. (HIOS), 1100 Louisiana St., Houston, Texas 77002, filed in Docket No. CP10-43-000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon by removal three compressor units and related facilities consisting of 54,200 horsepower on a platform at High Island Area Block 264, located offshore Texas, thereby reducing system capacity to 350 MMcf per day, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Jeff Molinaro, High Island Offshore System, L.L.C., 1100 Louisiana St., Houston, Texas 77002, or (telephone) 713-381-2526, or JMolinaro@epco.com, or (FAX) 713-803-2534.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental

Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the

Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 11, 2010.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-1672 Filed 1-27-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at North American Electric Reliability Corporation Meetings From January–June 2010

January 21, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following NERC related meetings:

- NERC Planning Committee Meetings and its sub-committee meetings.
 - Tuesday—Wednesday, March 16–17, 2010 (TBD).
 - Tuesday—Wednesday, June 15–16, 2010 (TBD).
- NERC Operating Committee Meetings and its sub-committee meetings.
 - Tuesday—Wednesday, March 16–17, 2010 (TBD).
 - Tuesday—Wednesday, June 15–16, 2010 (TBD).
- NERC Standards Committee Meetings and its sub-committee meetings.
 - Wednesday—Thursday, January 13–14, 2010 Phoenix, AZ (2).
 - Thursday, February 11, 2010 Teleconference (1).
 - Thursday, March 11, 2010 Teleconference (1).
 - Wednesday—Thursday, April 14–15, 2010 Tampa, FL (TBD).
 - Thursday, May 13, 2010 Teleconference (1).
 - Thursday, June 10, 2010 Teleconference (1).
 - NERC Member Representative Committee Meetings and its sub-committee meetings.
 - TBD.

- NERC Board of Trustees Meetings and its sub-committee meetings.
 - Monday, February 15, 2010 Phoenix, AZ (3).
 - Tuesday—Wednesday, May 11–12, 2010 Baltimore, MD (4).
 - NERC Finance and Audit Committee Meetings.
 - TBD.
 - Critical Infrastructure Protection Committee Quarterly Meetings and its sub-committee meetings.
 - Wednesday—Thursday, March 17–18, 2010 (TBD).
 - Wednesday—Thursday, June 16–17, 2010 (TBD).
- The meetings will be held at the following locations:
1. North American Electric Reliability Corporation, 866–740–1260.
 2. Hilton Phoenix Airport, 2435 S. 47th Street, Phoenix, AZ 85034, 480–894–1600.
 3. Arizona Grand Resort, 800 South Arizona Grand Parkway, Phoenix, AZ 85044, 602–438–9000.
 4. Hyatt Regency Baltimore on the Inner Harbor, 300 Light Street, Baltimore, MD 21202, 410–605–2854.

Further information may be found at <http://www.nerc.com>.

The above-referenced meetings are open to the public.

For more information, contact Mary Agnes Nimis, Office of Electric Reliability, Federal Energy Regulatory Commission at (202) 502–8235 or maryagnes.nimis@ferc.gov or Nicholas Snyder, Office of Electric Reliability, Federal Energy Regulatory Commission at (202) 502–6408 or nicholas.snyder@ferc.gov.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010–1676 Filed 1–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2225–013—Washington]

Pend Oreille County Public Utility District; Notice of Designation of Commission Staff as Non-Decisional

January 21, 2010.

Commission staff member James Hastreiter (Office of Energy Projects, 503–552–2760; james.hastreiter@ferc.gov) is hereby designated as “non-decisional” staff and assigned to participate in settlement discussions and provide guidance on the Commission’s policies and authorities for the surrender of the

Sullivan Creek Project No. 2225 in the above-referenced proceeding.

As “non-decisional” staff, Mr. Hastreiter will not participate in an advisory capacity in the Commission’s review of any offer of settlement or settlement agreement, or deliberations concerning the disposition of the surrender application.

Different Commission “advisory staff” will be assigned to review any offer of settlement or settlement agreement, and to process the surrender application, including providing advice to the Commission with respect to the agreement and the application. Non-decisional staff and advisory staff are prohibited from communicating with one another concerning the merits of the settlement and the relicensing application.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010–1678 Filed 1–27–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket Number EERE–BT–PET–0024]

Energy Efficiency Program for Consumer Products: Commonwealth of Massachusetts Petition for Exemption From Federal Preemption of Massachusetts’ Energy Efficiency Standard for Residential Non-Weatherized Gas Furnaces

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Petition for Exemption.

SUMMARY: The Department of Energy (DOE) announces the filing of the Commonwealth of Massachusetts Petition for Exemption from Federal Preemption of Massachusetts’ 90% Annual Fuel Utilization Efficiency Standard for Non-weatherized Gas Furnaces (hereafter “Massachusetts Petition” or “Petition”). To help DOE evaluate the merits of the Massachusetts Petition, DOE invites interested members of the public to submit comments they might have on the Massachusetts Petition and information related to the evaluation factors outlined in the Energy Policy and Conservation Act (EPCA or “the Act”).

DATES: DOE will accept written comments, data, and information regarding the Massachusetts Petition until, but no later than March 29, 2010.

ADDRESSES: A document entitled “Massachusetts Petition for Exemption from Preemption” is available for review on the Internet at <http://www1.eere.energy.gov/buildings/appliance-standards/state-petitions.html> or from Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, EE–2J, Room 1J–018, 1000 Independence Ave., SW., Washington, DC 20585–0121, or by telephone (202) 586–2945. Please submit comments, identified by docket number EERE–BT–PET–0024 by any of the following methods:

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

2. *E-mail:* MAExemptPetition@ee.doe.gov. Include either the docket number EERE–BT–PET–0024, and/or “Massachusetts Petition” in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

5. *Instructions:* All submissions received must include the agency name and docket number for this proceeding. For detailed instructions on submitting comments and additional information on the proceeding, see section II. C of this document (Submission of Comments).

Docket: For access to the docket to read the background documents relevant to this matter, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: The Massachusetts Petition; correspondence from Massachusetts; correspondence from DOE, and any comments received. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

Please note: DOE’s Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking

materials. Electronic copies of the Petition are available online at DOE's Web site at the following URL address: http://www2.eere.energy.gov/buildings/appliance_standards/state_petitions.html.

FOR FURTHER INFORMATION CONTACT:

Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-7892, or e-mail:

Mohammed.Khan@ee.doe.gov.

Michael Kido, U.S. Department of Energy, Office of General Counsel, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8145, e-mail: *Michael.Kido@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

B. Background

1. History of Energy Conservation Standards for Residential Furnaces
2. Massachusetts Petition and Summary of Relevant State Laws
3. Factors to Consider in Granting or Declining an Exemption
- C. Submission of Comments

I. Introduction

This notice announces two items. First, it announces the receipt of a petition submitted by the Commonwealth of Massachusetts asking that DOE exempt the State's standard for non-weatherized gas furnaces from preemption. The following discussion presents a brief summary of the background relevant to this matter. Second, DOE is providing notice that it is availing itself of the additional time permitted under its regulations to respond to this petition. Accordingly, DOE anticipates issuing its decision on this matter by no later than October 6, 2010.

A. Authority

Part A of Title III of the Energy Policy and Conservation Act, as amended (hereafter "Act" or EPCA) established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291-6309) Products covered under the program, including residential furnaces, and the authority to regulate them, are listed in section 322. (42 U.S.C. 6292) Section 325(f) (42 U.S.C. 6295(f)) establishes standards for certain classes of residential furnaces and requires DOE to issue two rulemakings to consider further amendments. Federal conservation standards for residential products generally preempt State laws or regulations concerning energy

conservation testing, labeling, and standards. (42 U.S.C. 6297(a)-(c)) However, DOE can grant waivers of Federal preemption (hereafter "waiver" or "exemption") for particular State laws or regulations, in accordance with the procedures and other provisions of section 327(d) of the Act. (42 U.S.C. 6297(d)) In particular, section 327(d)(1)(A) of EPCA provides that any State or river basin commission with a State regulation regarding energy use, energy efficiency, or water use requirements for products regulated by the Energy Conservation Program, may petition for an exemption from Federal preemption and seek to apply its own State regulation. (42 U.S.C. 6297(d)(1)(A))

B. Background

1. History of Energy Conservation Standards for Residential Furnaces

Energy conservation standards for residential furnaces were initially specified by EPCA in terms of annual fuel utilization efficiency (AFUE). EPCA set minimum standards for all furnaces except for mobile home furnaces and "small" furnaces (*i.e.*, those units with an input capacity less than 45,000 British thermal units per hour (Btu/h)) at 78% AFUE, with a compliance date of January 1, 1992. EPCA also specified a separate 75% AFUE standard for mobile home furnaces with a compliance date of September 1, 1990. (42 U.S.C. 6295(f)(1)-(2)) For furnaces with an input capacity less than 45,000 Btu/h, DOE published a final rule on November 17, 1989 that set the minimum standard for those products at 78% AFUE, with a compliance date of January 1, 1992. 54 FR 47916.

2. Massachusetts Petition and Summary of Relevant State Laws

On October 6, 2009, the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy received the Massachusetts Petition requesting an exemption from Federal Preemption its 90% Annual Fuel Utilization Efficiency Standard for Non-weatherized Gas Furnaces. The DOE believes that the Massachusetts Petition conforms to the filing requirements set out in 10 CFR 430.42 and accepts it for filing.

In its petition, the Commonwealth of Massachusetts asserts that its 90% AFUE efficiency standard for non-weatherized gas furnaces is needed to meet "unusual and compelling" interests that warrant granting of its petition. Massachusetts amended its 1986 laws regulating the efficiency of appliances in 2005 to establish the 90% AFUE

requirement. Additionally, in 2008, the Commonwealth passed the Green Communities Act (GCA), which requires the electric and gas utilities to meet resource needs through cost effective energy efficiency and demand reduction resources, and the Global Warming Solutions Act (GWSA) requiring greenhouse gas emissions limits be set by 2011. (Commonwealth of MA, No. 1, p.22, 23) The Commonwealth further asserts that, collectively, these laws also demonstrate it has interests that are "different in nature or magnitude than those prevailing in the United States generally." (Commonwealth of MA, No. 1, p.15).

Due to limited resources, DOE plans to issue a final decision on this issue by October 6, 2010, which is one year from the date of DOE's receipt of the Commonwealth's petition. This extension of time, which is permitted under 10 CFR 430.46(c), is necessary to provide DOE sufficient time to review the materials provided by the Commonwealth and to evaluate any data and information submitted by interested parties during the comment period.

3. Factors To Consider in Granting or Declining an Exemption

Section 327(d) of EPCA sets forth factors that the Secretary of Energy (hereafter "Secretary") is to consider in evaluating whether to grant an exemption. (42 U.S.C. 6297(d)) Section 327(d)(1)(B) requires the Secretary to grant an exemption if the Secretary determines that the proffered State regulation "is needed to meet unusual and compelling State or local water interests." (42 U.S.C. 6297(d)(1)(B)) According to section 327(d)(1)(C) of the Act, "unusual and compelling" interests are defined as interests which "(i) are substantially different in nature or magnitude than those prevailing in the United States generally; and (ii) are such that the costs, benefits, burdens, and reliability of energy or water savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy or water savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation." (42 U.S.C. 6297(d)(1)(C)) According to sections 327(d)(3)-(4), the Secretary may not grant an exemption if the Secretary finds that the State regulation would "significantly burden manufacturing, marketing, distribution, sale, or servicing of the covered product on a

national basis,” or “result in the unavailability” in the State of any covered product’s “performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary’s finding, except that the failure of some classes (or types) to meet this criterion shall not affect the Secretary’s determination of whether to prescribe a rule for other classes (or types).” (42 U.S.C. 6297(d)(3) and (4)) To evaluate whether the State regulation will create a significant burden, the Secretary is to consider “all relevant factors,” including the following:

(A) The extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others;

(B) The extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State;

(C) The extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction—

(i) In the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the United States; or

(ii) In the current or projected sales volume of the covered product type (or class) in the State and the United States; and

(D) The extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have. (U.S.C. 6297(d)(3)(A) through (D))

C. Submission of Comments

DOE will accept comments, data, and information regarding this notice no later than the date provided at the beginning of the notice. Please submit comments, data, and information electronically. Send them to the following e-mail address:

MAExemptPetition@ee.doe.gov. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Identify comments in electronic format by the docket number EERE-BT-PET-0024 and wherever possible include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

In accordance with 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on January 22, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010-1749 Filed 1-27-10; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC10-12-000]

Black Marlin Pipeline Company; Notice of Filing

January 21, 2010.

Take notice that on November 4, 2009, Black Marlin Pipeline Company submitted a request for a waiver of the reporting requirement to provide its certified public accountant (CPA) certification statement for the FERC Form No. 2-A for 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: February 1, 2010.

Kimberly Bose,
Secretary.

[FR Doc. 2010-1679 Filed 1-27-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC10-23-000]

Empire Pipeline, Inc.; Notice of Filing

January 21, 2010.

Take notice that on December 1, 2009, Empire Pipeline, Inc. submitted a request for a waiver of the reporting requirement to provide its certified public accountant (CPA) certification statement for the FERC Form No. 2 for 2009 on the basis of the calendar year ending December 31, 2009, because it utilizes a fiscal year ending September 30, 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: February 18, 2010.

Kimberly Bose,
Secretary.

[FR Doc. 2010-1671 Filed 1-27-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10-461-000]

Aquilon Power, Ltd.; Supplemental Notice That Initial Market-based Rate Filing Includes Request for Blanket Section 204 Authorization

January 21, 2010.

This is a supplemental notice in the above-referenced proceeding of Aquilon Power, Ltd.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 10, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-1673 Filed 1-27-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10-583-000]

Monarch Global Energy, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 21, 2010.

This is a supplemental notice in the above-referenced proceeding of Monarch Global Energy, Inc.'s application for market-based rate

authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is February 10, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-1674 Filed 1-27-10; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number EPA-HQ-OECA-2009-0563; FRL-9107-4]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment, and Opportunity To Comment Regarding Hydro Aluminum North America, Inc. and Hydro Aluminum Precision Tubing North America, LLC, wholly owned subsidiaries of Norsk Hydro Aluminum North America, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a Consent Agreement with Hydro Aluminum North America, Inc. and Hydro Aluminum Precision Tubing North America, LLC, wholly owned subsidiaries of Norsk Hydro Aluminum North America, Inc. (Hydro) to resolve violations of the Clean Water Act (CWA), the Clean Air Act (CAA), the Resource Conservation and Recovery Act (RCRA), and the Emergency Planning and Community Right-to-Know Act (EPCRA), and their implementing regulations at 16 facilities listed below:

249 South 51st Avenue, Phoenix, AZ 85043;
100 Gus Hipp Blvd., Rockledge, FL 32955-4701;
200 Riviera Blvd., St. Augustine, FL 32086;
Henry Street, North Liberty, IN 46554;
400 South Main Street, North Liberty, IN 46554;
5801 Riverport Road, Henderson, KY 42420;
1607 East Maumee Street, Adrian, MI 49221;
5375 North Riverview Drive, Kalamazoo, MI 49004;
Sale Barn Road, Cassville, MO 65625;
808 County Road, Monett, MO 65708;
401 North Stolle Avenue, Sidney, OH 45365;
2490 Ross Street, Sydney, OH 45363;
9 Aluminum Drive, Ellenville, NY 12428;
117 Blake Dairy Road, Belton, SC 29627;
171 Industrial Blvd., Fayetteville, TN 37334;
200 Economic Drive, Commerce, TX 75248.

The Administrator is hereby providing public notice of this proposed Consent Agreement and Final Order (CAFO), and providing an opportunity for interested persons to comment on the CWA, EPCRA, RCRA, and CAA portions of this Consent Agreement, in

accordance with CWA sections 309(g)(4)(A) and 311(b)(6)(C)(i), 33 U.S.C. 1319(g)(4)(A), and 1321(b)(6)(C)(i).

DATES: Comments are due on or before March 1, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2009-0563, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* docket.oeca@epa.gov, Attention Docket ID No. EPA-HQ-OECA-2009-0563.
- *Fax:* (202) 566-9744, Attention Docket ID No. EPA-HQ-OECA-2009-0563.
- *Mail:* Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OECA-2009-0563.
- *Hand Delivery:* Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OECA-2009-0563. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>. 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 at <http://www.regulations.gov> or in hard copy at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927.

FOR FURTHER INFORMATION CONTACT: Michael Calhoun, Special Litigation and Projects Division (2248-A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564-6031; fax: (202) 564-9001; e-mail: calhoun.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In July 2005, Hydro voluntarily disclosed violations of the CWA, CAA, RCRA, and EPCRA at 16 of its North American facilities pursuant to EPA's *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Final Policy Statement* (Audit Policy), 65 FR 19618 (Apr. 11, 2000). Hydro also provided supplemental audit reports in 2006 and 2007. EPA and Hydro have signed an administrative Consent Agreement,

following the Consolidated Rules of Practice, 40 CFR 22.13(b) (In Re: Hydro Aluminum North America, Inc. and Hydro Aluminum Precision Tubing North America, LLC, Docket Nos. CWA-HQ-2009-8002, CAA-HQ-2009-8002, EPCRA-HQ-2009-8002, RCRA-HQ-2009-8002). In the settlement agreement, Hydro will pay a civil penalty of \$119,365.

CWA Violations

Respondents had inadequate and/or failed to prepare and implement Spill Prevention, Control, and Countermeasure (SPCC) plans at four facilities listed below in violation of CWA section 311(j) and 40 CFR Part 112:

5801 Riverport Road, Henderson, KY 42420;
5375 North Riverview Drive, Kalamazoo, MI 49004;
808 County Road, Monett, MO 65708;
117 Blake Dairy Road, Belton, SC 29627.

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to \$177,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR Part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a CWA Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is March 1, 2010. All comments will be transferred to the Environmental Appeals Board (EAB) of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Hydro also disclosed that it had an inadequate Stormwater Pollution Prevention Plan (SWPPP) and/or failed to prepare and implement a SWPPP at the six facilities listed below in violation of federal/state Multi-Sector General Stormwater Permits (MSGP) and 40 CFR Part 122.41:

249 South 51st Avenue, Phoenix, AZ 85043;
5801 Riverport Road, Henderson, KY 42420;

1607 East Maumee Street, Adrian, MI 49221;
5375 North Riverview Drive, Kalamazoo, MI 49004;
117 Blake Dairy Road, Belton, SC 29627;
171 Industrial Blvd., Fayetteville, TN 37334.

Hydro also failed to obtain coverage under an MSGP at four facilities below in violation of 40 CFR Part 122.26:

Henry Street, North Liberty, IN 46554;
400 South Main Street, North Liberty, IN 46554;
Sale Barn Road, Cassville, MO 65625;
401 N. Stolle Avenue, Sidney, OH 45365.

Hydro also failed to prepare and submit annual operating reports, and did not submit timely quarterly monitoring reports for the Monett, MO facility as required by the state MSGP.

Hydro also failed to comply with pretreatment regulations found at 40 CFR 403.12(e), 40 CFR 467.35 and 40 CFR 467.53 at the Ellenville, NY facility by failing to submit semi-annual compliance reports since 1997 and failing to document baseline or initial compliance reports. All of the above CWA violations are described in detail in Attachments A and B of the proposed Consent Agreement.

EPA, as authorized by CWA 311(b)(6), 33 U.S.C. 1321(b)(6), and CWA 309(g)(2)(B), 33 U.S.C. 1319(g)(2)(B), has assessed a civil penalty for the CWA violations described above.

EPCRA Violations

Hydro also disclosed that it had failed to comply with EPCRA section 312, 42 U.S.C. 11022, and the regulations found at 40 CFR Parts 355.30 and 370.25, when it failed to prepare and submit emergency and chemical inventory forms (Tier II) to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and/or the fire department with jurisdiction over each facility for the five facilities listed below:

100 Gus Hipp Blvd., Rockledge, FL 32955-4701;
400 South Main Street, North Liberty, IN 46554;
1607 East Maumee Street, Adrian, MI 49221;
5375 North Riverview Drive, Kalamazoo, MI 49004;
401 N. Stolle Avenue, Sidney, OH 45365.

Hydro also disclosed that it had failed to comply with EPCRA section 313, 42 U.S.C. 11023, and the regulations found at 40 CFR 372.22 and 40 CFR 372.30, when it failed to report the annual estimated releases of various chemicals

and/or metals in Form R reports in a timely manner for the five facilities listed below:

100 Gus Hipp Blvd., Rockledge, FL 32955-4701;
200 Riviera Blvd., St. Augustine, FL 32086;
1607 East Maumee Street, Adrian, MI 49221;
808 County Road, Monett, MO 65708;
117 Blake Dairy Road, Belton, SC 29627.

The specific EPCRA violations above are described in Attachment A of the proposed Consent Agreement. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations. Under EPCRA section 325, 42 U.S.C. 11045, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of EPCRA. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR Part 22.

RCRA Violations

Hydro also disclosed that it had failed to comply with RCRA and the regulations found at 40 CFR Parts 262 and 265 when it failed to perform inspections, maintain records, develop contingency plans, and conduct training with regard to stored hazardous wastes for the three facilities listed below. The specific violations are described in Attachment A of the proposed Consent Agreement. EPA, as authorized by RCRA sections 3008(a) and (g), 42 U.S.C. 6928(a) and (g), has assessed a civil penalty for these violations:

5801 Riverport Road, Henderson, KY 42420;
5375 North Riverview Drive, Kalamazoo, MI 49004;
9 Aluminum Drive, Ellenville, NY 12428.

CAA Violations

Hydro also failed to comply with CAA section 112, 42 U.S.C. 7412, and 40 CFR Part 63, by having inadequate operation and maintenance plans, late submission of operation and maintenance plans, failure to have a startup, shutdown and malfunction plan, late submission of performance tests, lack of process monitoring, failure to keep records, failure to calibrate scales, and no documentation of an initial applicability determination for a boiler and process heater at three facilities listed below. The specific violations are described in Attachment A of the proposed Consent Agreement. EPA, as authorized by CAA sections 113(a)(3) and (d), 42 U.S.C.

7413(a)(3) and 7413(d), has assessed a civil penalty for these violations:
249 South 51st Avenue, Phoenix, AZ 85043;
808 County Road, Monett, MO 65708;
200 Economic Drive, Commerce, TX 75248.

EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: January 20, 2010.

Bernadette Rappold,

Director, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 2010-1741 Filed 1-27-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9107-3, EPA-HQ-OW-2008-0238]

Modification to 2008 National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated With Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 today are modifying the 2008 National Pollutant Discharge Elimination System (NPDES) general permits for stormwater discharges associated with construction activity in order to extend by one year the expiration date of the permit. Hereinafter, these NPDES general permits will be referred to as “permit” or “2008 construction general permit” or “2008 CGP.” The 2008 CGP was originally issued for a period of two (2) years. Today, EPA is modifying the CGP in order to extend the 2 year term of the 2008 CGP by one year so that it expires on June 30, 2011, instead of June 30, 2010, resulting in a permit that will be in effect for a total period of three (3) years. By Federal law, no NPDES permit may be issued for a period that exceeds five (5) years.

DATES: EPA is modifying its 2008 Construction General Permit by extending the permit by one year. This permit modification is effective on January 20, 2010. The 2008 Construction General Permit will now

expire on midnight June 30, 2011, instead of June 30, 2010.

FOR FURTHER INFORMATION CONTACT: Greg Schaner, Water Permits Division, Office of Wastewater Management (Mail Code: 4203M), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., EPA East, Washington, DC 20460; telephone number: (202) 564-0721; fax number: (202) 564-6431; e-mail address: schaner.greg@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

If a discharger chooses to apply for coverage under the 2008 CGP, the permit provides specific requirements for preventing contamination of stormwater discharges from the following construction activities:

Category	Examples of affected entities	North American Industry Classification System (NAICS) code
Industry	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Building, Developing and General Contracting	233
	Heavy Construction	234

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the definition of “construction activity” and “small construction activity” in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding “**FOR FURTHER INFORMATION CONTACT**” section.

Eligibility for coverage under the 2008 CGP is limited to operators of “new projects” or “unpermitted ongoing projects.” A “new project” is one that

commences after the effective date of the 2008 CGP. An “unpermitted ongoing project” is one that commenced prior to the effective date of the 2008 CGP, yet never received authorization to discharge under the 2003 CGP or any other NPDES permit covering its construction-related stormwater discharges. This permit is effective only in those areas where EPA is the permitting authority. A list of eligible areas is included in Appendix B of the 2008 CGP.

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

1. Docket. EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-2008-0238. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington,

DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through <http://www.regulations.gov> and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Water Docket is (202) 566-2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. Electronic versions of the final permit and fact sheet are available at EPA’s stormwater Web site <http://www.epa.gov/npdes/stormwater>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov/fdmspublic/component/main> view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search", then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.1.

C. Response to Public Comments

EPA received 4 comments on the proposal to extend the 2008 CGP. All commenters were supportive of EPA's proposed extension. Three of the commenters recommended that EPA modify the 2008 CGP to extend the expiration date of the permit for 3 years, so that the permit would expire on June 30, 2013, instead of the proposed expiration date of June 30, 2011, thus making it a 5-year permit. EPA declined to adopt the commenter's recommendation. It is important to minimize the delay in issuing a new CGP that incorporates the new federal requirements for the discharges from construction and development sites, which were published in the **Federal Register** December 1, 2009. 74 FR 62996. For a copy of the "Construction and Development Effluent Limitations Guidelines" (or "C&D rule"), and other related information, go to <http://www.epa.gov/guide/construction/>.

The 2008 CGP was issued for a shorter term than the statutorily allowed 5 years so that the newly promulgated C&D rule requirements could be incorporated into the permit as soon as practicable. Many States will be looking at the Agency's next CGP to gain insight into how to implement the C&D ELG requirements into permits. The C&D ELG established numeric effluent limitations and monitoring requirements, both of which

may be new to the large number of construction sites throughout the country. EPA would like to issue the next CGP implementing these requirements as soon as possible. By promulgating a final CGP that incorporates the C&D ELG by June 30, 2011 EPA will assist State agencies that must reissue their permits in the next few years and incorporate the C&D ELG into their permits.

One commenter further recommended that EPA make modifications to the 2008 CGP in addition to the one-year extension of the permit. This commenter specifically recommended that EPA take the opportunity to streamline the CGP and the process for authorizing dischargers, such as through a simplified option for single lot construction projects, a simplified qualified local program option, and a certification of no pollutant discharge added to the permit. EPA is aware of the issues that the commenter has raised; however, EPA is not inclined to make further modifications to the 2008 CGP at this time beyond the one-year extension. The expiration date of the 2008 CGP is the only issue for which EPA proposed a modification; EPA believes the issues raised by the commenter, which will require a significant amount of time to consider for incorporation into the permit, are best contemplated for the new permit to be issued prior to June 30, 2011.

D. Who Are The EPA Regional Contacts for This Permit?

For EPA Region 1, contact Jessica Hing at tel.: (617) 918-1560 or e-mail at hing.jessica@epa.gov.

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637-3856 or e-mail at venezia.stephen@epa.gov, or for Puerto Rico, contact Sergio Bosques at tel.: (787) 977-5838 or e-mail at bosques.sergio@epa.gov.

For EPA Region 3, contact Garrison Miller at tel.: (215) 814-5745 or e-mail at miller.garrison@epa.gov.

For EPA Region 5, contact Brian Bell at tel.: (312) 886-0981 or e-mail at bell.brian@epa.gov.

For EPA Region 6, contact Brent Larsen at tel.: (214) 665-7523 or e-mail at: larsen.brent@epa.gov.

For EPA Region 7, contact Mark Matthews at tel.: (913) 551-7635 or e-mail at: matthews.mark@epa.gov.

For EPA Region 8, contact Greg Davis at tel.: (303) 312-6314 or e-mail at: davis.gregory@epa.gov.

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972-3510 or e-mail at bromley.eugene@epa.gov.

For EPA Region 10, contact Dick Hetherington at tel.: (206) 553-1941

or e-mail at hetherington.dick@epa.gov.

II. Background of Permit

A. Statutory and Regulatory History

The Clean Water Act ("CWA") establishes a comprehensive program "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. 1251(a). The CWA also includes the objective of attaining "water quality which provides for the protection and propagation of fish, shellfish and wildlife." 33 U.S.C. 1251(a)(2). To achieve these goals, the CWA requires EPA to control discharges through the issuance of National Pollutant Discharge Elimination System ("NPDES") permits, which may be issued for fixed terms that may not exceed five (5) years. 33 U.S.C. 1342(b)(1)(B).

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. EPA published a final regulation in the **Federal Register** on the first phase of this program on November 16, 1990, establishing permit application requirements for "storm water discharges associated with industrial activity." See 55 FR 47990. EPA defined the term "storm water discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of facilities. Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the U.S. were included in the definition of "industrial activity" pursuant to 40 CFR 122.26(b)(14)(x). Phase II of the stormwater program was published in the **Federal Register** on December 8, 1999, and required NPDES permits for discharges from construction sites disturbing at least one acre, but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See 64 FR 68722. EPA is proposing to extend the expiration date of the 2008 CGP under the statutory and regulatory authority cited above.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based effluent limits established under Section 301 and, where applicable, Section 306. Once an

effluent limitations guideline or new source performance standard is promulgated in accordance with these sections, NPDES permits are required to incorporate limits based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of national effluent limitations and standards, permitting authorities incorporate technology-based effluent limitations on a best professional judgment basis. CWA section 402(a)(1)(B); 40 CFR 125.3(a)(2)(ii)(B).

B. Summary of 2008 CGP

EPA announced the issuance of the 2008 CGP on July 14, 2008. See 73 FR 40338. Construction operators choosing to be covered by the 2008 CGP must certify in their notice of intent (NOI) that they meet the requisite eligibility requirements, described in Part 1.3 of the permit. If eligible, operators are authorized to discharge under this permit in accordance with Part 2. Permittees must install and implement control measures to meet the effluent limits applicable to all dischargers in Part 3, and must inspect such stormwater controls and repair or modify them in accordance with Part 4. The permit in Part 5 requires all construction operators to prepare a stormwater pollution prevention plan (SWPPP) that identifies all sources of pollution, and describes control measures used to minimize pollutants discharged from the construction site. Part 6 details the requirements for terminating coverage under the permit.

The 2008 CGP permit provides coverage for discharges from construction sites that occur in areas not covered by an approved State NPDES program. EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 issued the 2008 CGP to replace the expired 2003 CGP for operators of new and unpermitted ongoing construction projects. The geographic coverage and scope of the 2008 CGP is listed in Appendix B of the permit.

C. What Is EPA's Rationale for the Modification of the 2008 CGP for a One-Year Extension of the Expiration Date?

As stated above, any NPDES permit issued after the effective date of the C&D rule, whether issued by EPA or an authorized state, must incorporate the substantive technology-based requirements of the rule into the permit. The effective date of the C&D rule is February 1, 2010. Therefore, EPA's next permit, which will be issued after the effective date of the C&D rule, will require that the requirements of the rule be incorporated into the permit. While as discussed above, EPA wants to issue

a CGP that incorporates the C&D ELG as soon as possible in order to provide guidance to state permitting authorities, today's one-year extension is necessary due to EPA's judgment that an extension of one year is needed to provide sufficient time to incorporate the new C&D rule requirements, provide guidance to state permitting authorities, and to be able to manage the additional actions and initiatives that are being undertaken at the same time by the Agency. Without the one-year extension, EPA fears that it would be left with an inadequate amount of time to issue a new CGP, placing potentially thousands of construction projects at risk of discharging without an effective stormwater permit.

Prior to the extension, the 2008 CGP would have expired on June 30, 2010, giving EPA approximately seven months to propose and finalize a new CGP. In EPA's judgment, the seven-month period would have been insufficient to properly draft new requirements that reflect the C&D rule, and to modify these permit conditions in response to public comments. The seven-month timeframe to propose and finalize a new permit would have been impracticable based on EPA's past experience in issuing stormwater general permits, in general, and with the construction general permit specifically. In the past, EPA required an estimated eighteen months to propose and finalize the 2003 CGP, and a similar amount of time for the previous construction general permits. While EPA does not believe the 2008 Multi-Sector General Permit (MSGP) for stormwater discharges associated with industrial activities was typical, that permit required almost three years to finalize after the proposed permit was published. Beyond incorporating updated modifications to the permit based on changes to the technology-based and water quality-based effluent limitations into the permit, EPA is required to conduct many additional tasks that are automatically required of final Federal actions, such as conducting consultations under the Endangered Species Act and National Historic Properties Act, obtaining CWA section 401 certifications for the permit from States and Indian Country lands, providing the public with an opportunity to comment, and responding to all comments received during the public comment period. Separately, these tasks have historically required more than seven months. The combined effect of these tasks, which are each necessary to issue a general permit, on EPA's schedule for permit

issuance is to make a seven-month permit issuance timeframe impracticable.

While a seven-month schedule to finalize a new CGP would be impracticable under the circumstances, as discussed above, what would have made this period of time even more challenging is the incorporation of the new Federal C&D rule requirements into the general permit. The C&D rule has introduced several concepts that may be new to most construction sites, including the requirement for certain sized construction sites to comply with a numeric effluent limitation for turbidity. Additionally, the non-numeric effluent limitations in the C&D ELG will need to be properly translated into permit conditions and modified based on public comments received. The additional one-year extension will ensure that the Agency has sufficient time to accomplish these tasks.

Also weighing heavily in favor of extending the expiration date of the 2008 CGP are the risks associated with failing to issue a replacement permit prior to the 2008 CGP's original expiration date. If EPA fails to issue a new CGP before the expiration of the 2008 CGP, no new construction projects would be able to be eligible for coverage by the 2008 CGP, leaving individual NPDES permits as the only available option for permitting new projects. The sole reliance on individual permits will mean that discharge authorizations will be delayed due to the greater amount of time and Agency resources that are required for developing and issuing individual permits. EPA is unwilling to risk the possibility of such delays. The one-year extension to the 2008 CGP's expiration date will provide the Agency with the time needed to issue a new permit, without any gaps in permit coverage.

D. EPA's Authority To Modify NPDES Permits

EPA regulations establish when the permitting authority may make modifications to existing NPDES permits. In relevant part, EPA regulations state that "[w]hen the Director receives any information * * * he or she may determine whether or not one or more of the causes listed in paragraph (a) * * * of this section for modification * * * exist. If cause exists, the Director may modify * * * the permit accordingly, subject to the limitations of 40 CFR 124.5(c)." 40 CFR 122.62. For purposes of this **Federal Register** notice, the relevant cause for modification is at 40 CFR 122.62(a)(2), which states a permit may be modified when "[t]he Director has received new

information” and that information was not available at the time of permit issuance * * * and would have justified the application of different permit conditions at the time of issuance.” Pursuant to EPA regulations, “[w]hen a permit is modified, only the conditions subject to the modification are reopened.” 40 CFR 122.62.

In the case of the 2008 CGP, a permit modification is justified based on the new information EPA received since issuance of the 2008 CGP in July 2008, in terms of the new actions EPA is planning or undertaking that are putting new demands on the Agency’s available resources in the NPDES stormwater program. New actions and the resulting resource demands have come about as a result of EPA’s desire to respond to the 2008 National Research Council report, *Urban Stormwater Management in the United States* (see http://www.epa.gov/npdes/pubs/nrc_stormwaterreport.pdf), and to take action under the President’s May 2009 Executive Order on Chesapeake Bay Protection and Restoration (see http://www.whitehouse.gov/the_press_office/Executive-Order-Chesapeake-Bay-Protection-and-Restoration/). Related to these efforts, EPA has announced its intention to initiate a national rulemaking to establish a program to reduce stormwater discharges from new development and redevelopment, and to make other regulatory improvements to strengthen its stormwater program. Refer to <http://www.epa.gov/npdes/stormwater/rulemaking>. EPA’s meeting these new demands, while implementing new Federal requirements for the construction and development industry, is not practical in a seven-month time period. Additionally, at the time of the 2008 CGP was issued, EPA did not know the final content of the C&D ELG. If this information was available at the time of permit issuance, it would have justified EPA establishing an expiration date for the 2008 CGP later than midnight June 30, 2010. As a result, cause exists under EPA regulations to justify modification of the 2008 CGP to extend the expiration date of the permit from midnight June 30, 2010 to midnight June 30, 2011.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 20, 2010.

Curt Spalding,

Regional Administrator, EPA Region 1.

Dated: January 20, 2010.

Carl-Axel P. Soderberg,

Division Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: January 20, 2010.

Barbara A. Finazzo,

Division Director, Division of Environmental Planning & Protection, EPA Region 2.

Dated: January 20, 2010.

Jon M. Capacasa,

Director, Water Protection Division, EPA Region 3.

Dated: January 20, 2010.

Timothy C. Henry,

Associate Director, Water Division, EPA Region 5.

Dated: January 20, 2010.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

Dated: January 20, 2010.

William A. Spratlin,

Director, Wetlands and Pesticides Division, EPA Region 7.

Dated: January 20, 2010.

Stephen S. Tuber,

Assistant Regional Administrator, Office of Partnerships & Regulatory Assistance, EPA Region 8.

Dated: January 20, 2010.

Alexis Strauss,

Director, Water Division, EPA Region 9.

Dated: January 20, 2010.

Michael A. Bussell,

Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. 2010-1743 Filed 1-27-10; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting Notice

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, January 28, 2010 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Open Agenda Items

ITEM NO. 1: Ex-Im Bank Advisory Committee (16th & 17th Members) for 2010.

ITEM NO. 2: Ex-Im Bank Sub-Saharan Africa Advisory Committee for 2010.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Items No. 1 & 2 only.

FOR FURTHER INFORMATION CONTACT:

Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565-3957.

Jonathan J. Cordone,

Senior Vice President and General Counsel.

[FR Doc. 2010-1737 Filed 1-27-10; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; DA 10-101]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 20, 2010, the Commission released a public notice announcing the February 18, 2010 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC’s next meeting and agenda.

DATES: Thursday, February 18, 2010, 9:30 a.m.

ADDRESSES: Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Suite 5-C162, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT:

Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418-1466 or Deborah.Blue@fcc.gov. The fax number is: (202) 418-1413. The TTY number is: (202) 418-0484.

SUPPLEMENTARY INFORMATION: Released: January 20, 2010.

The North American Numbering Council (NANC) has scheduled a meeting to be held Thursday, February 18, 2010, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room TW-C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on

the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty). Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Proposed Agenda: Thursday, February 18, 2010, 9:30 a.m. *

1. Announcements and Recent News.
 2. Approval of Transcript.—Meeting of October 15, 2009.
 3. Report from the North American Numbering Plan Billing and Collection (NANP B&C) Agent.
 4. Report of the Billing & Collection Working Group (B&C WG).
 5. Report of the North American Numbering Plan Administrator (NANPA).
 6. Report of the National Thousands Block Pooling Administrator (PA).
 7. Report of the Local Number Portability Administration (LNPA) Working Group.
 8. Report of North American Portability Management LLC (NAPM LLC).
 9. Telcordia Dispute Resolution Team: Telcordia Appeal.
 10. Report of the Numbering Oversight Working Group.
 11. Status of the Industry Numbering Committee (INC) activities.
 12. Report of the Future of Numbering Working Group (FoN WG).
 13. Summary of Action Items.
 14. Public Comments and Participation (5 minutes per speaker).
 15. Other Business.
- Adjourn no later than 5 p.m.
*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Marilyn Jones,

*Attorney, Wireline Competition Bureau,
Federal Communications Commission.*

[FR Doc. 2010-1460 Filed 1-27-10; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.
DATE & TIME: Friday, January 29, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes

Draft Advisory Opinion 2009-30: TechNet by its counsel, Marc E. Elias and Rebecca H. Gordon.

Draft Advisory Opinion 2009-31: MAXIMUS, Inc. by its counsel, Kirk L. Jowers and Matthew T. Sanderson.

Draft Advisory Opinion 2009-32: Dr. Richard L. Jorgensen.

Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Darlene Harris, Deputy Commission Secretary, at (202) 694-1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Darlene Harris,

Deputy Secretary of the Commission.

[FR Doc. 2010-1563 Filed 1-27-10; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested

persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Austin Bancshares, Inc.*, Austin, Texas, to become a bank holding company by acquiring 100 percent of the voting shares of La Grange Bancshares, Inc., and thereby indirectly acquire voting shares of Colorado Valley Bank, SSB, both of La Grange, Texas.

Board of Governors of the Federal Reserve System, January 25, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010-1722 Filed 1-27-10; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL MARITIME COMMISSION

Notice of Inquiry Regarding Passenger Vessel Financial Responsibility

December 3, 2009.

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission is issuing this Inquiry to solicit information and comments concerning the benefits and burdens of the current Commission requirements by which passenger vessel operators establish proof of financial responsibility in the event of nonperformance of a contracted cruise from a U.S. port. Comments received from the public and interested segments of the passenger cruise industry will assist in determining whether or not the Commission should amend its regulations at 46 CFR part 540, subpart A.

DATES: Comments are due on or before February 10, 2010.

ADDRESSES: Address all comments concerning this Inquiry to:

Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, E-mail: secretary@fmc.gov.

FOR FURTHER INFORMATION CONTACT:

Sandra L. Kusumoto, Director, Bureau of Certification & Licensing, Telephone: (202) 523-5787, E-mail: skusumoto@fmc.gov.

SUPPLEMENTARY INFORMATION:

The Commission administers Chapter 441 of Title 46 of the U.S. Code, entitled Evidence of Financial Responsibility for Passenger Transportation, 46 U.S.C. 44101-44106. As relevant, this Chapter requires operators of vessels having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports to evidence proof of financial responsibility to reimburse passengers for the water portion of their fare in the event of nonperformance (46 U.S.C. 44102), and provide coverage in the event of death or injury to passengers or other persons on voyages to or from United States ports (46 U.S.C. 44103).

In order to indemnify passengers for nonperformance of contracted cruises, passenger vessel operators (PVOs) must establish proof of financial responsibility (Nonperformance Coverage) in an amount determined by the Commission. Current Commission regulations require that Nonperformance Coverage be set at no less than 110 percent of the highest unearned passenger revenue¹ of the applicant within two fiscal years prior to filing an application with the Commission. 46 CFR 540.5-.6. The amount of Nonperformance Coverage required is presently capped at \$15 million dollars. 46 CFR 540.9(j).

The \$15 million ceiling for Nonperformance Coverage has been in existence since 1991, when it was raised from \$10 million. The Commission is issuing this Notice of Inquiry (NOI) to gather information that will assist in assessing comprehensively the benefits or burdens that the Nonperformance Coverage requirement has on all sectors of the passenger vessel industry. Information derived through this Inquiry may determine whether changes to our program may be called for at this time. PVOs, ports, industry associations, credit and financial companies, sureties, guarantors, insurers, travel agents, cruise passengers and other interested

parties are encouraged to participate by providing responses to the questions herein and information pertaining to the impact of Nonperformance Coverage.

To promote maximum participation, the NOI questions will be made available on the Commission's Web site, <http://www.fmc.gov>. The NOI questions also may be obtained by contacting the Commission's Secretary, Karen V. Gregory, by telephone at (202) 523-5725, or by e-mail at secretary@fmc.gov. In addition, non-confidential comments may be submitted as an attachment to an e-mail submission. These attachments must be submitted in Microsoft Word (2007 or prior version), Rich Text format (.rtf), or plain text (.txt).

Some commenters may wish to include some commercially sensitive information as necessary or relevant, whether by way of explaining their experience or detailing in practical terms the impact of Nonperformance Coverage. Any such information should be identified as commercially sensitive by the filer and the document or relevant portions thereof must be marked as confidential. Confidential treatment must be specifically requested for those marked portions, and one additional copy of the comments with the confidential portions redacted must be provided along with the original and one copy of the complete comments. Confidential comments should not be submitted by e-mail. The Commission will provide confidential treatment to the extent allowable by law for submissions, or parts of submissions, for which the parties request confidentiality.

While the Commission intends that this review of Nonperformance Coverage be as thorough as possible, *there is no requirement that participants answer all NOI questions*. Commenters are free to answer only those questions for which they have direct experience or specific views.

The Commission accordingly invites written comments from interested parties responding to the following inquiries:

Notice of Inquiry Questions

A. PVOs' Cost of Complying With Nonperformance Regulations

1. Do you expect your company's unearned passenger revenue to increase, decrease or remain the same over the next twelve to twenty-four months? If you expect it to change, by what percent?

2. Set forth a detailed description of your actual costs for 2008, and actual or projected costs for 2009, directly related

to satisfying the FMC's PVO regulations for Nonperformance Coverage.

3. With respect to passenger bookings and payments:

(i) What is your company's policy with regard to passenger reimbursement in the event of nonperformance of a cruise?

(ii) What is your company's booking policy regarding the timing and amount of booking deposit and for payment of any fare balance?

B. Adequacy of Nonperformance Coverage

The Commission is interested in assessing whether Nonperformance Coverage remains adequate for the purpose of protecting cruise passengers. The following questions are addressed to all interested parties:

4. What is your position with regard to the adequacy of the current ceiling of \$15 million? Please provide a detailed explanation with your response.

5. Should the Commission consider adjusting the \$15 million cap periodically based on an inflation factor (i.e., Consumer Price Index)?

6. Should the Commission consider alternatives to the current \$15 million cap? Please provide a detailed explanation with your response.

7. If the \$15 million cap is modified, what would be the likely benefits or burdens upon PVOs, related companies and the shipping public?

8. What other methodologies could the Commission use to establish adequate coverage amounts as required by current regulations?

9. Should the Commission consider legislative alternatives to the current Nonperformance Coverage requirement? If so, set forth a detailed response.

C. Practices of Sureties, Credit Card Companies and Others

The Commission is interested in assessing whether and to what extent the practices of sureties, credit card issuers or other companies may affect the availability of Nonperformance Coverage. The following questions are addressed primarily to financial entities, but may be answered by PVOs or other interested parties:

10. Have credit card companies added specific requirements for servicing PVOs?

11. What are the factors credit card issuers use to assess a cruise line's creditworthiness or financial fitness? How does a credit card issuer determine whether to implement additional security (i.e., holdbacks, letters of credit, collateral)?

12. What are the factors that sureties or guarantors use to assess a cruise

¹ Unearned passenger revenue is defined as "that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed," 46 CFR 540.2(i).

line's creditworthiness or financial fitness? Please describe the factors that affect premiums for passenger vessel operators. What indicators will cause an increase or decrease in premiums for bonds or guarantees?

Further Proceedings and Scheduling

Following receipt of written comments, the Commission anticipates holding one or more hearings to receive public testimony from interested parties. The Commission will announce the dates and locations of such hearings by subsequent Order.

By the Commission.

Karen V. Gregory,
Secretary.

[FR Doc. 2010-1799 Filed 1-27-10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier—Ocean Transportation Intermediary Applicants:

Doma Consolidating Inc. dba Doma Shipping, 2520 S. State Street, Chicago, IL 60616, *Officers:* Asimoula Georgalas, President (Qualifying Individual), Dimitrios Kouklakis, Stockholder.

World Cargo Service, Inc., 6905 NW 73 Court, Miami, FL 31166, *Officers:* Gregorio Zambrano, President (Qualifying Individual), Diana Julieta Rodriguez, Vice President.

Logistics Unlimited, Inc., 30 Mauchly, Suite A, Irvine, CA 92618, *Officers:* Dennis B. Crosby, Vice President (Qualifying Individual), Ted G. Shown, President/CFO.

Cargo Flow, Inc., 309 Beebe Road, Mineola, NY 11501, *Officers:* Power Cheng, President (Qualifying Individual), Shu Ju Chi, Secretary.

Unius LLC, 27653 Echo Valley W., Farmington Hills, MI 48334,

Officer: Aram Grigoryan, President/Secretary/Treasurer (Qualifying Individual).

Fraiser Polanco dba Quisqueya Cargo Express, 421 W. Tilghman Street, Allentown, PA 18102, *Officer:* Fraiser Polanco, Sole Proprietor (Qualifying Individual).

America Pak Agency, Inc. dba Centrans Marine Shipping, Inc., 6161 Savoy Drive, Suite 300, Houston, TX 77036, *Officer:* Jun (James) Ping, President (Qualifying Individual).

Seagull Maritime Agencies Private Limited, E-40/3, Okhla Industrial Area, Phase II, New Delhi, 110 020, India, *Officers:* Ashutosh L. Korde, President/CEO/Director (Qualifying Individual), Nitin Agarwal, Director.

American Logistics USA, Inc., 320 Pine Avenue, Suite 511, Long Beach, CA 90802, *Officers:* Mian S. Waheed, Vice President/Secretary (Qualifying Individual), Rafia S. Waheed, President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Ocean Transportation Intermediary Applicants:

Damco USA Inc. dba Damco, Damco Sea and Air, Damco Maritime, DSL Star Express, Maersk Logistics, Giralda Farms, Madison Avenue, P.O. Box 880, Madison, NJ 07940, *Officers:* Jens F. Wessel, Vice President (Qualifying Individual), Jeremy T. Haycock, Chairman/President.

USA Intercargo, LLC, 564 Industrial Drive, Carmel, IN 46032, *Officer:* Mindaugas Balcius, Sole Member (Qualifying Individual).

CDS Global Logistics, Inc. dba USNW Express, One Cross Island Plaza, Suite 118, Rosedale, NY 11422, *Officers:* Henry Wiseman, President (Qualifying Individual), Viu Hing Mok, Director.

Morrison Express Corporation (U.S.A.), 2000 Hughes Way, El Segundo, CA 90245, *Officers:* Vincent Chih-Yu Kao, Deputy General Manager (Qualifying Individual), Danny Chiu, President/Director.

IAL Container Line (USA) Inc., 50 Cragwood Road, Suite 115, South Plainfield, NJ 07080, *Officers:* Sridhar Rajagopalan, Secretary (Qualifying Individual), Nitin Bhagat, President/C.O.O.

Kenny Kyusup Kim dba K-Way Express, 2373 E. Pacifica Place, Rancho Dominguez, CA 90220, *Officer:* Kenney Kyusup Kim, Sole Proprietor (Qualifying Individual).

Quantum Group LLC, 346 Bennetts

Farm Road, Ridgefield, CT 06877, *Officer:* Kenneth P. Treschitta, President/CEO (Qualifying Individual).

Miami Warehouse Logistics, Inc., 9251 NW 100th Street, Miami, FL 33178, *Officer:* Alexis Roldos, President/Secretary (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

All American Worldwide, Inc., 610 Presidential Drive, Suite 110, Richardson, TX 75081, *Officers:* Judson H. Good, II, President (Qualifying Individual), Debera D. Good, Secretary.

Russell Burns, Inc. dba Interworld Services, 16003 Crooked Lake Way S., Cypress, TX 77433, *Officer:* Russell Burns, President (Qualifying Individual).

All Freight Transportation Services, Inc., 1138 N. Main Street, Algonquin, IL 60102, *Officer:* Richard A. Pena, Jr., President/Secretary (Qualifying Individual).

V. Alexander & Company, Inc., 22 Century Blvd., Suite 510, Nashville, TN 37214, *Officers:* Michael D. Swett, Vice President/CIO (Qualifying Individual), D.F. Brown, Jr., President/Chairman of the Board.

Cesar A. Benoit and Hadee Benoit dba Cesar Cargo Express 532 Chestnut Street, Lynn, MA 01904, *Officers:* Cesar Augusto Benoit, Partner (Qualifying Individual), Hadee Benoit, Partner.

Freight America Express Inc., 25 Western Industrial Drive, Cranston, RI 02921, *Officer:* Keith T. Brandow, President/Secretary/Treasurer (Qualifying Individual).

Dated: January 22, 2010.

Karen V. Gregory,
Secretary.

[FR Doc. 2010-1639 Filed 1-27-10; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Notice of Public Hearing; Passenger Vessel Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Public hearing.

SUMMARY: The Commission has determined to hold a public hearing on March 3, 2010 to receive public testimony concerning the Commission's Passenger Vessel Financial Responsibility Program.

DATES: Requests to participate in the Public Hearing are due February 16, 2010.

ADDRESSES: Address all requests to appear to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573-0001, (202) 523-5725, E-mail: secretary@fmc.gov.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573-0001, (202) 523-5725, E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

On December 3, 2009, the Commission announced that it had determined to issue a Notice of Inquiry ("NOI") to solicit information and comments concerning the benefits and burdens of the current Commission requirements by which passenger vessel operators establish proof of financial responsibility in the event of nonperformance of a contracted cruise from a U.S. port. Comments received from the public and interested segments of the passenger cruise industry will assist in determining whether or not the Commission should amend its regulations at 46 CFR Part 540, Subpart A. Written comments in response to the NOI are due February 10, 2010. The Commission's NOI is posted on the Commission's Web site at <http://www.fmc.gov> and is also published elsewhere in this issue.

The NOI also announced that the Commission anticipated holding one or

more hearings at which interested parties could make presentations concerning the Commission's passenger vessel financial responsibility program. The Commission has now determined to convene this public hearing on March 3, 2010. The hearing will be held in the Commission's Main Hearing Room, Room 100, 800 North Capitol Street, NW., Washington, DC, at a time that will be announced in a subsequent notice.

Requests to appear at the hearing must be filed with the Office of the Secretary no later than 5 p.m. on February 16, 2010, and include the name, street address, email, address, telephone number, and the name of your company or employer, if any. Parties wishing to participate should also provide a brief statement describing the nature of their business, *e.g.*, PVO, port, industry association, credit and financial company, surety, guarantor, insurer, travel agent, cruise passenger, or other interested party.

Requests to appear should be addressed to the Office of the Secretary and submitted: By e-mail as an attachment (Microsoft Word) sent to secretary@fmc.gov; by facsimile to 202-523-0014; or by U.S. mail or courier to Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573. Please note, to avoid delay, email or facsimile submissions are encouraged. The Commission will announce the time of the hearing, the order of presentation, and time allotment prior to the March 3, 2010 hearing.

By the Commission.

Karen V. Gregory,
Secretary.

[FR Doc. 2010-1797 Filed 1-27-10; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET Date	Trans No.	ET req status	Party name
14-DEC-09	20100215	G	Corsair III Financial Services.
		G	Capital Partners, LP.
		G	East West Bancorp, Inc.
16-DEC-09	20100049	G	East West Bancorp, Inc.
		G	Cisco Systems, Inc.
		G	Starent Networks, Corp.
	20100155	G	Starent Networks, Corp.
		G	JDA Software Group, Inc.
		G	i2 Technologies, Inc.
	20100183	G	i2 Technologies, Inc.
		G	Blackstone Capital Partners V L.P.
		G	Birds Eye Holdings LLC.
17-DEC-09	20100160	G	Birds Eye Foods, Inc.
		G	Applied Materials, Inc.
		G	Semitool, Inc.
	20100161	G	Semitool, Inc.
		G	Goodrich Corporation.
		G	J.F. Lehman Equity.
18-DEC-09	20100213	G	Investors II, L.P.
		G	AIS Global Holdings LLC.
		G	TowerBrook Investors III, L.P.
		G	Mr. Sumner Redstone.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET Date	Trans No.	ET req status	Party name
22-DEC-09	20100239	G	National Amusements, Inc.
		G	Quincy Amusements Inc.
		G	Linsalata Capital Partners.
	20100240	Fund V, L.P.	
		G	James J Gervato.
		G	Eatem Corporation.
	20100250	G	Linsalata Capital Partners.
		Fund V, L.P.	
		G	Robert G Buono, Sr.
23-DEC-09	20100095	Eatem Corporation.	
		G	The Resolute Fund II, L.P.
		G	Zest Anchors, Inc.
	20100229	G	Zest Anchors, Inc.
		G	Agrium Inc.
		G	CF Industries Holdings, Inc.
24-DEC-09	20100256	G	CF Industries Holdings, Inc.
		G	Hewlett-Packard Company.
		G	3Com Corporation.
28-DEC-09	20100094	G	3Com Corporation.
		G	Geokinetics Inc.
		G	Petroleum Geo-Services, ASA.
29-DEC-09	20100023	G	PGS Onshore, Inc.
		G	Agrium Inc.
		G	Terra Industries Inc.
30-DEC-09	20090714	G	Terra Industries Inc.
		G	EMC Corporation.
		G	Jon and Tara Darbyshire.
	20100137	G	Archer Technologies, LLC.
		G	Amcor Limited.
		G	Rio Tinto plc/Rio Tinto Limited.
	20100247	G	Alcan Packaging Puerto Rico Inc.
		G	Daiichi Sankyo Company, Limited.
		G	PharmaForce, Inc.
	20100264	G	PharmaForce, Inc.
		G	AstraZeneca plc.
		G	Targacept, Inc.
05-JAN-10	20100266	G	Targacept, Inc.
		G	Eugenie Patri Sebastien EPS, SA.
		G	Anthony Soave.
	20100267	G	Double Eagle Distributing Company.
		G	CITY Beverage-Illinois L.L.C.
		G	United Technologies Corporation.
	20100286	G	Clipper Windpower Plc.
		G	Clipper Windpower Plc.
		G	De Facto 1730 Limited.
	20100270	G	Iridium Holding Limited.
		G	Iridium Holding Limited.
		G	Platinum Equity Capital.
06-JAN-10	20100274	G	Partners II, L.P.
		G	Genmar Holdings, Inc.
		G	Genmar Holdings, Inc.
	20100263	Y	Trilantic Capital Partners IV L.P.
		Y	Macquarie Group Limited.
		Y	Microstar Global Asset Management LLC.
	20100272	Y	Microstar Logistics LLC.
		G	EQT V (No. 1) Limited Partnership.
		G	Springer Science + Business Media S.A.
	20100263	G	Springer Science + Business Media S.A.
		G	SPO Partners II, LP.
		G	Greene Group, Inc.
	20100272	G	Ready Mix USA, LLC.
		G	Valero Energy Corporation.
		G	ASA Ethanol Holdings, LLC.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET Date	Trans No.	ET req status	Party name
07-JAN-10	20100276	G	ASA Ethanol Holdings, LLC.
		G	Diamond Castle Partners IV, L.P.
		G	CHS Private Equity V LP.
	20100295	G	Suture Express Holdings, Inc.
		G	Valero Energy Corporation.
		G	Renew Energy LLC.
	20100273	G	Renew Energy LLC.
		G	Celgene Corporation.
		G	Gloucester Pharmaceuticals, Inc.
	20100299	G	Gloucester Pharmaceuticals, Inc.
		G	Overture Acquisition Corporation.
		G	David Smilow.
08-JAN-10	20100252	G	JNL Bermuda LLC.
		G	Telefonaktiebolaget LM Ericsson.
		G	Nortel Networks Corporation.
	20100278	G	Nortel Networks Corporation.
		G	Kinder Morgan Energy Partners, LP.
		G	M12 LLC.
		G	USD Commercial Services LLC.
		G	Baltimore Transload Terminal LLC.
		G	Dallas Fort Worth Rail Terminal LLC.
	20100279	G	Linden Transload Terminal LLC.
		G	Kinder Morgan Energy Partners, L.P.
		G	The Goldman Sachs Group, Inc.
		G	USD Commercial Services LLC.
		G	Linden Transload Terminal LLC.
		G	Dallas Fort Worth Rail Terminal LLC.
	20100281	G	Baltimore Transload Terminal LLC.
		G	ArcLight Energy Partners Fund IV, LP.
		G	United States Power Fund, LP.
		G	Hamakua A. LLC.
		G	BR Hamakua, LLC.
		G	BR Landing, LLC.
		G	QUIXX Mustang Station, LLC.
		G	GPP Investors 1, LLC.
		G	LSP—Denver City, LLC.
		G	EIF Neptune, LLC.
		G	Crockett Holdings, LLC.
		G	Northbrook Texas, LLC.
	20100291	G	EIF Borger Holdings, LLC.
		G	Legacy Hospital Partners (Holdings), LLC.
		G	The Wilson N. Jones Memorial Hospital.
	20100303	G	Wilson N. Jones Medical Center and Affiliates.
		G	Windstream Corporation.
		G	Iowa Telecommunications Services, Inc.
	20100314	G	Iowa Telecommunications Services, Inc.
		G	Total S.A.
		G	Chesapeake Energy Corporation.
		G	Chesapeake Exploration LLC.

For Further Information Contact:
Sandra M. Peay, Contact Representative
or Renee Hallman, Contact
Representative, Federal Trade
Commission, Premerger Notification
Office, Bureau Of Competition, Room
H-303, Washington, DC 20580, (202)
326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010-1564 Filed 1-27-10; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0011]

Federal Acquisition Regulation; Information Collection; Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

AGENCIES: Department of Defense (DOD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Notice of request for comments
regarding an extension to an existing
OMB clearance.

SUMMARY: Under the provisions of the
Paperwork Reduction Act of 1995 (44
U.S.C. Chapter 35), the Regulatory
Secretariat will be submitting to the
Office of Management and Budget
(OMB) a request to review and approve
an extension of a previously approved
information collection requirement
concerning preaward survey forms
(Standard Forms 1403, 1404, 1405,
1406, 1407, and 1408.)

*Public comments are particularly
invited on:* Whether this collection of
information is necessary for the proper
performance of functions of the FAR,
and whether it will have practical
utility; whether our estimate of the
public burden of this collection of
information is accurate, and based on
valid assumptions and methodology;
ways to enhance the quality, utility, and
clarity of the information to be
collected; and ways in which we can
minimize the burden of the collection of
information on those who are to
respond, through the use of appropriate
technological collection techniques or
other forms of information technology.

DATES: Submit comments on or before
March 29, 2010.

ADDRESSES: Submit comments regarding
this burden estimate or any other aspect
of the collection of information,
including suggestions for reducing this
burden to the General Services
Administration, Regulatory Secretariat
(MVPR), 1800 F Street, NW., Room
4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr.
Warren Blankenship, Procurement
Analyst, Contract Policy Branch, GSA,
(202) 501-1900 or e-mail
warren.blankenship@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interest
and to ensure timely delivery of items
of the requisite quality, contracting
officers, prior to award, must make an
affirmative determination that the
prospective contractor is responsible,
i.e., capable of performing the contract.
Before making such a determination, the
contracting officer must have in his
possession or must obtain information
sufficient to satisfy himself that the
prospective contractor (i) has adequate
financial resources, or the ability to
obtain such resources, (ii) is able to
comply with required delivery
schedule, (iii) has a satisfactory record
of performance, (iv) has a satisfactory
record of integrity, and (v) is otherwise
qualified and eligible to receive an
award under appropriate laws and
regulations. If such information is not in
the contracting officer's possession, it is
obtained through a preaward survey
conducted by the contract
administration office responsible for the
plant and/or the geographic area in
which the plant is located. The
necessary data is collected by contract
administration personnel from available
data or through plant visits, phone calls,
and correspondence. This data is
entered on to Standard Forms 1403,
1404, 1405, 1406, 1407, and 1408 in
detail commensurate with the dollar
value and complexity of the
procurement.

B. Annual Reporting Burden

Respondents: 5,800.

Responses Per Respondent: 1.

Total Responses: 5,800.

Hours Per Response: 21.

Total Burden Hours: 121,800.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the
information collection documents from
the General Services Administration,
Regulatory Secretariat (MVPR), 1800 F
Street, NW., Room 4041, Washington,
DC 20405, telephone (202) 501-4755.
Please cite OMB Control Number 9000-
0011, Preaward Survey Forms (Standard

Forms 1403, 1404, 1405, 1406, 1407,
and 1408), in all correspondence.

Dated: January 22, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010-1682 Filed 1-27-10; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0133]

Federal Acquisition Regulation; Submission for OMB Review; Defense Production Act Amendments

AGENCIES: Department of Defense (DOD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Notice of request for comments
regarding an extension to an existing
OMB clearance.

SUMMARY: Under the provisions of the
Paperwork Reduction Act of 1995 (44
U.S.C. Chapter 35), the Regulatory
Secretariat will be submitting to the
Office of Management and Budget
(OMB) a request to review and approve
an extension of a previously approved
information collection requirement
concerning Defense Production Act
Amendments. A request for public
comments was published in the **Federal
Register** at 74 FR 58627, on November
13, 2009. No comments were received.

Public comments are particularly
invited on: Whether this collection of
information is necessary for the proper
performance of functions of the FAR,
and whether it will have practical
utility; whether our estimate of the
public burden of this collection of
information is accurate, and based on
valid assumptions and methodology;
ways to enhance the quality, utility, and
clarity of the information to be
collected; and ways in which we can
minimize the burden of the collection of
information on those who are to
respond, through the use of appropriate
technological collection techniques or
other forms of information technology.

DATES: Comments may be submitted on
or before March 1, 2010. Submit
comments including suggestions for
reducing this burden to: FAR Desk
Officer, OMB, Room 10102, NEOB,
Washington, DC 20503, and a copy to
the General Services Administration,
Regulatory Secretariat (MVPR), 1800 F

Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Contract Policy Branch, GSA, (202) 501-4082 or e-mail at jeritta.parnell@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title III of the Defense Production Act (DPA) of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA.

FAR 34.1 and 52.234-1 require contractors, upon the direction of the contracting officer, to test Title III industrial resources for qualification, and provide the test results to the Defense Production Act Office. The FAR coverage also expresses Government policy to pay for such testing and provides definitions, procedures, and a contract clause to implement the policy. This information is used by the Defense Production Act Office, Title III Program, to determine whether the Title III industrial resource has been provided an impartial opportunity to qualify.

B. Annual Reporting Burden

Respondents: 6.

Responses Per Respondent: 3.

Total Annual Responses: 18.

Hours Per Response: 100.

Total Burden Hours: 1,800.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-0133, Defense Production Act Amendments, in all correspondence.

Dated: January 22, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010-1683 Filed 1-27-10; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

[OMB Control No. 9000-0114]

**Federal Acquisition Regulation;
Submission for OMB Review; Right of
First Refusal of Employment**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0114).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning right of first refusal of employment. A request for public comments was published in the **Federal Register** at 74 FR 58629, on November 13, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before March 1, 2010.

ADDRESSES: Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Sakalos, Contract Policy Branch, GSA, at (202) 208-0498 or via e-mail at lori.sakalos@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

Right of First Refusal of Employment is a regulation which establishes policy regarding adversely affected or separated Government employees resulting from the conversion from in-house performance to performance by contract. The policy will enable these employees to have an opportunity to work for the contractor who is awarded the contract.

The information gathered will be used by the Government to gain knowledge of which employees, adversely affected or separated as a result of the contract award, have gained employment with the contractor within 90 days after contract performance begins.

B. Annual Reporting Burden

Number of Respondents: 304.

Responses Per Respondent: 1.

Total Responses: 304.

Average Burden Hours Per Response:

3. *Total Burden Hours:* 912.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0114, Right of First Refusal of Employment, in all correspondence.

Dated: January 22, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010-1685 Filed 1-27-10; 8:45 am]

BILLING CODE 6820-EP-P

**GENERAL SERVICES
ADMINISTRATION**

[OMB Control No. 3090-0121]

**General Services Administration
Acquisition Regulation; Submission
for OMB Review; Industrial Funding
Fee and Sales Reporting**

AGENCY: Acquisition Policy Division, GSA.

ACTION: Notice of request for comments regarding a reinstatement of an information collection for an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement regarding industrial

funding fee and sales reporting. A request for public comments was published in the **Federal Register** at 74 FR 58630, on November 13, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: March 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Procurement Analyst, Contract Policy Branch, at telephone (202) 501-1900 or via e-mail to warren.blankenship@gsa.gov.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090-0121, Industrial Funding Fee and Sales Reporting, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Background

The Government collects the data quarterly in order to evaluate and monitor the effectiveness of the schedule program and to negotiate better prices based on volume, which saves taxpayers dollars. As a result of collecting the data quarterly, the Government has the ability to provide upon request current schedule sales information to the federal agencies and the public.

B. Annual Reporting Burden

Respondents: 17,000.

Responses Per Respondent: 20.

Total Responses: 340,000.

Hours Per Response: .0833.

Total Burden Hours: 28,322.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 208-7312. Please cite OMB Control No. 3090-0121, Industrial Funding Fee and Sales Reporting, in all correspondence.

Dated: January 22, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010-1681 Filed 1-27-10; 8:45 am]

BILLING CODE 6820-61-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Misconduct in Science

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that on January 7, 2010, the Department of Health and Human Services (HHS) Debarring Official, on behalf of the Secretary of HHS, issued a final notice of debarment based on the misconduct in science findings of the Office of Research Integrity (ORI) in the following case:

James Gary Linn, PhD, Tennessee State University: Based on the findings in an investigation report by Tennessee State University (TSU) and additional analysis conducted by ORI in its oversight review, ORI found that James Gary Linn, Ph.D., former Professor, School of Nursing, TSU, committed misconduct in science and research misconduct in research supported by National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grant S06 GM008092, and National Center for Research Resources (NCRR), NIH, grant G12 RR03033.

Specifically, ORI found:

- The Respondent knowingly and intentionally falsified and/or fabricated the data and results of a study in which he purportedly tested the effects of an intervention to reduce sexual risk behaviors in high risk, impaired populations of homeless men with mental illness by reporting false values for variables in Tables 2-5 of *Cellular and Molecular Biology* 49(7):1167-1175, 2003. In that published article, he falsified the values in Tables 2-5 by altering the values that he had obtained from another author's manuscript.

- The Respondent provided a CD ROM disc to TSU's Institutional Research Investigation Committee (RIC) that he claimed contained files supporting his analyses for the article in question but that contained fabricated and/or falsified data.

- The Respondent submitted falsified summary data to the TSU RIC during the TSU investigation and to ORI.

ORI issued a charge letter enumerating the above findings of misconduct in science and proposing

HHS administrative actions. Dr. Linn subsequently requested a hearing before an Administrative Law Judge (ALJ) of the Departmental Appeals Board to dispute these findings. However, on November 30, 2009, Dr. Linn withdrew his request for a hearing. On December 18, 2009, the ALJ of the Departmental Appeals Board accepted Dr. Linn's withdrawal and dismissed his request for a hearing. Thus, the scientific misconduct findings set forth above became effective, and the following administrative actions have been implemented for a period of three (3) years, beginning on January 7, 2010:

(1) Dr. Linn has been debarred from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as "covered transactions" pursuant to the Department of Health and Human Service's Implementation (2 CFR Part 376 *et seq.*) of OMB Guidelines to Agencies on Governmentwide Debarment and Suspension, 2 CFR Part 180; and

(2) Dr. Linn is prohibited from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as consultant.

FOR FURTHER INFORMATION CONTACT:

Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453-8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2010-1706 Filed 1-27-10; 8:45 am]

BILLING CODE 4160-17-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day 10-0222]

Agency Forms Undergoing Paperwork Reduction Act Review; Proposed Data Collections Submitted for Public Comment and Recommendations; Correction

AGENCY: Centers for Disease Control and Prevention.

ACTION: Notice; correction.

SUMMARY: The Centers for Disease Control and Prevention published a document in the **Federal Register** of

January 22, 2010, concerning request for comments on specifications for Questionnaire Design Research Laboratory (QDRL) 2010–2012. The

document contained incorrect burden table.

FOR FURTHER INFORMATION CONTACT: Maryam Daneshvar, 404–639–4604; E-mail: Maryam.Daneshvar@cdc.hhs.gov.

Correction

In the **Federal Register** of January 22, 2010, in FR Doc, 2010–1166, on page 3737, correct the “Annualized Burden Table” caption to read:

ESTIMATED ANNUALIZED BURDEN TABLE

Projects	Number of participants	Number of responses per participant	Average hours per response
QDRL Interviews:			
1) NCHS Surveys	120	1	1.25
2) Other questionnaire testing	120	1	1.25
3) Research on the effects of alternative questionnaire design	500	1	18/60
4) General Methodological Research	60	1	1.25
Focus Groups (5 groups of 10)	50	1	1.5

Dated: January 22, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1717 Filed 1–27–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0017]

Agency Forms Undergoing Paperwork Reduction Act Review; Proposed Data Collections Submitted for Public Comment and Recommendations; Correction

AGENCY: Centers for Disease Control and Prevention.

ACTION: Notice; correction.

SUMMARY: The Centers for Disease Control and Prevention published a document in the **Federal Register** of January 22, 2010, concerning request for comments on application for training. The document contained an incorrect status.

FOR FURTHER INFORMATION CONTACT: Maryam Daneshvar, 404–639–4604; E-mail: Maryam.Daneshvar@cdc.hhs.gov.

Correction

In the **Federal Register** of January 22, 2010, in FR Doc 2010–1165, on page 3736, in the proposed project, correct the “Status” caption to read:

Application for Training (OMB No. 0920–0017 Exp. 3/31/2010)—
REVISION—

Dated: January 22, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1715 Filed 1–27–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–09AU]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Minority HIV/AIDS Research Initiative (MARI) Project—Preventing HIV Risk Behaviors among Hispanic Adolescents—New—National Center for HIV/AIDS, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis Elimination Programs (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is planning to interview Hispanic adolescents and their parents at two high schools in Miami-Dade County to facilitate the development of targeted and culturally-appropriate HIV prevention materials for Hispanic youth in Miami-Dade County. The purpose of the proposed study is to assess the efficacy of Streamlined Familias Unidas, a 5-session version of a longer efficacious, parent-centered prevention intervention developed specifically for Hispanic families. 240 Hispanic adolescents and their primary caregivers (480 total participants) from two Miami-Dade County public high schools will be recruited and randomized into two groups: (1) The streamlined 5-session Familias Unidas intervention group, and (2) a group that receives routine information about HIV from the high schools. Four times over 2 years, both groups will respond to computerized questionnaires that explore family function, sexual behaviors, etc. These assessment questionnaires will be computer-based (ACASI). The assessments are for the purpose of developing and improving HIV prevention materials and interventions that are culturally appropriate to the Hispanic population in Miami-Dade

County. Family functioning, substance use, sexual behaviors, behavior problems, and community values will inform HIV intervention programs in the community.

This study will address some of the goals of CDC's "CDC HIV Prevention Strategic Plan: Extended Through 2010". CDC plans to meet specific goals by

increasing the number of behavior prevention interventions proven effective for Hispanic adolescents, and increasing the number of Hispanic adolescents who consistently engage in behaviors that reduce risk for acquiring HIV. Additionally, the study data will provide important information that will

aid in developing and improving HIV prevention interventions for Hispanic adolescents and their families.

Questionnaires will take from approximately 45 min. (caregivers) to 60 minutes (adolescents) to complete.

There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Type of respondents and questionnaire	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Hispanic Adolescent				
Screening	400	1	3/60	20
ACASI—Baseline	240	1	1	240
ACASI—4-month follow-up	228	1	1	228
ACASI—12-month follow-up	217	1	1	217
Primary Caregiver of Hispanic Adolescent				
Screening	400	1	3/60	20
ACASI—Baseline	240	1	45/60	180
ACASI—4-month follow-up	228	1	45/60	171
ACASI—12-month follow-up	217	1	45/60	163
TOTAL				1239

Dated: January 22, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010-1719 Filed 1-27-10; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-10-09BR]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC), Agency for Toxic Substances and Disease Registry (ATSDR) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to omb@cdc.gov. Send written comments to ATSDR Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.

Proposed Project

Registration of Individuals with Amyotrophic Lateral Sclerosis (ALS) in the National ALS Registry—New—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

On October 10, 2008, President Bush signed S. 1382: ALS Registry Act which amended the Public Health Service Act to provide for the establishment of an Amyotrophic Lateral Sclerosis (ALS) Registry. The activities described are part of the effort to create the National ALS Registry. The purpose of the registry is to: (1) Better describe the incidence and prevalence of ALS in the United States; (2) examine appropriate factors, such as environmental and occupational, that might be associated with the disease; (3) better outline key demographic factors (such as age, race or ethnicity, gender, and family history of individuals who are diagnosed with the disease) associated with the disease; and (4) better examine the connection between ALS and other motor neuron disorders that can be confused with ALS, misdiagnosed as ALS, and in some cases progress to ALS. The registry will collect personal health information that may provide a basis for further scientific studies of potential risks for developing ALS.

During a workshop held by The Agency for Toxic Substances and

Disease Registry (ATSDR) in March 2006 to discuss surveillance of selected autoimmune and neurological diseases, it was decided to develop a proposal to build on work that had already been done and coordinate existing datasets to create a larger database, rather than to start from scratch with medical records review and physician reporting. Four pilot projects were funded to evaluate the accuracy and reliability of existing data from the Center for Medicare and Medicaid Services (CMS) and various datasets from the Veterans Administration. Preliminary results indicate that additional ways to identify cases of ALS will be necessary to increase completeness of the registry. Therefore, ATSDR developed a Web site where individuals will also have the opportunity to provide additional information on such things as occupation, military service, and family history of ALS, which is not available in existing records.

The registration portion of the data collection will be limited to information that can be used to identify an individual to assure that there are not duplicate records for an individual. Avoiding duplication of registrants due to obtaining records from multiple sources is imperative to get accurate estimates of incidence and prevalence, as well as accurate information on demographic characteristics of the cases of ALS.

In addition to questions required for registration, there will be a series of short surveys to collect information on such things as military history, occupations, and family history that would not likely be available from other sources.

This project proposes to collect information on individuals with ALS which can be combined with information obtained from existing

sources of information. This combined data will become the National ALS Registry and will be used to provide more accurate estimates of the incidence and prevalence of disease as well as the demographic characteristics of the cases. Information obtained from the surveys will be used to better characterize potential risk factors for ALS which will lead to further in-depth studies.

The existence of the Web site will be advertised by ATSDR and advocacy groups such as the Amyotrophic Lateral Sclerosis Association (ALSA) and the Muscular Dystrophy Association (MDA). There are no costs to the respondents other than their time. The estimated annualized burden hours are 2300.

ESTIMATED ANNUALIZED BURDEN HOURS

Forms for ALS respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Validation questions	6,000	1	2/60
Registration of ALS cases	4,667	1	7/60
Cases of ALS completing 1-time surveys	2,334	6	5/60
Cases of ALS completing twice yearly surveys	2,334	2	5/60

Dated: January 22, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry.

[FR Doc. 2010-1718 Filed 1-27-10; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Diagnostic Tool for Diagnosing Benign Versus Malignant Thyroid Lesions

Description of Invention: This technology describes a 72 gene model that has been developed for diagnosing less common forms of thyroid cancer like follicular carcinoma and others. The technology detects thyroid cancer using fine needle aspiration (FNA) biopsy and the analysis of differentially expressed thyroid (DET) genes and their encoded proteins. These results provide a molecular classification system for thyroid tumors and this in turn provides a more accurate diagnostic tool for the clinician managing patients with suspicious thyroid lesions. It is related to earlier technology out of the laboratory of Dr. Libutti, US Application No. 11/547,995 entitled "Diagnostic Tool for Diagnosing Benign vs. Malignant Thyroid Lesions" (HHS Reference No. E-124-2004). This latter invention was drawn to a 6 and 10 gene model that distinguishes benign vs. malignant papillary thyroid lesions.

Application: The identification of markers that can determine a specific type of tumor, predict patient outcome or the tumor response to specific therapies.

Advantage: The use of gene profiles to detect thyroid malignancy has the advantage that it complements the current method of diagnosis using FNA, but greatly increases the accuracy of detecting malignant thyroid lesions.

Development Status: The technology is currently in the pre-clinical stage of development.

Market: It is expected that more than 37,340 new cases of thyroid cancer will be diagnosed in the United States this year. Women will be disproportionately affected constituting 76% of these new

cases. Fortunately, this is one of the least deadly cancers; the percentage of people living at least 5 years after being diagnosed is about 97%. However, current methods of diagnosis are inaccurate and many biopsy results are inconclusive and labeled as suspicious or indeterminate because of difficulties in distinguishing benign and malignant thyroid tumors solely on cellular features. Since most nodules usually end up being benign, treatment decisions are greatly impacted because patients with benign nodules may be subjected to unnecessary surgery that will impact their lives considerably. Thus, there is a compelling need to develop more accurate diagnostic tests to detect thyroid cancer.

Inventors: Steven K. Libutti (NCI) *et al.*

Related Publications:

1. Prasad NB, Somervell H, Tufano RP, Dackiw AP, Marohn MR, Califano JA, Wang Y, Westra WH, Clark DP, Umbricht CB, Libutti SK, Zeiger MA. Identification of genes differentially expressed in benign versus malignant thyroid tumors. *Clin Cancer Res.* 2008 Jun 1;14(11):3327-3337. [PubMed: 18519760]

2. Rosen J, He M, Umbricht C, Alexander HR, Dackiw AP, Zeiger MA, Libutti SK. A six-gene model for differentiating benign from malignant thyroid tumors on the basis of gene expression. *Surgery.* 2005 Dec;138(6):1050-1056; discussion 1056-1057. [PubMed: 16360390]

3. Mazzanti C, Zeiger MA, Costouros NG, Umbricht C, Westra WH, Smith D, Somervell H, Bevilacqua G, Alexander HR, Libutti SK. Using gene expression profiling to differentiate benign versus malignant thyroid tumors. *Cancer Res.*

2004 Apr 15;64(8):2898–2903. [PubMed: 15087409]

Patent Status: PCT Application No. PCT/US2008/10139 entitled “Diagnostic Tool for Diagnosing Benign Versus Malignant Thyroid Lesions” filed August 27, 2008 (HHS Reference No. E–326–2007/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Whitney Hastings; 301–451–7337; hastingw@mail.nih.gov.

Collaborative Research Opportunity: The Center for Cancer Research, Surgery Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Diagnostic Tool for Diagnosing Benign Versus Malignant Thyroid Lesions. Please contact John D. Hewes, Ph.D. at 301–435–3121 or hewesj@mail.nih.gov for more information.

Imaging of Extracellular Proteases in Cells Using Mutant Anthrax Toxin Protective Antigens

Description of Invention: The claimed invention provides highly specific and sensitive methods for in vivo, in vitro, or ex vivo imaging of specific extracellular protease activity using an anthrax binary toxin system. The system targets cells that express extracellular proteases of interest. Such a system would be highly useful since various studies have demonstrated a positive correlation between the activity of extracellular proteases and various diseases and undesirable physiological conditions. For example, breakdown of the extracellular matrix by extracellular proteases is a prerequisite for the invasive growth of malignant cells, metastatic spread of tumors, and other pathological remodeling of tissue. In this case, methods are provided for the imaging of a specific extracellular protease by contacting a cell with: (1) A mutant anthrax toxin protective antigen (mPrAg) that binds to a cell surface receptor of a cell expressing an extracellular protease and is cleaved by a specific extracellular protease expressed by the cell and 2) a ligand that specifically binds to the cleaved mPrAg and is linked to a moiety that is detected by an imaging procedure, thereby forming a ligand-mPrAg complex that is translocated into the cell. The detectable moiety linked to the ligand in the ligand-mPrAg complex can be imaged before, during, or after translocation. Specific disease examples might include, but are not necessarily limited to, cancer, inflammation, and tumor progression or regression.

Inventors: Thomas H. Bugge *et al.* (NIDCR).

Patent Status: U.S. Patent Application No. 10/488,806 filed 04 Mar 2004 (HHS Reference No. E–295–2001/0–US–03).

Licensing Status: Available for licensing.

Licensing Contact: Whitney Hastings; 301–451–7337; hastingw@mail.nih.gov.

A Basal Cell Carcinoma Tumor Suppressor Gene

Description of Invention: Novel human nucleic acid sequences and polypeptides derived from the tumor suppressor, PTC or patched gene which have been mapped to human chromosome 9q22.3–q31, have been discovered for use in cancer diagnosis and therapy. Mutations of this gene are associated with Nevroid Basal Cell Carcinoma Syndrome (NBCCS) a disease associated with skin cancer and human developmental defects such as Gorlin Syndrome comprising skeletal defects, craniofacial and brain abnormalities. Methods of detection of PTC in a tissue sample have been found as well as recombinant cells, antibodies, and pharmacological compositions useful in treatment of the disease. Methods of diagnosis of and therapy for NBCCS have also been found. The PTC gene is thought to encode a protein which selectively switches off growth factor production in certain cells by interaction with members of the family of proteins encoded by the “hedgehog” gene, which instructs cells during development and growth. NBCCS is the result of abnormal PTC gene products that encode non-functional or functionally reduced NBCCS polypeptides. This lack of function may be caused by insertions, deletions, point mutations, splicing errors, premature termination codons, missing initiators, etc. The tumors caused by NBCCS are slow growing tumors that rarely metastasize, but which can cause significant morbidity and occasional mortality from local invasion. The PTC gene is also associated with medulloblastomas and trichoepitheliomas.

Newly discovered germline and sporadic mutations associated with NBCCS have been disclosed and claimed in the International (PCT) application.

Inventors: Michael C. Dean (NCI) *et al.*
Patent Status:

• U.S. Patent No. 6,552,181 issued 22 Apr 2003 (HHS Reference No. E–104–1996/1–US–01).

• U.S. Patent No. 7,317,086 issued 08 Jan 2008 (HHS Reference No. E–104–1996/1–US–02).

• Related international patents/patent applications.

Licensing Status: Available for licensing.

Licensing Contact: Whitney Hastings; 301–451–7337; hastingw@mail.nih.gov.

Dated: January 21, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–1667 Filed 1–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Signal-to-Noise Enhancement in Imaging Applications Using a Time-Series of Images

Description of Invention: The invention offered for licensing relates to the field of imaging and specifically to the field of medical imaging. The apparatus and method of the invention provide for noise reduction in imaging applications that use a time-series of images. In one embodiment of the invention, a time-series of images is acquired using a same imaging protocol of the same subject area, but the images are spaced in time by one or more time intervals (e.g. 1, 2, 3 * * * seconds apart). A sub-region is projected across

all of the images to perform a localized analysis (corresponding X-Y pixels or X-Y-Z voxels are analyzed across all images) that identifies temporal components within each sub-region. Subsequently, within the sub-regions, only those temporal components are selected whose amplitude is above a predetermined amplitude threshold. The images are then reconstructed using the sub-regions with reduced components. A maximal-intensity-projection (MIP) is applied in the temporal domain (tMIP) in order to obtain a single image with reduced noise (this can be done either at the sub-region level or at the reconstructed image level). The technology can be applied to a broad spectrum of medical imaging technologies such as MRI, X-Ray, CT and others.

Applications: Medical imaging and diagnostics applied to MRI, X-Ray, CT scans or other imaging modalities including PET, SPECT, ultrasound or optical.

Advantages: Enhancing signal-to-noise of medical imaging techniques.

Development Status:

- Proof of concept has been demonstrated. Data is available.
- Need to acquire further data to establish clinical utility of the method and to further optimize the protocol.

Market:

- According to market research reports the market for medical imaging equipment industry in the United States is approximately \$9.0 billion dollars now and has been growing by approximately 7.6% annually.

- The United States market for computed tomography (CT) scanning systems is estimated to touch \$3.6 billion by the end of 2009. The U.S. accounts for over 50.0% of the worldwide market.

- Worldwide MRI equipment market is estimated to reach \$5.5 billion by 2010, according to new report by Global Industry Analysts, Inc. (http://www.strategyr.com/Magnetic_Resonance_Imaging_MRI_Equipment_Market_Report.asp). In the United States the market for such equipment is estimated at \$1.9 billion for 2008, as stated the same report. The very high-field MRI systems market in the United States is projected to reach \$968 million by the year 2010. Very High-Field Systems also represent the fastest growing segment, as hospitals and clinics upgrade old equipment with state-of-the-art systems.

- Enhancements in imaging technologies to achieve better image clarity, reliability and speed are being constantly pursued by medical imaging companies. Technologies that offer such improvements therefore present

excellent commercial potential. Thus the subject invention which can be applied in a broad spectrum of imaging technologies offers such good commercial potential.

Inventors: Han Wen and Vinay Pai (NHLBI).

Relevant Articles:

1. Fish DA, Grochmalicki J, Pike ER. Scanning singular-value-decomposition method for restoration of images with space-variant blur. *J Opt Soc Am A*, 13(3), pp. 464–469, March 1996.

2. Du X, Dunxu Y, Cuihua L, Jing L. “A novel approach to SVD-based image filtering improvement,” International Conference on Computer Science and Software Engineering, vol 6, pp. 133–136, 2008.

Patent Status: U.S. Provisional Application No. 61/266,442 filed December 3, 2009, entitled “Signal-to-Noise Enhancement in Imaging Applications Using a Time-Series of Images” (HHS Reference No. E-292–2009/0–US–01).

Related Technologies: Image denoising techniques such as singular value decomposition (SVD).

Licensing Status: Available for licensing.

Licensing Contacts: Uri Reichman, Ph.D., MBA; 301–435–4616; UR7a@nih.gov; or John Stansberry, Ph.D.; 301–435–5236; stansbej@mail.nih.gov.

Collaborative Research Opportunity: The National Heart, Lung, and Blood Institute is seeking statements of capability or interest from parties interested in collaborative research to implement the technology described above on specific commercial platforms. Please contact Denise Crooks, Ph.D. at 301–435–0103 or via e-mail at crooksd@nhlbi.nih.gov for more information.

Method for the Treatment of HIV/AIDS Infection Using Acyclovir in Identified Subjects

Description of Invention: The invention provides the novel method to treat HIV infections with acyclovir which can be converted to acyclovir triphosphate inside infected cells. Acyclovir or acyclovir-related drugs were previously approved for control of herpesvirus replication with 20 years of records of safe application. The subject invention demonstrates that acyclovir triphosphate can inhibit HIV–1 reverse transcriptase as a potent suppressor of HIV–1 replication in human lymphoid tissues. In addition, the subject invention may be attractive to potential licensees, as there is little to no FDA hurdle to overcome in the development of the new formulations to use in this

manner. Thus, the low cost and proven safety of acyclovir may lead to a new medicine for treating HIV–1 infections and a prophylactic agent for preventing HIV infections.

Applications: The treatment and prevention of HIV infections.

Development Status: *In vitro* data available.

Inventors: Leonid B. Margolis, Andrea Lisco, Christophe Vanpouille, Jean-Charles Grivel (NICHD).

Related Publications:

1. A Lisco *et al.* Acyclovir is activated into a HIV–1 reverse transcriptase inhibitor in herpesvirus-infected human tissues. *Cell Host Microbe*. 2008 Sep 11;4(3):260–270. [PubMed: 18779052]
2. N Nagot *et al.* Reduction of HIV–1 RNA levels with therapy to suppress herpes simplex virus. *New Engl J Med*. 2007 Feb 22;356(8):790–799. [PubMed: 17314338]

Patent Status: PCT Application No. PCT/US2008/010316 filed 30 Aug 2008, which published as WO 2009/032244 on 12 Mar 2009 (HHS Reference No. E-306–2007/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Sally Hu, Ph.D.; 301/435–5606; HuS@mail.nih.gov.

Collaborative Research Opportunity: The Eunice Kennedy Shriver National Institute of Child Health and Human Development, Program in Physical Biology, Section on Intracellular Interactions, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Joseph Conrad, Ph.D., J.D. at 301–435–3107 or jmconrad@mail.nih.gov for more information.

Dated: January 21, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–1669 Filed 1–27–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S.

Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Mouse Macula Densa Cell Line

Description of Invention: This technology provides a clonally derived macula densa cell line (MMDD1 cells) that closely mimics the known molecular expression pattern of native macula densa (MD) cells. MMDD1 cells are developed from SV-40 transgenic mice using fluorescence-activated cell sorting of renal tubular cells labeled with segment-specific fluorescent lectins. The MMDD1 cells of this technology express COX-2, bNOS, NKCC2, and ROMK, but not Tamm-Horsfall protein, and show rapid ⁸⁶Rb⁺ uptake that is inhibited by a reduction in NaCl concentration and by bumetanide or furosemide. These MMDD1 cells provide a useful in vitro model for the study of Macula Densa function.

Inventor: Jürgen B. Schnermann (NIDDK).

Publication: T Yang, JM Park, L Arend, Y Huang, R Topaloglu, A Pasumarthy, H Praetorius, K Spring, JP Briggs, J Schnermann. Low chloride stimulation of prostaglandin E2 release and cyclooxygenase-2 expression in a mouse macula densa cell line. *J Biol Chem*. 2000 Dec 1;275(48):37922-37929. [PubMed: 10982805].

Patent Status: HHS Reference No. E-234-2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Suryanarayana (Sury) Vepa, Ph.D., J.D.; 301-435-5020; vepas@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Diabetes and Digestive and Kidney Diseases Kidney Disease Branch is seeking statements of

capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the clonally derived macula densa cell line (MMDD1 cells). Please contact Cindy Fuchs at 301-451-3636 for more information.

Novel Analogues of the Natural Product Schweinfurthin With Specificity for Tumors and Other Disease Manifestations Associated With Neurofibromatosis Type 1

Description of Invention: The global anti-cancer market is forecast to reach \$40 billion by 2012. There remains a significant unmet need for therapies to treat neurofibromatosis type 1 ("NF1"), a common genetic disease that afflicts 1 in 3500 people, and malignant tumors carrying NF1 mutations, including tumors of the central and peripheral nervous systems.

Researchers at the National Cancer Institute ("NCI")-Frederick investigating genetic influences on cancer susceptibility of the nervous system have synthesized novel analogues of Schweinfurthin, a natural compound first isolated from the tropical African plant *Macaranga schweinfurthii*, to which glioma and leukemia cell lines show significant sensitivity. The Schweinfurthin analogues also have inhibitory activity against mouse and human NF1 cancer cell lines. The analogues have a novel mode of action that appears to involve regulation of cytoskeletal reorganization.

These inhibitors are likely to be accepted in the marketplace because their potent, selective activity and unique specificity in mode of action gives them a distinct advantage over the mechanisms of other existing therapies.

Applications:

- Therapies for tumors associated with NF1 (including brain and peripheral nervous system tumors).
- Therapies for leukemia.
- Therapies for NF1 and associated conditions.

Advantages:

- Utilizes proven small-molecule technology.
- Specificity of mode of action may reduce potential side-effects.
- Novel mode of action may limit market competition.

Development Status:

Pre-clinical.

Inventors: Karlyne Reilly *et al.* (NCI).

Relevant Publication: Turbyville *et al.*, "Schweinfurthin A Selectively Inhibits Proliferation and Rho Signaling in Glioma and Neurofibromatosis type 1 Tumor Cells in an NF1-GRD Dependent Manner", submitted.

Patent Status: U.S. Patent Application No. 61/174,338, filed 30 Apr 2009 (HHS Reference No. E-183-2009/0-US-01).

Licensing Status: Available for licensing.

Licensing Contact: Patrick P. McCue, Ph.D.; 301-435-5560; mccuepat@mail.nih.gov.

Collaborative Research Opportunity: The Genetic Modifiers of Tumorigenesis Section at the National Cancer Institute-Frederick is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Schweinfurthins for the treatment of Neurofibromatosis type 1. Please contact John D. Hewes, Ph.D. at 301-435-3121 or hewesj@mail.nih.gov for more information.

Detection of Autoantibodies for the Diagnosis of Sjogren's Syndrome

Description of Invention: This invention provides a method for diagnosing Sjogren's syndrome in a subject. In tests utilizing blood from human volunteers, this method demonstrated dramatically higher accuracy (76%) in positively diagnosing Sjogren's syndrome than a standard, currently available immunoassay (46%).

Briefly, this invention employs a panel of mammalian-derived proteins and protein fragments that are often antigenic in individuals with Sjogren's syndrome in concert with a luciferase immunoprecipitation system. In contrast, most currently available immunoassays for diagnosis of rheumatological diseases include either antigens from recombinant bacterial expression systems or single antigens from bovine sources. These immunoassays are likely to fail to present the sufficient variety of specific human epitopes that are necessary for high accuracy diagnoses of Sjogren's syndrome.

Applications:

- Diagnosis of Sjogren's syndrome.
- A component of a panel of diagnostic tests for patients with autoimmune disease symptoms.

Advantages: Higher accuracy than currently available diagnostics of Sjogren's syndrome.

Development Status:

Early stage. Initial clinical screens have been completed.

Market: According to the Sjogren's Syndrome Foundation, Inc., it takes on average seven years for a positive Sjogren's syndrome diagnosis as symptoms of this syndrome mimic other conditions and diseases. Up to four million individuals in the United States have Sjogren's syndrome, and half of currently diagnosed cases occur in concert with other autoimmune disease (<http://www.sjogrens.org/home/about-sjogrens-syndrome>).

Inventors: Peter D. Burbelo and Michael J. Iadarola (NIDCR).

Related Publications:

1. Burbelo PD, Leahy HP, Issa AT, Groot S, Baraniuk JN, Nikolov NP, Illei GG, Iadarola MJ. Sensitive and robust luminescent profiling of anti-La and other autoantibodies in Sjogren's syndrome. *Autoimmunity*. 2009 Sep;42(6):515–524. [PubMed: 19657778]
2. Burbelo PD, Ching KH, Issa AT, Loftus CM, Li Y, Satoh M, Reeves WH, Iadarola MJ. Rapid serological detection of autoantibodies associated with Sjögren's syndrome. *J Transl Med*. 2009 Sep 24;7:83. [PubMed: 19778440]
3. Burbelo PD, Ching KH, Klimavicz CM, Iadarola MJ. Antibody profiling by Luciferase Immunoprecipitation Systems (LIPS). *J Vis Exp*. 2009 Oct 7;(32); pii: 1549; doi: 10.3791/1549. [PubMed: 19812534]

Patent Status: U.S. Provisional Application No. 61/224,649 filed 10 Jul 2009 (HHS Reference No. E-070-2009/0-US-01).

Licensing Status: Available for licensing.

Licensing Contact: Norbert Pontzer, J.D., Ph.D.; 301-435-5502; pontzern@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Dental and Craniofacial Research, Laboratory of Sensory Biology, Neurobiology and Pain Therapeutics Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact David W. Bradley, Ph.D. at 301-402-0540 or bradleyda@nidcr.nih.gov for more information.

Dated: January 21, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010-1680 Filed 1-27-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious

commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Nitric Oxide-Based Therapeutics for Lung Cancer

Description of Invention: JS-36-25, a diazeniumdiolate prodrug, is available for licensing and development of treatments for lung cancer. The inventors have demonstrated a potent tumoristatic activity of JS-36-25 in both lung cancer cells in vitro and as xenografts in mice. JS-36-25 treatment led to 85% reduction of tumor growth in vivo. The tumoristatic potency of the compound correlated well with the level of endogenous reactive oxygen species (ROS) in the cancer cells. Thus, in addition to potent tumoristatic activity when administered alone, this compound is predicted to have a strong synergy with therapeutics that act through generation of ROS, such as bortezomib, doxorubicin, as well as high-energy radiation.

Applications: Development of lung cancer treatments.

Development Status: Pre-clinical.

Market: There are over 160,000 new cases of lung cancer every year in the United States alone.

Inventors: Anna E. Maciag *et al.* (NCI).

Patent Status: U.S. Provisional Application No. 61/261,175 filed 13 November 2009 (HHS Reference No. E-025-2010/0-US-01).

Licensing Status: Available for licensing.

Licensing Contact: Steve Standley, Ph.D.; 301-435-4074; sstand@od.nih.gov.

T-Cell-Specific Gfi-1 Knockout Mouse

Description of Invention: This is a mouse model available to study T-cell differentiation. Growth factor independent 1 (Gfi-1) is a transcriptional repressor that is transiently induced during T-cell activation. This knockout mouse line is a Gfi-1[flox/flox] introduced into a mouse Cre controlled by a CD4

promoter, which allows selective removal of Gfi-1 exclusively in T-cells. It has thus far been used to demonstrate that Gfi-1 plays a critical role in enhancing Th2 cell expansion and repressing induction of Th17 and CD103+ iTreg cells.

Applications: Tool for studying T-cell proliferation and differentiation.

Inventors: Jinfang Zhu and William E. Paul (NIAID).

Related Publication: J Zhu, TS Davidson, G Wei, D Jankovic, K Cui, DE Schones, L Guo, K Zhao, EM Shevach, WE Paul. Down-regulation of Gfi-1 expression by TGF-beta is important for differentiation of Th17 and CD103+ inducible regulatory T cells. *J Exp Med*. 2009 Feb 16;206(2):329–341. [PubMed: 19188499].

Patent Status: HHS Reference No. E-242-2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: This technology is available as a research tool under a Biological Materials License.

Licensing Contact: Steve Standley, Ph.D.; 301-435-4074; sstand@od.nih.gov.

Dated: January 21, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010-1668 Filed 1-27-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive

Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Preventing Oral Mucositis With Hybrid Adenoretroviral Vectors

Description of Invention: Researchers at the National Institutes of Health have recently developed a novel method utilizing adenoretroviral vectors to safely and swiftly prevent oral mucositis induced by radiotherapy. This clever new method developed by National Institute of Dental and Craniofacial Research (NIDCR) researchers combines the advantages of adenoviral and retroviral vectors to efficiently shuttle into salivary glands a non-integrating vector that can produce a therapeutic protein for intermediate to long-term treatment. This approach is anticipated to result in fewer side-effects than current therapies.

The market for the treatment of mucositis, the painful inflammation and ulceration of the mucous membranes lining the digestive tract, is estimated to be in excess of \$5 billion worldwide. Up to 80% of all patients receiving radiotherapy and approximately 40% of all chemotherapy patients develop oral mucositis, and almost all patients receiving radiotherapy for head and neck cancer and those undergoing stem cell transplantation develop mucositis.

Applications

- Prevention of radiation-induced oral mucositis.
- Transduction of genes encoding secretory proteins with clinical uses for intermediate to long-term treatment (e.g., 4–8 weeks).

Advantages

- Safe.
- Reduced potential for side-effects.
- Efficient production of transduced genes.
- Efficient in vivo/in vitro transduction.

Development Status: Pre-clinical.

Inventor: Changyu Zheng *et al.* (NIDCR).

Patent Status: U.S. Provisional Application No. 61/176,210 filed 07 May 2009 (HHS Reference No. E-185-2009/0-US-01).

Licensing Status: Available for licensing.

Licensing Contact: Patrick McCue, Ph.D.; 301-435-5560; McCuepat@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Dental and

Craniofacial Research is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact David Bradley, Ph.D. at 301-402-0540 or bradleyda@nidcr.nih.gov for more information.

Mutations of the ERBB4 Gene in Melanoma

Description of Invention: Cutaneous malignant melanoma is the most common fatal skin cancer, and the incidence of this disease increases each year. The average survival time for patients diagnosed with malignant melanoma is less than ten months. Consequently, it is important to identify and understand genetic alterations leading to malignant melanoma so that new treatment strategies can be developed.

Protein tyrosine kinases (PTKs) have been associated with a wide variety of cancers, including melanoma. Using high-throughput gene sequencing, the NIH inventors have analyzed PTKs in melanoma and have identified several novel somatic alterations, including alterations in ERBB4. This invention provides methods of identifying specific inhibitors to ERBB4 that could be used to treat patients with ERBB4 mutations. Given the recent success of small molecule protein kinase inhibitors and specifically inhibitors to EGFR, this invention could be used to further the development of specific inhibitors to ERBB4 and improve existing melanoma treatments for patients with these mutations.

Applications

- Diagnostic array for the detection of ERBB4 mutations.
- Method of identifying ERBB4 inhibitors as therapeutic agents to treat malignant melanoma patients.

Development Status: The technology is currently in the pre-clinical stage of development.

Market

- Approximately 160,000 new cases of melanoma are diagnosed worldwide each year. Malignant melanoma is increasing faster than any other cancer.

- Melanoma is the most prevalent cancer among women between the ages of 25 and 29 and the second most prevalent cancer among women ages 30–34.

- Cutaneous malignant melanoma is the most serious form of skin cancer and accounts for about 75% of all skin cancer deaths.

- One person dies from melanoma every hour.

Inventors: Yardena R. Samuels *et al.* (NHGRI).

Related Publication: Prickett TD, Agrawal NS, Wei X, Yates KE, Lin JC, Wunderlich JR, Cronin JC, Cruz P, Rosenberg SA, Samuels Y. Analysis of the tyrosine kinome in melanoma reveals recurrent mutations in ERBB4. *Nature Genet.* 2009 October; 41(10):1127–1132. [PubMed: 19718025].

Patent Status: PCT Application No. PCT/US2009/053005 filed 06 Aug 2009 (HHS Reference No. E-272-2008/0-PCT-02).

Licensing Status: Available for licensing.

Licensing Contact: Whitney Hastings, 301-451-7337; hastingw@mail.nih.gov.

Collaborative Research Opportunity: The Cancer Genetics Branch, National Human Genome Research Institute (NHGRI), National Institutes of Health (NIH) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate and/or commercialize an ERBB4-based diagnostic, prognostic and/or theranostic test as well as identify and/or evaluate ERBB4 inhibitor compounds for testing as possible candidate malignant melanoma therapeutic drugs. Please contact Claire Driscoll at cdriscoll@mail.nih.gov or Dr. Yardena Samuels at samuelsy@mail.nih.gov for more information.

Genetically Modified Stem Cells for Personalized Therapy of Single Gene Disorders

Description of Invention: This technology is directed to individualized therapies of single gene disorders by introducing a patient's own genetically modified adult stem cells to the damaged tissue. Diseases arising from single gene disorders affect approximately 1% of the human population. Unlike most current treatments for such diseases, which are non-specific and symptom-based, this technology specifically addresses the underlying pathology of the disorder.

Many single gene diseases are accompanied by tissue damage and inflammation. This technology exploits the inflammatory response, which includes homing of mesenchymal stem cells to the site of damage, for therapeutic purposes. The inventors have genetically modified adult stem cells to produce silencing RNA specific to the defective protein in the damaged tissue. The silencing RNA can inhibit the source of the pathology and promote the growth and differentiation of genetically modified stem cells adjacent to the damaged tissue which can support the tissue healing process.

Additionally, the risk of developing Graft Versus Host Disease is eliminated by utilizing the patient's own stem cells.

Proof of concept has been demonstrated in the vascular type of the Ehlers-Danlos Syndrome (VEDS). Using tissues isolated from VEDS patients, siRNA was shown to correct the mutational defect. The siRNA not only inhibited the production of the mutant protein but also restored the normal, non-pathological structure of the wild-type protein in the tissue.

This technology may be particularly applicable to patients with mutations in structural proteins of the extracellular matrix, as presented in diseases such as osteogenesis imperfecta, Marfan syndrome, and Ehlers-Danlos syndrome (EDS).

Potential Applications and Advantages

- Therapeutic for diseases arising from single gene disorders.
- Specific to the underlying disease unlike most current treatments.
- Therapeutic cells are recruited to the specific site of damage.
- Subsequent differentiation and localization of stem cells is therapeutic to the damaged tissue.

Development Status: Pre-clinical; however, patients with vascular type of the Ehlers-Danlos syndrome (VEDS) are being recruited for observational studies.

Inventors: Wilfried M. Briest and Mark I. Talan (NIA).

Patent Status: U.S. Provisional Application No. 61/233,537 filed 13 Aug 2009 (HHS Reference No. E-171-2008/0-US-01).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301-435-4521; Fatima.Sayyid@nih.hhs.gov.

HIV-1 Infection Detection Assay for Seroconverted HIV-1 Vaccine Recipients

Description of Invention: Available for licensing and commercial distribution is a serological test specifically designed to distinguish between antibodies generated in HIV vaccine recipients and those generated in a natural HIV infection. The method is useful in HIV vaccine development and clinical studies as it can readily detect early breakthrough infections in seroconverted vaccine recipients, thus providing the information required to determine vaccine efficacy. The test kit includes diagnostic peptide fragments derived from human immunodeficiency virus-1 (HIV-1). The peptide epitopes are primarily derived from the GAG-p6 and gp41 genes. These epitopes are

broadly reactive with early sera from HIV infected individuals, but do not illicit protective antibodies, or immunologic cytotoxicity, and thus can readily be excluded from current and future HIV-1 vaccine candidates.

Applications

- Vaccine efficacy studies; Detection of early seroconversion in vaccine recipients.
- Distinguishing between healthy vaccine recipients and natural HIV infection.
- Blood bank screening.

Advantages: Cost effective method to determine vaccines efficacy in clinical studies.

Market: In spite of the more than twenty years of efforts to develop HIV vaccine, such vaccine does not yet exist. While treatment of HIV/AIDS with antiretroviral drugs can reduce viral load and extend life, this approach does not provide a true cure and cannot stop the HIV/AIDS pandemic. The medical community therefore fully recognizes the urgency to develop an effective vaccine for HIV/AIDS. In spite of the many challenges in the development of such vaccine (out of the 75 vaccine candidates that entered clinical trials over the years only 3 have reached the stage of large-scale efficacy trials and to date none have prove efficacious) the efforts in this area will continue to receive high priority by the public sector and high level of research funding. In order to make progress in this area, public sectors in many countries as well as not-for-profit NGOs have in recent years developed strategies and provided incentives to the private sector to continue with the efforts through the creation of public-private partnerships. Development of tools that can facilitate clinical trials, such as the present invention, may therefore be a good commercial opportunity, in particular in light of the potential market for HIV/AIDS vaccine. While the market for therapeutic drugs against HIV/AIDS across the seven major markets is now approaching \$11.0 billion annually and growing at about 12.8% a year, the International AIDS Vaccine Initiative (IAVI) projects \$2.5 billion to \$5.5 billion in peak annual revenues of any new vaccine. This projection is based on peak demand of between 38 and 152 million courses (two doses per one course) depending on the vaccine profile. The projection also takes into consideration a tiered pricing and this projected revenue represents 5% to 13% of the total global vaccine market.

Inventors: Hana Golding and Surender Khurana (FDA).

Related Publications

1. S Khurana *et al.* Human immunodeficiency virus (HIV) vaccine trials: A novel assay for differential diagnosis of HIV infections in the face of vaccine-generated antibodies. *J Virol.* 2006 March;80(5): 2092-2099. [PubMed: 16474117].

2. S Khurana *et al.* Novel approach for differential diagnosis of HIV infections in the face of vaccine-generated antibodies: Utility for detection of diverse HIV-1 subtypes. *J Acquir Immune Defic Syndr.* 2006 Nov 1;43(3):304-312. [PubMed: 17019363].

3. S Khurana *et al.* HIV-SELECTEST EIA and rapid test: Ability to detect seroconversion following HIV-1 infection. *J Clin Microbiol.* 2009 Nov 11. Epub ahead of print. doi:10.1128/JCM.01573-09. [PubMed: 19906903].

Patent Status

- U.S. Provisional Application No. 60/607,579 filed 08 Sep 2004 (HHS Reference No. E-259-2004/0-US-01).

- U.S. Provisional Application No. 60/676,931 filed 03 May 2005 (HHS Reference No. E-259-2004/1-US-01).

- PCT Application No. PCT/US2005/031287, which published as WO/2007/018550 on 15 Feb 2007 (HHS Reference No. E-259-2004/2-PCT-01); and related applications: U.S. Patent Application No. 11/662,370 filed 02 Sep 2005, published 27 Jun 2007; Australia Patent Application No. 2005335203, published 04 Apr 2007; Canadian Patent Application No. 2579676; European Patent Application No. 2005858397, published 27 Jun 2007.

- U.S. Provisional Application No. 61,180,233 filed 21 May 2009 (HHS Reference No. E-259-2004/3-US-01).

Licensing Status: Available for licensing.

Licensing Contacts: Uri Reichman, Ph.D., M.B.A.; 301-435-4616; UR7a@nih.gov; or Michael Shmilovich, Esq.; 301-435-5019; shmilovm@mail.nih.gov.

Dated: January 21, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010-1665 Filed 1-27-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2010-N-0001]

Veterinary Medicine Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Veterinary Medicine Advisory Committee.

General Function of the Committee:

To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 24, 2010, from 8:30 a.m. to 5 p.m.

Location: Rockville Hilton, 1750 Rockville Pike, Rockville MD 20852, 301-468-1100.

Contact Person: Aleta Sindelar, Center for Veterinary Medicine (HFV-3), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-276-9004, FAX 240-276-9020, e-mail: aleta.sindelar@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512548. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On March 24, 2010, the committee will discuss and make recommendations regarding modifications, if any, to the current risk minimization and restricted distribution program for Pfizer's PROHEART 6 (NADA 141-189), the subsequent safety data collected under the Center for Veterinary Medicine's risk minimization and restricted distribution program, and the agency's role in continued product postmarketing surveillance.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the

meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 17, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 9, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 10, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Aleta Sindelar at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 22, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010-1626 Filed 1-27-10; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Electromagnetic Devices.

Date: February 10, 2010.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Antonio Sastre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301-435-2592, sastrea@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Genetics, Substance Use and Other Behaviors.

Date: February 11, 2010.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Heidi B. Friedman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301-435-0906, hfriedman@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Academic-Industry Partnership in Cancer Imaging.

Date: February 13, 2010.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Antonio Sastre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301-435-2592, sastrea@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Pathogenesis Study Section.

Date: February 16, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435-1149, elzaataf@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-1654 Filed 1-27-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) National Advisory Council will meet on February 10, 2010. The meeting is open and will include discussion of the Center's policy issues, and current administrative, legislative and program developments.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the CSAP Council's Designated Federal Official, Ms. Tia Haynes (see contact information below), to make arrangements to attend, comment or to request special accommodations for persons with disabilities. You may also register online at <https://nac.samhsa.gov/Registration/meetingsRegistration.aspx>.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site, <https://nac.samhsa.gov/CSAPcouncil/index.aspx>, or by contacting Ms. Haynes. The transcript for the open session will be available on

the SAMHSA Committee Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention National Advisory Council.

Date/Time/Type: February 10, 2010. From 1 p.m.—5 p.m.: Open.

Place: Gaylord Convention Center, 201 Waterfront Street, National Harbor Rooms 4 & 5, National Harbor, MD 20745.

Contact: Tia Haynes, Designated Federal Official, SAMHSA/CSAP National Advisory Council, 1 Choke Cherry Road, Room 4-1066, Rockville, MD 20857, Telephone: (240) 276-2436, Fax: (240) 276-2430, E-mail: tia.haynes@samhsa.hhs.gov.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2010-1742 Filed 1-27-10; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development; Initial Review Group Reproduction, Andrology, and Gynecology Subcommittee.

Date: March 8, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Dennis E. Leszczynski, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive

Boulevard, Room 5b01, Bethesda, MD 20892, (301) 435-2717, leszczynski@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-1580 Filed 1-27-10; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke, Initial Review Group Neurological Sciences and Disorders C.

Dates: February 18-19, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892. (301) 496-0660. benzingw@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-1413 Filed 1-27-10; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of Statewide Per Capita Threshold for Recommending a Cost Share Adjustment

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the statewide per capita threshold for recommending cost share adjustments for major disasters declared on or after January 1, 2010, through December 31, 2010, is \$125.

DATES: This notice applies to major disasters declared on or after January 1, 2010.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR 206.47, the statewide per capita threshold that is used to recommend an increase of the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and emergency work under section 403 and section 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act is adjusted annually. The adjustment to the threshold is based on the Consumer Price Index for All Urban Consumers published annually by the U.S. Department of Labor. For disasters declared on January 1, 2010, through December 31, 2010, the qualifying threshold is \$125 per capita of State population.

This adjustment is based on an increase of 2.7 percent in the Consumer Price Index for All Urban Consumers for the 12-month period that ended December 2009. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on January 15, 2010.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling;

97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010-1757 Filed 1-27-10; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: National Explosives Detection Canine Team Program (NEDCTP) Handler Training Assessment Survey (Formerly Named: Graduate Training Feedback Form)

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0041 abstracted below, to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on October 27, 2009, 74 FR 55248. The collection involves the electronic submission of numerical ratings and written comments about the quality of training instruction from students who graduate from the NEDCTP Explosives Detection Canine Handlers Course.

DATES: Send your comments by March 1, 2010. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and

Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Joanna Johnson, TSA Paperwork Reduction Act (PRA) Officer, Office of Information Technology (OIT), TSA-40, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6040; telephone (571) 227-3651; e-mail TSAPRA@dhs.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at <http://www.reginfo.gov>. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Handler Training Assessment Survey.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652-0041.

Form(s): TSA Form 1935-1.

Affected Public: State and local employees, as well as TSA personnel who are trained to be TSA NEDCTP canine handlers.

Abstract: The Handler Training Assessment Survey captures from graduating students (State and local personnel, as well as TSA personnel trained to be TSA NEDCTP canine handlers) numerical ratings and written comments about the quality of training instruction at the NEDCTP Explosives Detection Canine Handlers Course. The State and local personnel participate in

the TSA Grant program, which falls under the National Explosives Detection Canine Team Program. The data is collected electronically through the NEDCTP secure Canine Website (accessible by authorized personnel only) and provides valuable feedback to the Chief of the National Explosives Detection Canine Team Program and instructional staff and supervisors on how the training material was presented and received. Once reviewed, the feedback is used to improve the course curriculum and course of instruction.

Number of Respondents: Average 180 students per calendar year.

Estimated Annual Burden Hours: Approximately one hour per participant, 180 hours per calendar year.

Issued in Arlington, Virginia, on January 21, 2010.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2010-1724 Filed 1-27-10; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2009-0504]

Certificate of Alternative Compliance for the Offshore Supply Vessel C-AGGRESSOR

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel C-AGGRESSOR, as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on December 8, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2009-0504 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504-671-2153. If you have

questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The offshore supply vessel C-AGGRESSOR will be used for offshore supply operations. The horizontal distance between the forward and aft masthead lights may be 22'-2³/₈". Placing the aft masthead light at the horizontal distance from the forward masthead light, as required by Annex I, paragraph 3(a) of the 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the cargo deck where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: January 4, 2010.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2010-1710 Filed 1-27-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2009-0503]

Certificate of Alternative Compliance for the Tugboat MR SAM

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the tugboat MR SAM as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on December 11, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday,

except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2009-0503 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504-671-2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed under Title 33, Code of Federal Regulations, Parts 81 and 89, has been issued for the tugboat MR SAM, O.N. 1218725. Full compliance with 72 COLREGS and the Inland Rules Act would hinder the vessel's ability to maneuver within close proximity of other vessels. Compliance with the rule would cause the lights to be in a location highly susceptible to damage. Locating the sidelights 9'-3" outboard from the centerline of the vessel on the pilot house will provide a sheltered location for the lights and allow maneuvering within close proximity to other vessels.

The Certificate of Alternative Compliance allows for the placement of the sidelights to deviate from requirements set forth in Annex I, paragraph 3(b) of 72 COLREGS and Annex I, paragraph 84.05(b) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: January 4, 2010.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2010-1712 Filed 1-27-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2009-1078]

Certificate of Alternative Compliance for the Offshore Supply Vessel INGRID

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore

supply vessel INGRID, as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on December 7, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2009-1078 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504-671-2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The offshore supply vessel INGRID will be used for offshore supply operations. The horizontal distance between the forward and aft masthead lights may be 21'-10". Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act would result in an aft masthead light location directly over the cargo deck, where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: January 4, 2010.

J. W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2010-1711 Filed 1-27-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-1859-DR; Docket ID FEMA-2008-0018]

American Samoa; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of American Samoa (FEMA-1859-DR), dated September 29, 2009, and related determinations.

DATES: *Effective Date:* January 15, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 2010, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), and the Insular Areas Act, in particular, 48 U.S.C. 1469a(d), in a letter to W. Craig Fugate, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as amended, as follows:

I have determined that the damage in certain areas of the Territory of American Samoa resulting from an earthquake, tsunami, and flooding during the period of September 29 to October 6, 2009, is of sufficient severity and magnitude that special cost-sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act") and the Insular Areas Act, in particular, 48 U.S.C. 1469a(d).

Therefore, I amend my declaration of September 29, 2009, to authorize Federal funds for all categories of Public Assistance, Hazard Mitigation, and the Other Needs Assistance portion of the Individual Assistance Program at 90 percent of total eligible costs, and further authorize Public Assistance (Categories A and B), including direct Federal assistance, at 100 percent of total eligible costs for 30 consecutive days. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant;

97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010-1702 Filed 1-27-10; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-1866-DR; Docket ID FEMA-2008-0018]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA-1866-DR), dated December 22, 2009, and related determinations.

DATES: *Effective Date:* January 14, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, W. Michael Moore, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Michael Bolch as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals

and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010-1755 Filed 1-27-10; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-1870-DR; Docket ID FEMA-2008-0018]

Alabama; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA-1870-DR), dated December 31, 2009, and related determinations.

DATES: *Effective Date:* January 14, 2010.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, W. Michael Moore, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Michael Bolch as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010-1703 Filed 1-27-10; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R4-ES-2009-N269; 41910-1112-0000-F2]

Endangered [and Threatened] Wildlife and Plants; Permit(s); Land Clearing Associated With Phosphate Mining in Manatee County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for an incidental take permit (ITP); availability of proposed low-effect habitat conservation plans (HCP); request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) application and habitat conservation plan (HCP). Mosaic Fertilizer, LLC (applicant) requests a 24-year ITP under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking approximately 100 acres (ac) of Florida scrub-jay (*Aphelocoma coerulescens*)—occupied habitat incidental to land clearing and phosphate mining in Manatee County, Florida (project). The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the project to the Florida scrub-jay.

DATES: We must receive any written comments on the ITP application and HCP on or before March 1, 2010.

ADDRESSES: If you wish to review the application and HCP, you may write the Field Supervisor at our Jacksonville Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256 or make an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may e-mail comments to paula_sisson@fws.gov. For more information on reviewing documents and public comments and submitting comments, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES**); telephone: 904/731-3134.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Please reference permit number TE236128-0 for Mosaic Fertilizer, LLC in all requests or comments. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The Florida scrub-jay (scrub-jay) is found exclusively in peninsular Florida and is restricted to xeric upland communities (predominately in oak-dominated scrub with open canopies) of the interior and Atlantic coast sand ridges. Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which have adversely affected the distribution and numbers of scrub-jays. Remaining habitat is largely degraded due to the exclusion of fire, which is needed to maintain xeric uplands in conditions suitable for scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

Applicant's Proposal

The applicant is requesting take of approximately 100 ac of occupied Florida scrub-jay habitat incidental to the project. The 4,345-ac project is located on the Texaco Tract in Sections 22-27, 34, and portions of Section 13, Township 34 South, Range 22 East, in Manatee County, Florida. The proposed project includes land clearing activities associated with phosphate mining which will result in the take of 100 ac of occupied scrub-jay habitat, including four scrub-jay families. The applicant proposes to mitigate for the take of the sand skink at a ratio of 2:1 based on Service Mitigation Guidelines. The applicant proposes to mitigate for 100 ac of impacts by establishing a conservation easement capturing 200 ac of scrub-jay within the Mosaic Wellfield.

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or

negligible effects on the species covered in the HCP. Therefore, we are making a preliminary determination that the ITP is a "low-effect" project and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). We may revise this preliminary determination based on our review of public comments we receive in response to this notice. A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCP and comments we receive to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets those requirements, we will issue the ITP for incidental take of the sand skink. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP.

Authority

We provide this notice under Section 10 of the Act and NEPA regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6.

Dated: January 12, 2010.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2010-1730 Filed 1-27-10; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14200000.BJ0000; 10-08807; MO#4500011812; TAS: 14X1109]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of

Geographic Sciences, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775-861-6541.

SUPPLEMENTARY INFORMATION:

1. The Supplemental Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on October 15, 2009:

The supplemental plat, showing a subdivision of original lots 6 and 7, section 6, Township 16 North, Range 64 East, Mount Diablo Meridian, Nevada, was accepted October 13, 2009.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

2. The Supplemental Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on November 5, 2009.

The supplemental plat, showing a subdivision of lot 14, section 17, Township 19 South, Range 60 East, Mount Diablo Meridian, Nevada, was accepted November 3, 2009.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on December 8, 2009:

The plat, representing the dependent resurvey of the Fourth Standard Parallel North through a portion of Range 32 East, the east and west boundaries, and a portion of the subdivisional lines of Township 21 North, Range 32 East, Mount Diablo Meridian, Nevada, under Group No. 862, was accepted December 8, 2009.

This survey was executed to meet certain administrative needs of the U.S. Fish and Wildlife Service.

4. The Supplemental Plats of Survey of the following lands were officially filed at the Nevada State Office, Reno, Nevada, on December 11, 2009:

The plat, showing the subdivision of lots 8, 13, 14, 15 and 20, section 5, Township 33 North, Range 55 East, Mount Diablo Meridian, Nevada, was accepted December 10, 2009.

The supplemental plat, showing the subdivision of lots 22 and 23, section 6, Township 33 North, Range 55 East, Mount Diablo Meridian, Nevada, was accepted December 10, 2009.

These supplemental plats were prepared to meet certain administrative needs of the Bureau of Land Management.

5. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These

surveys have been placed in the open files in the Bureau of Land Management, Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: January 21, 2010.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 2010-1727 Filed 1-27-10; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000

L16400000.PH0000.LXSS006F0000 261A; MO#4500011785; 10-08807; TAS: 14X1109]

Mojave-Southern Great Basin Resource Advisory Council Meetings, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave-Southern Great Basin Resource Advisory Council (RAC), will hold three meetings in Nevada in fiscal year 2010. All meetings are open to the public.

DATES AND TIMES: February 18, Las Vegas; March 24-25, Las Vegas; and August 26, Ely. Each meeting will include a public comment period, where the public may submit oral or written comments to the RAC. Each public comment period will begin at approximately 8:15 a.m., Thursday, unless otherwise listed in each specific, final meeting agenda.

FOR FURTHER INFORMATION CONTACT: Chris Hanefeld, (775) 289-1842, *E-mail:* chris_hanefeld@nv.blm.gov.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada.

Meeting locations and topics for discussion include, but are not limited to:

- February 18, BLM Southern Nevada District Office, 4701 N. Torrey Pines Dr., Las Vegas; Renewable Energy, Red Rock Canyon National Conservation Area fees.

- March 24-25, BLM Southern Nevada District Office, 4701 N. Torrey

Pines Dr., Las Vegas: Off-Highway Vehicle (OHV) casual use, Southern Nevada Public Land Management Act (SNPLMA) Round 11.

- August 26, BLM Ely District Office, 702 N. Industrial Way, Ely: Land use planning Reports of district and field office activities will be given at each meeting. The council may raise other topics at any of the three planned meetings. Final agendas with any additions/corrections to agenda topics, locations, field trips and meeting times, will be posted on the BLM Mojave-Southern Great Basin Resource Advisory Council (RAC) Web site at: http://www.blm.gov/nv/st/en/res/resource_advisory/mojave-southern_grat.html, and sent to the media at least 14 days before each meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, should contact Chris Hanefeld no later than 10 days prior to each meeting.

Michael J. Herder,

Acting Ely District Office Manager.

[FR Doc. 2010-1729 Filed 1-27-10; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDB00000 L17110000.PH0000
LXSS024D0000: 4500011885]

Notice of Public Meeting: Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will hold a meeting as indicated below.

DATES: The meeting will be held March 3, 2010 at the Boise District Offices beginning at 9 a.m. and adjourning at 4:30 p.m. Members of the public are invited to attend. A comment period will be held following the Field Office Updates.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384-3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. Items on the agenda will include a review of briefing papers, including a request for the RAC's feedback on the Preliminary Draft Alternatives in the Draft Environmental Impact Statement for the new Resource Management Plan for the Four Rivers Field Office, and an update on the status of Economic Recovery and Reinvestment Act of 2009 (ARRA) projects in the Boise District. An update on actions related to the implementation of the Owyhee Public Lands Management Act (OMA) will be provided, and the RAC's assistance in developing a strategy for OMA wilderness monitoring and documentation will be sought. Subgroup charters and membership will be finalized, and dates for subgroup meetings to be held throughout the year will be discussed. Field Office managers will provide highlights for discussion on activities in their offices, including the recent U.S. Fish and Wildlife Service decision to list as "threatened" slickspot peppergrass (*Lepidium Papilliferum*). Agenda items and location may change due to changing circumstances. All RAC meetings are open to the public. The public may present written or oral comments to members of the Council. At each full RAC meeting, time is provided in the agenda for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, should contact the BLM Coordinator as provided above.

Dated: January 20, 2010.

David Wolf,

Associate District Manager.

[FR Doc. 2010-1733 Filed 1-27-10; 8:45 am]

BILLING CODE 4310-GG-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-701]

In the Matter of: Certain Electronic Devices, Including Mobile Phones, Portable Music Players, and Computers; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 29, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Nokia Corporation of Finland and Nokia Inc. of White Plains, New York. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including mobile phones, portable music players, and computers, by reason of infringement of certain claims of U.S. Patent Nos. 6,714,091; 6,834,181; 6,895,256; 6,518,957; 6,073,036; 6,262,735; and 6,924,789. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Rett Sotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2599.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 25, 2010, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation is instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electronic devices, including mobile phones, portable music players, or computers that infringe one or more of claims 1–12 of U.S. Patent No. 6,714,091; claims 1–6 and 8 of U.S. Patent No. 6,834,181; claims 1, 3, 6–10, 14, and 16 of U.S. Patent No. 6,895,256; 1, 10–13, 16, 19, 22, and 25 of U.S. Patent No. 6,518,957; claims 1, 3, 6, 8–10, 13, 17, and 19 of U.S. Patent No. 6,073,036; claims 1–3 and 7–10 of U.S. Patent No. 6,262,735; and claim 5 of U.S. Patent No. 6,924,789, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:
Nokia Corporation, Keilalahdentie 4
(P.O. Box 226), FIN-00045 Nokia
Group, Espoo, Finland;
Nokia Inc., 102 Corporate Park Drive,
White Plains, New York.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:
Apple Inc., 1 Infinite Loop, Cupertino, California 95014.

(c) The Commission investigative attorney, party to this investigation, is Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: January 25, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010-1761 Filed 1-27-10; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-466 and 731-TA-1162 (Final)]

Wire Decking From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701-TA-466 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation No. 731-TA-1162 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of wire decking, provided for in subheadings 9403.90.80, 7217.10, 7217.20, 7326.20, 7326.90, and 9403.20.00 of the Harmonized Tariff Schedule of the United States.¹

¹ For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "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

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT:

Christopher J. Cassise (202-708-5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of wire decking, and that such

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."

products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on June 5, 2009, by AWP Industries, Inc., Frankfort, KY; ITC Manufacturing, Inc., Phoenix, AZ; J&L Wire Cloth, Inc., St. Paul, MN; and Nashville Wire Products Mfg. Co., Inc., Nashville, TN.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 12, 2010, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 27, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or

before May 20, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 25, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 19, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 4, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before June 4, 2010. On June 24, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 28, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is

permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 25, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010-1744 Filed 1-27-10; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of the Approval of Information Collection Requirements

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 Office of Workers' Compensation Programs is soliciting comments concerning the proposal to extend OMB approval of the

information collection: Certification by School Official (CM-981). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 29, 2010.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0372, fax (202) 693-1378, E-mail Alvarez.Vincent@dol.gov. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

In order to qualify as a dependent that is eligible for black lung benefits, a child aged 18 to 23 must be a full-time student as described in the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.* and attending regulations 20 CFR 725.209. The CM-981 is partially completed by the appropriate district office so that the school official or registrar's office will know for which student and time period the information is being requested and is also used to verify the full-time student status. This information collection is currently approved for use through May 31, 2010.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this

currently approved information collection in order to determine the continued eligibility of students.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Certification by School Official.

OMB Number: 1215-0061.

Agency Number: CM-981.

Affected Public: Individuals or households, Not-for-profit institutions, State, Local or Tribal Government.

Total Respondents: 300.

Total Annual Responses: 300.

Estimated Time per Response: 10 minutes.

Frequency: On occasion.

Estimated Total Burden Hours: 50.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

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 22, 2010.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, Department of Labor.

[FR Doc. 2010-1630 Filed 1-27-10; 8:45 am]

BILLING CODE 4510-CK-P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Federal Employees' Compensation; Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is

soliciting comments concerning the proposed collection: Death Gratuity Forms (CA-40, CA-41, and CA-42). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before March 29, 2010.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0372, fax (202) 693-1378, e-mail Alvarez.Vincent@dol.gov. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION

I. Background

The National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, was enacted on January 28, 2008. Section 1105 of Public Law 110-181 amended the Federal Employees' Compensation Act (FECA) creating a new section 8102a effective upon enactment. This section established a new FECA death gratuity benefit for eligible beneficiaries of Federal employees and Non-Appropriated Fund Instrumentality (NAFI) employees who die from injuries incurred in connection with service with an Armed Force in a contingency operation. Section 8102a also permits agencies to authorize retroactive payment of the death gratuity for employees who died on or after October 7, 2001, in service with an Armed Force in the theater of operations of Operation Enduring Freedom and Operation Iraqi Freedom. Form CA-40 requests the information necessary from the employee to accomplish this variance. Form CA-41 provides the means for those named beneficiaries and possible recipients to file claims for those benefits and requests information from such claimants so that OWCP may determine their eligibility for payment. Furthermore, the statute and regulations require agencies to notify OWCP immediately upon the death of a covered employee. CA-42 provides the means to accomplish this notification and requests information necessary to administer any claim for benefits resulting from such a death. This information collection is currently approved for use through May 31, 2010.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

** Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

** Enhance the quality, utility and clarity of the information to be collected; and

** Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of the Federal Employees' Compensation Act. The information contained in these forms is used by the Division of Federal Employees'

Compensation to determine entitlement to benefits under the Act, to verify dependent status, and to initiate, continue, adjust, or terminate benefits based on eligibility criteria.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Death Gratuity Forms.

OMB Number: 1215-0206.

Agency Number: CA-40, CA-41, and CA-42.

Affected Public: Individuals or household; Federal Government.

Total Respondents: 2,635.

Total Responses: 2,635.

Form	Time to complete (min)	Frequency of response	Number of respondents	Number of responses	Hours burden
CA-40 (Individual Respondent)	15	1	2,600	2,600	650
CA-41 (Individual Respondent)	15	1	25	25	6.25
CA-42 (Agency Respondent)	20	1	10	10	3.33
Totals			2,635	2,635	659.58

Estimated Total Burden Hours: 659

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$12.

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 22, 2010.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, Department of Labor.

[FR Doc. 2010-1642 Filed 1-27-10; 8:45 am]

BILLING CODE 4510-CH-P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Federal Employees' Compensation; Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the

Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Claim for Compensation by Dependents Information Reports (CA-5, CA-5b, CA-1031, CA1074, Letter of Compensation Due at Death and Letter of Student/Dependency). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 29, 2010.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0372, fax (202) 693-1378, E-mail Alvarez.Vincent@dol.gov. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The forms included in this package are forms used by Federal employees and their dependents to claim benefits,

to prove continued eligibility for benefits, to show entitlement to remaining compensation payments of a deceased employee and to show dependency under the Federal Employees' Compensation Act. There are six forms in this information collection request. The information collected by Forms CA-5, is used by dependents for claiming compensation for the work related death of a Federal Employee and CA-5b is used by other survivors. Form CA-1031 is used in disability cases and provides information to determine whether a claimant is actually supporting a dependent and is entitled to additional compensation. Form CA-1074 is a follow up to CA-5b to request clarification of any information that is unclear and incomplete in the CA-5b. The letter of "Compensation Due at Death" is used to request information necessary to distribute compensation due when an employee dies who was receiving or who was entitled to compensation at the time of death for either disability benefits or a scheduled award. The letter of "Student/Dependency" is used to obtain information regarding the student status of a dependent. When a child reaches 18 years of age, they are no longer considered an eligible dependent unless they are a full time student or incapable of self-support. This information collection is currently approved for use through May 31, 2010.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- * Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- * Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- * Enhance the quality, utility and clarity of the information to be collected; and

- * Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of the Federal Employees' Compensation Act. The information contained in these forms is used by the Division of Federal Employees'

Compensation to determine entitlement to benefits under the Act, to verify dependent status, and to initiate, continue, adjust, or terminate benefits based on eligibility criteria.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Claim for Compensation by Dependents Information Reports.

OMB Number: 1215-0155.

Agency Number: CA-5, CA-5b, CA-1031, CA-1074, Letter of Compensation Due at Death and Letter of Student/Dependency.

Affected Public: Individuals or households.

Total Respondents: 1,358.

Total Responses: 1,358.

Form/letter	Time to complete (min)	Frequency of response	Number of respondents	Hours burden
CA-5	90	1	185	278
CA-5b	90	1	19	29
CA-1031	15	1	146	37
CA-1074	60	1	19	19
Student Dependency	30	1	925	463
CompDue at Death	30	1	64	32
Totals			1358	858

Estimated Total Burden Hours: 858.

Total Burden Cost (capital/startup): \$638.

Total Burden Cost (operating/maintenance): \$9,961.

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 22, 2010.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, Department of Labor.

[FR Doc. 2010-1644 Filed 1-27-10; 8:45 am]

BILLING CODE 4510-CH-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 10-011]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the newly formed Information Technology

Infrastructure Committee of the NASA Advisory Council. This will be the first meeting of this Committee.

DATES: February 11, 2010—11 a.m.—1 p.m. (EST).

Meet-Me-Number: 1-877-613-3958; #2939943.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Washington, DC, Room 2N35

FOR FURTHER INFORMATION CONTACT: Ms. Tereda J. Frazier, Executive Secretary for the Information Technology Infrastructure Committee, National Aeronautics and Space Administration Headquarters, Washington, DC, 20546, (202) 358-2595.

SUPPLEMENTARY INFORMATION: The topics of discussion for the meeting are the following:

- Committee Responsibilities.
- Committee Processes.
- NASA IT Infrastructure Overview.
- Nomination of Early Work Areas.

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information

no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); and title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Ms. Tereda J. Frazier via e-mail at tereda.j.frazier@nasa.gov or by telephone at (202) 358-2595. Persons with disabilities who require assistance should indicate this.

Dated: January 22, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010-1638 Filed 1-27-10; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 10-013]

NASA Advisory Council; meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aeronautics Committee of the NASA Advisory Council. The meeting will be held for the purpose of soliciting from the aeronautics community and other persons research and technical information relevant to program planning.

DATES: Tuesday, February 16, 2010, 12 p.m. to 5 p.m.; Wednesday, February 17, 2010, 9 a.m. to 3 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Washington, DC, Room 6B42.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Minor, Executive Secretary for the Aeronautics Committee, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358-0566, or susan.l.minor@nasa.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- NASA Aeronautics Overview Briefing, including partnership strategy.
- Future Directions for NASA Aeronautics.
- Aeronautics Committee 2010 Work Plan discussion.

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); and title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Ms. Susan L. Minor via e-mail at susan.l.minor@nasa.gov or by telephone at (202) 358-0566. Persons with disabilities who require assistance should indicate this.

Dated: January 22, 2010.

P. Diane Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 2010-1739 Filed 1-27-10; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10-012)]

NASA Advisory Council Exploration Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council Exploration Committee.

DATES: Tuesday, February 16, 2010, 11:45 a.m.-5 p.m., and Wednesday, February 17, 2010, 9 a.m.-12 p.m. (all times are Eastern Standard Time).

ADDRESSES: National Aeronautics and Space Administration Headquarters, Room 8R40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Parham, Exploration Committee Administrative Officer, Mail Stop 7C27, National Aeronautics and Space Administration Headquarters, 300 E Street, SW., Washington, DC 20546, 202/358-1715.

SUPPLEMENTARY INFORMATION: The agenda topics for the meeting will include:

- Exploration Systems Mission Directorate (ESMD) Background.
- Results of Lunar Reconnaissance Orbiter (LRO) and Lunar CRater Observation and Sensing Satellite (LCROSS).
- ESMD Status Overview.
- Exploration Committee 2010 Work Plan Content Overview, Implementation, and Schedule.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state they are attending the NASA Advisory Council Exploration Committee meeting in Room 8R40. All non-U.S. citizens

must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), Permanent Resident Alien card number and expiration date (if applicable), and place and date of entry into the U.S., fax to Jane Parham, NASA Advisory Council Exploration Committee Administrative Officer, FAX 202-358-3406, by no later than February 9, 2010. Non-U.S. citizens will need to show their Passport or Permanent Resident Alien card to enter the NASA Headquarters building. For questions, please call Jane Parham at (202) 358-1715.

Dated: January 22, 2010.

P. Diane Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 2010-1734 Filed 1-27-10; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Wednesday, February 3, 2010, at 7:30 a.m.; and Thursday, February 4, 2010 at 8 a.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Rooms 1235 and 1295, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge. *Public visitors must arrange for a visitor's badge in advance. Call 703-292-7000 or e-mail NationalScienceBrd@nsf.gov and leave your name and place of business to request your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting.*

STATUS: Some portions open, some portions closed.

Open Sessions*February 3, 2010*

7:30 a.m.–7:35 a.m.
 7:35 a.m.–8:30 a.m.
 8:30 a.m.–10 a.m.
 8:30 a.m.–8:50 a.m.
 9 a.m.–10 a.m.
 10 a.m.–12 p.m.
 1 p.m.–1:45 p.m.
 1 p.m.–1:20 p.m.
 4:45 p.m.–5:45 p.m.

February 4, 2010

8 a.m.–9:30 a.m.
 9:30 a.m.–10 a.m.
 11:30 a.m.–12 p.m.
 1 p.m.–3 p.m.

Closed Sessions*February 3, 2010*

1:45 p.m.–3:45 p.m.
 3:45 p.m.–4:45 p.m.

February 4, 2010

10 a.m.–10:30 a.m.
 10:30 a.m.–11:30 a.m.

AGENCY CONTACT: Kim Silverman,
ksilverm@nsf.gov, (703) 292-7000,
<http://www.nsf.gov/nsb/>.

MATTERS TO BE DISCUSSED:**Wednesday, February 3, 2010****Chairman's Introduction**

*Open Session: 7:30 a.m.–7:35 a.m.,
 Room 1235*

- Chairman's Remarks.

Joint Session: Committee on Programs and Plans and Committee on Strategy and Budget

*Open Session: 7:35 a.m.–8:30 a.m.,
 Room 1235*

- Committee Chairman's Remarks.
- Annual NSF Facilities Plan Presentation to the NSB.
- Discussion.
- Annual Timeline for Integration of Board MREFC Process with NSF Budget Process: Proposed Revision.

Committee on Programs and Plans (CPP)

Open Session: 8:30 a.m.–10 a.m., Room 1235

- Approval of December 2009 Minutes.
- Committee Chairman's Remarks.
- *NSB Information Item:* Access to LIGO Data by the Broader Community.
- *NSB Information Item:* DUSEL: Preliminary Design Effort.
- *NSB Discussion Item:* Update on Cyberinfrastructure Vision for 21st Century Discovery.

Task Force on the NSB 60th Anniversary

*Open Session: 8:30 a.m.–8:50 a.m.,
 Room 1295*

- Approval of Minutes for the December 9, 2009 Meeting.
- Task Force Chairman's Remarks.
- Updates on NSB/NSF Anniversary Activities.
 - Distinguished Speakers at NSB Meetings.
 - OLPA Activities.
 - NSF 60th Anniversary Working Group Activities.
 - AAAS Symposium.

Committee on Strategy and Budget (CSB)

Open Session: 9 a.m.–10 a.m., Room 1295

- Approval of Minutes.
- CSB Minutes, December 10, 2009.
- Subcommittee on Facilities Teleconference, November 19, 2009.
- Committee Chairman's Remarks.
- FY 2010 Budget Update.
- FY 2011 Budget Update.
- ARRA Update.
- Strategic Plan Update.
- NSB Budget.
- Other Committee Business.

Committee on Education and Human Resources (CEH)

Open Session: 10 a.m.–12 p.m., Room 1235

- Approval of December 2009 Minutes.
- Update on the Next Generation of STEM Innovators.
- Perspectives and Discussion on STEM Education Challenges.
- Other Business.

Committee on Programs and Plans (CPP)

Open Session: 1 p.m.–1:45 p.m., Room 1235

- CPP Subcommittee on Polar Issues (SOPI):
 - SOPI Chairman's Remarks.
 - Director's Report—Office of Polar Programs (OPP).
 - Plans to Study Infrastructure and Logistics Needs in the Antarctic for the Next Decades.

Executive Committee (EC)

Open Session: 1 p.m.–1:20 p.m., Room 1295

- Approval of December 2009 Minutes.
- Executive Committee Chairman's Remarks.
- Updates or New Business from Committee Members.

Committee on Programs and Plans (CPP)

*Closed Session: 1:45 p.m.–3:45 p.m.,
 Room 1235*

- Committee Chairman's Remarks.
- CPP Subcommittee on Polar Issues (SOPI):
 - *NSB Action Item:* IceCube Maintenance and Operations 2010.
 - *NSB Action Item:* Extension of Contract Ceiling for the NSF Contract for Arctic Logistics in Support of Research.
- *NSB Action Item:* Award for NEON: Observatory Design and Prototyping.

Committee on Strategy and Budget (CSB)

*Closed Session: 3:45 p.m.–4:45 p.m.,
 Room 1235*

- Subcommittee on Facilities (SCF).
 - SCF Chairman's Remarks.
 - Overview of Materials Provided for May 2010 Facilities Portfolio Review.
 - Discussion of Portfolio Review Materials.
- Other Committee Business.

Committee on Audit and Oversight (A&O)

*Open Session: 4:45 p.m.–5:45 p.m.,
 Room 1235*

- Approval of Minutes, December 9, 2009.
- Committee Chairman's Opening Remarks.
- Chief Financial Officer's Update.
- Procurement Executive Update.
- ARRA Update.
- Financial System Modernization—"iTRAK".
- Inspector General's ARRA Update.
- Closed Investigative Matters.
- Office of International Science and Engineering: Research Integrity in an International Context.
- Committee Chairman's Closing Remarks.

Thursday, February 4, 2010**Committee on Programs and Plans (CPP)**

Open Session: 8 a.m.–9:30 a.m., Room 1235

- *NSB Information Item:* NCAR—Supercomputing Facilities.
- *NSB Information Item:* National High Magnetic Field Laboratory.
- *NSB Information Item:* Extension of Gemini Cooperative Agreement.
- *NSB Information Item:* DataNet.
- *NSB Information Item:* ESPCoR RII—T1.
- *NSB Information Item:* ARI—R2.

Committee on Science and Engineering Indicators (SEI)

Open Session: 9:30 a.m.–10 a.m., Room 1235

- Approval of December 2009 Minutes.
- Chairman's Remarks.
- Report on Washington Rollout of *Indicators 2010*.

• Report on Plans for Second *Indicators 2010* Rollout at AAAS Annual Meeting in San Diego.

- Chairman's Summary.

Plenary Executive Closed

Closed Session: 10 a.m.–10:30 a.m., Room 1235

- Approval of Plenary Executive Closed Minutes, December 2009.
- Board Member Proposals.
- Election of *ad hoc* Committee on Nominating for NSB Elections.
- Approval of Honorary Award Recipient.

Plenary Closed

Closed Session: 10:30 a.m.–11:30 a.m., Room 1235

- Approval of Plenary Closed Minutes, December 2009.
- Awards and Agreements—Committee on Programs and Plans Presentations.
- Closed Committee Reports.

Plenary Open

Open Session: 11:30 a.m.–12 p.m., Room 1235

- 60th Anniversary Distinguished Speaker.

Plenary Open

Open Session: 1 p.m.–3 p.m., Room 1235

- Approval of Open Session Minutes, December 2009.
- Closed Session Items for May 2010 Meeting.
- Chairman's Report.
- Task Force on Merit Review.
- Director's Report.
- Open Committee Reports.

Ann Ferrante,

Technical Writer/Editor.

[FR Doc. 2010-1827 Filed 1-26-10; 4:15 pm]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-338 and 50-339; NRC-2010-0026]

Virginia Electric and Power Company; North Anna Power Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to Section 73.5, "Specific exemptions," of Title 10 of the *Code of Federal Regulations* (10 CFR) part 73, "Physical protection of plants and materials," from the implementation date for certain requirements of 10 CFR part 73 for Facility Operating License Nos. NPF-4 and NPF-7, issued to Virginia Electric and Power Company, (the licensee), for operation of the North Anna Power Station, Unit Nos. 1 and 2 (NAPS). In accordance with 10 CFR 51.21, "Criteria for and identification of licensing and regulatory actions requiring environmental assessments," the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment*Identification of the Proposed Action*

The proposed action would exempt the NAPS from the required implementation date of March 31, 2010, for several new requirements of 10 CFR part 73. Specifically, NAPS would be granted an exemption from being in full compliance with certain new requirements contained in Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," of 10 CFR part 73 by the March 31, 2010, deadline, Power Reactor Security Requirements, 74 FR 13926, 13935 (March 27, 2009). Instead, the licensee has proposed an alternate full compliance implementation date of August 31, 2010, approximately five months beyond the date required by 10 CFR part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the NAPS site that were not previously considered in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revision to 10 CFR part 73, 74 FR 13967.

The proposed action is in accordance with the licensee's application dated November 23, 2009.

The Need for the Proposed Action

The proposed action is needed to provide the licensee with additional time to perform the required upgrades to the NAPS security system due to resource and logistical impacts of vendor availability.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73, 74 FR 13967. There will be no change to radioactive effluents that effect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926, 13967 (March 27, 2009)].

The NRC staff's safety evaluation will be provided in the exemption, if granted, that will be issued as part of the letter to the licensee approving the exemption to the regulation.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed actions, the NRC staff considered denial of the proposed actions (*i.e.*, the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement Related to the Continuation of Construction and the Operation of Units 1 and 2 and the Construction of Units 3 and 4, North Anna Power Station, dated April 1973, as supplemented through the Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplement 7 Regarding North Anna Power Station, Units 1 and 2—Final Report (NUREG-1437, Supplement 7), dated November 2002.

Agencies and Persons Consulted

In accordance with its stated policy, on December 30, 2009, the NRC staff consulted with the Virginia State official, Mr. Les Foldesi, Division of Radiological Health of the Virginia Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated November 23, 2009. Portions of the November 23, 2009, submittal contain proprietary and safeguards information and, accordingly, are not available to the public. Other parts of these documents may be examined, and/or copied for a fee, at the NRC's Public Document

Room (PDR), located at One White Flint North, Room O-1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: <http://www.nrc.gov/reading-rm/adams.html>.

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or send an e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland, this January 21, 2010.

For The Nuclear Regulatory Commission.

V. Sreenivas,

Project Manager, Plant Licensing Branch II-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010-1753 Filed 1-27-10; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

January 2010 Pay Adjustments

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: The President adjusted the rates of basic pay and locality payments for certain categories of Federal employees effective in January 2010. This notice documents those pay adjustments for the public record.

FOR FURTHER INFORMATION CONTACT: Lisa Dismond, Pay and Leave, Employee Services, U.S. Office of Personnel Management; (202) 606-2858; FAX (202) 606-0824; or email to pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: On December 23, 2009, the President signed Executive Order 13525 (74 FR 69231), which implemented the January 2010 pay adjustments. The President made these adjustments consistent with Public Law 111-117, December 16, 2009, which authorized an overall average pay increase of 2.0 percent for the "statutory pay systems," including the General Schedule (GS).

Schedule 1 of Executive Order 13525 provides the rates for the 2010 General Schedule and reflects a 1.5 percent across-the-board increase. Executive Order 13525 also includes the percentage amounts of the 2010 locality payments. (See Section 5 and Schedule 9 of Executive Order 13525.)

The publication of this notice satisfies the requirement in section 5(b) of Executive Order 13525 that the U.S. Office of Personnel Management (OPM) publish appropriate notice of the 2010 locality payments in the **Federal Register**.

GS employees receive locality payments under 5 U.S.C. 5304. Locality payments apply in the United States (as defined in 5 U.S.C. 5921(4)) and its territories and possessions. In 2010, locality payments ranging from 4.72 percent to 35.15 percent apply to GS employees in the 32 locality pay areas, Alaska, Hawaii, and the territories and possessions.

The 2010 locality pay percentages, which replaced the 2009 locality pay percentages, became effective on the first day of the first pay period beginning on or after January 1, 2010 (January 3, 2010). An employee's locality rate of pay is computed by increasing his or her scheduled annual rate of pay (as defined in 5 CFR 531.602) by the applicable locality pay percentage. (See 5 CFR 531.604 and 531.609.) (The 2010 locality pay area definitions can be found at <http://www.opm.gov/oca/10tables/locdef.asp>. The Non-Foreign Area Retirement Equity Assurance Act of 2009 contained in subtitle B (sections 1911-1919) of title XIX of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84, October 28, 2009) extends coverage of the locality pay program to employees in Alaska, Hawaii, and the other nonforeign areas beginning in 2010. For 2010, the statute provides that employees in each of these areas receive one-third of the locality pay percentage approved for the Rest of United States locality pay area.)

Executive Order 13525 establishes the new Executive Schedule, which incorporates a 1.5 percent increase required under 5 U.S.C. 5318 (rounded to the nearest \$100). By law, Executive Schedule officials are not authorized to receive locality payments.

Executive Order 13525 establishes the range of rates of basic pay for senior executives in the Senior Executive Service (SES), as established pursuant to 5 U.S.C. 5382. The minimum rate of basic pay for the SES may not be less than the minimum rate payable under 5 U.S.C. 5376 for senior-level positions (\$119,554 in 2010). The maximum rate of the SES rate range is level II of the Executive Schedule (\$179,700 in 2010) for SES members covered by a certified SES performance appraisal system and level III of the Executive Schedule (\$165,300 in 2010) for SES members covered by an SES performance

appraisal system that has not been certified.

The minimum rate of basic pay for the senior-level (SL) and scientific and professional (ST) rate range was increased by 1.5 percent (\$119,554 in 2010), which is the amount of the across-the-board GS increase. The applicable maximum rate of the SL/ST rate range is level II of the Executive Schedule (\$179,700 in 2010) for SL or ST employees covered by a certified SL/ST performance appraisal system and level III of the Executive Schedule (\$165,300 in 2010) for SL or ST employees covered by an SL/ST performance appraisal system that has not been certified. Agencies with certified performance appraisal systems in 2010 for SES members and employees in SL and ST positions also must apply a higher aggregate limitation on pay—up to the Vice President's salary (\$230,700 in 2010).

By law, SES members and employees in SL and ST positions are not authorized to receive locality payments.

Note: An exception applies to SES, SL, and ST employees stationed in a nonforeign area on January 2, 2010, which is explained in an OPM memorandum, CPM 2009–27. (See <http://www.opm.gov/oca/compmemo/index.asp>.)

The Executive order adjusted the rates of basic pay for administrative law judges (ALJs) by 1.5 percent, rounded to the nearest \$100. The maximum rate of basic pay for ALJs is set by law at the rate for level IV of the Executive Schedule, which is now \$155,500. The rate of basic pay for AL–2 is \$151,800. The rates of basic pay for AL–3/A through 3/F range from \$103,900 to \$143,700. (See 5 U.S.C. 5372.)

The rates of basic pay for members of Contract Appeals Boards are calculated as a percentage of the rate for level IV of the Executive Schedule. (See 5 U.S.C. 5372a.) Therefore, these rates of basic pay were increased by approximately 1.5 percent.

On October 23, 2009, the President's Pay Agent extended the 2010 locality-based comparability payments to certain categories of non-GS employees. The Governmentwide categories include ALJs and Contract Appeals Board members. The maximum locality rate of pay for these employees is the rate for level III of the Executive Schedule (\$165,300 in 2010).

On December 23, 2009, OPM issued a memorandum (CPM 2009–23) on the January 2010 pay adjustments. (See <http://www.opm.gov/oca/compmemo/index.asp>.) The memorandum transmitted Executive Order 13525 and provided the 2010 salary tables, locality

pay areas and percentages, and information on general pay administration matters and other related information. The “2010 Salary Tables” posted on OPM's Web site at: <http://www.opm.gov/oca/10tables/index.asp> are the official rates of pay for affected employees and are hereby incorporated as part of this notice.

U.S. Office of Personnel Management.

John Berry,
Director.

[FR Doc. 2010–1714 Filed 1–27–10; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2010–20; Order No. 397]

New Postal Product

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add GEPS 2 (CP2009–50) to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments are due: February 1, 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:

- I. Introduction
- II. Notice of Filing
- III. Ordering Paragraphs

I. Introduction

On January 21, 2010, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 2 (GEPS 2) contract.¹

GEPS 2 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International

(PMI). The Postal Service believes the instant contract is functionally equivalent to the previously submitted GEPS 2 contracts and is supported by the Governors' Decision filed in Docket No. CP2008–4.² *Id.* at 1.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 290.³ The term of the instant contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.⁴ Notice at 2–3.

In support of its Notice, the Postal Service filed four attachments as follows:

1. Attachment 1—an application for non-public treatment of materials to maintain the contract and supporting documents under seal;

2. Attachment 2—a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis and certification of the formulas and certification of the Governors' vote;

3. Attachment 3—a redacted copy of the contract, applicable annexes, and a provision to modify the mailer's tender requirements; and

4. Attachment 4—a certified statement required by 39 CFR 3015.5(c)(2).

Functional equivalency. The Postal Service asserts that the instant contract is functionally equivalent to the contract in Docket No. CP2009–50 and prior GEPS 2 contracts. *Id.* at 3–4. It also contends that the instant contract meets the requirements of Governors' Decision No. 08–7 for rates for GEPS contracts. *Id.* at 3. The Postal Service indicates that the instant contract differs from the contract in Docket No. CP2009–50 in two ways, namely, (a) customer specific information, *e.g.*, the customer's name, address, representative, signatory and provisions clarifying tender locations, minimum revenue and/or volume commitment; and (b) revisions intended to be included in all subsequent

² See Docket No. CP2008–4, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, May 20, 2008.

³ See Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

⁴ The Postal Service states its intent is to begin this contract on February 8, 2010, at the expiration of the customer's current contract. The contract's terms provide that the Postal Service will give notice to the mailer of the effective date within 30 days of regulatory approval.

¹ Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, January 21, 2010 (Notice).

agreements. *Id.* at 3–4. The latter revisions address, for example, the treatment of confidential information, reference updates and the availability of pickup service. The Postal Service also notes other minor changes which modify or delete certain provisions. *Id.*

The Postal Service contends that the instant contract satisfies the pricing formula and classification system established in Governors' Decision No. 08–7. *Id.* at 2–3. It asserts that the instant contract and all GEPS 2 contracts have similar cost and market characteristics and is functionally equivalent in all relevant aspects. *Id.* at 3. The Postal Service concludes that this contract is in compliance with 39 U.S.C. 3633, and requests that this contract be included within the GEPS 2 product. *Id.* at 6.

II. Notice of Filing

The Commission establishes Docket No. CP2010–20 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015. Comments are due no later than February 1, 2010. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Paul L. Harrington to serve as Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2010–20 for consideration of the issues raised in this docket.

2. Comments by interested persons in these proceedings are due no later than February 1, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,
Secretary.

[FR Doc. 2010–1752 Filed 1–27–10; 8:45 am]

BILLING CODE 7710–FW–S

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATE AND TIME: Tuesday, February 9, 2010, at 8:30 a.m.; 1:30 p.m. and 3:15 p.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: February 9 at 8:30 a.m.—Closed; 1:30 p.m.—Open; and 3:15 p.m.—Closed.

MATTERS TO BE CONSIDERED:

Tuesday, February 9 at 8:30 a.m. (Closed)

1. Strategic Issues.
2. Pricing.
3. Financial Matters.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Tuesday, February 9 at 1:30 p.m. (Open)

1. Minutes of the Previous Meetings, November 12–13, December 8, 2009; and January 12, 2010.
2. Remarks of the Chairman of the Board.
3. Remarks of the Postmaster General and CEO.
4. Amendments to Board Bylaws.
5. Appointment of Committee Members and Committee Reports.
6. Quarterly Report on Financial Performance.
7. Inspector General Report on USPS Share of CSRS Pension Responsibility.
8. Quarterly Report on Service Performance.
9. Tentative Agenda for the March 22–24, 2010, meeting in Washington, DC.

Tuesday, February 9 at 3:15 p.m. (Closed)

1. Continuation of closed session agenda.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,
Secretary.

[FR Doc. 2010–1858 Filed 1–26–10; 4:15 pm]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection(s) Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collections are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden for the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and Purpose of Information Collection

Application for Employee Annuity Under the Railroad Retirement Act; OMB 3220–0002. Section 2 of the Railroad Retirement Act (RRA) provides for payments of age and service, disability, and supplemental annuities to qualified employees. An annuity cannot be paid until the employee stops working for a railroad employer. In addition, the age and service employee must relinquish any rights held to such jobs. A disabled employee does not need to relinquish employee rights until attaining Full Retirement Age, or if earlier, their spouse files for a spouse annuity. Benefits become payable after the employee meets certain other requirements, which depend on the type of annuity payable. The requirements for obtaining the annuities are prescribed in 20 CFR 216, and 220.

The RRB currently uses the electronic AA–1cert, *Application Summary and Certification* process and the following forms to collect the information needed for determining entitlement to and the amount of, an employee retirement annuity: *Form AA–1, Application for Employee Annuity Under the Railroad Retirement Act*, *Form AA–1d, Application for Determination of Employee Disability*, and *Form G–204, Verification of Workers Compensation/Public Disability Benefit Information*.

The AA–1cert process obtains information from an applicant for either an age and service, or disability annuity

by means of an interview with an RRB field-office representative. It obtains information about an applicant's marital history, work history, military service, benefits from other governmental agencies and railroad pensions. During the interview, the field-office representative enters the information obtained into an on-line information system. Upon completion of the interview, the applicant receives Form AA-1cert, Application Summary and Certification, which summarizes the

information that was provided by/or verified by the applicant, for review and signature. The RRB also uses a manual version, RRB Form AA-1, in instances where the RRB representative is unable to contact the applicant in-person or by telephone, *i.e.*, the applicant lives in another country.

Form AA-1d, Application for Determination of Employee Disability, is completed by an employee who is filing for a disability annuity under the RRA, or a disability freeze under the Social

Security Act for early Medicare based on a disability. Form G-204, Verification of Workers Compensation/Public Disability Benefit Information, is used to obtain and verify information concerning worker's compensation or public disability benefits that are or will be paid by a public agency to a disabled railroad employee.

The RRB estimates the burden for the collection as follows:

ESTIMATED BURDEN

Form #	Estimated annual responses	Estimated completion time (per response)	Estimated annual burden (Hours)
AA-1cert (interview)	14,000	30	7,000
AA-1 manual (without assistance)	100	62	103
AA-1d (manual without assistance)	5	60	5
AA-1d (manual) (interview)	3,700	35	2,158
G-204	20	15	5
Total	17,825		9,271

The RRB proposes non-burden impacting editorial changes intended to provide clarification to Form AA-1(cert). Non-burden impacting editorial changes intended to provide clarification and specificity to currently existing responses as well as the deletion of several items that are no longer needed are proposed to Form AA-1. No changes are proposed to Form(s) AA-1d and G-204.

All of the forms require completion to obtain a benefit. One response is requested of each respondent.

2. Title and Purpose of Information Collection

Voluntary Customer Surveys in Accordance with E.O. 12862; OMB 3220-0192

In accordance with Executive Order 12862, the Railroad Retirement Board (RRB) conducts a number of customer surveys designed to determine the kinds and quality of services our beneficiaries, claimants, employers and members of the public want and expect, as well as their satisfaction with existing RRB services. The information collected is used by RRB management to monitor customer satisfaction by determining to what extent services are satisfactory and where and to what extent services can be improved. The surveys are limited to data collections that solicit strictly voluntary opinions, and do not collect information which is required or regulated. The information collection, which was first approved by the Office of Management and Budget (OMB) in

1997, provides the RRB with a generic clearance authority. This generic authority allows the RRB to submit a variety of new or revised customer survey instruments (needed to timely implement customer monitoring activities) to the Office of Management and Budget (OMB) for expedited review and approval.

The average burden per response for customer satisfaction activities is estimated to range from 2 minutes for a Web-site questionnaire to 2 hours for participation in a focus group. The RRB estimates an annual burden of 1,750 annual respondents totaling 717 hours for the generic customer survey clearance.

Additional Information or Comments:

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363 or send an e-mail request to Charles.Mierzwa@RRB.GOV. Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or send an e-mail to Patricia.Henaghan@RRB.GOV. Written comments should be received within 60 days of this notice.

Charles Mierzwa,
Clearance Officer.

[FR Doc. 2010-1713 Filed 1-27-10; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61400; File No. 10-198]

BATS Y-Exchange, Inc.; Notice of Filing of Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

January 22, 2010.

On October 20, 2009, BATS Y-Exchange, Inc. ("BATS Y Exchange") submitted to the Securities and Exchange Commission ("Commission") a Form 1 application under the Securities Exchange Act of 1934 ("Exchange Act"), seeking registration as a national securities exchange under Section 6 of the Exchange Act. The Commission is publishing this notice to solicit comments on BATS Y Exchange's Form 1. The Commission will take these comments into consideration in making its determination about whether to grant BATS Y Exchange's request to be registered as a national securities exchange. The Commission shall grant such registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to BATS Y Exchange are satisfied.¹

BATS Y Exchange's Form 1 provides detailed information on how it proposes to satisfy the requirements of the Exchange Act. BATS Y Exchange is wholly-owned by BATS Global Markets, Inc., which also owns BATS Exchange,

¹ 15 U.S.C. 78s(a).

Inc. ("BATS X"). BATS Y Exchange would operate as a self-regulatory organization, separate from BATS X, under its own exchange license. In general, BATS Y Exchange will operate a fully automated electronic book for orders to buy or sell securities with a continuous, automated matching function. Liquidity will be derived from orders to buy and sell submitted to BATS Y Exchange electronically by BATS Y Exchange members from remote locations as well as from quotes submitted by BATS Y Exchange members that chose to register with BATS Y Exchange as a market maker. BATS Y Exchange will not have a trading floor.

BATS Y Exchange's Form 1 is available at the Commission's Public Reference Room and <http://www.sec.gov>. Interested persons are invited to submit written data, views, and arguments concerning BATS Y Exchange's Form 1, including whether BATS Y Exchange's application is consistent with the Exchange 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 10-198 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number 10-198. 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 BATS Y Exchange's Form 1 filed with the Commission, and all written communications relating to the application 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.

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 10-198 and should be submitted on or before March 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-1767 Filed 1-27-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61408; File No. SR-FINRA-2010-004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Certain Non-Substantive Technical Changes to FINRA Rule 4521(d)

January 22, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "SEA")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 20, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to make certain non-substantive technical changes to FINRA Rule 4521(d). The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets:

* * * * *

² 17 CFR 200.30-3(a)(71)(i).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

4000. FINANCIAL AND OPERATIONAL RULES

* * * * *

4500. BOOKS, RECORDS AND REPORTS

* * * * *

4520. Financial Records and Reporting Requirements

4521. Notifications, Questionnaires and Reports

(a) through (c) No Change.

(d)(1) No Change.

(2) Each member carrying margin accounts for customers shall submit reports containing the following customer information:

(A) No Change.

(B) Total of all free credit balances in all cash accounts and all *securities* margin accounts.

(3) For purposes of this paragraph (d):

(A) Only free credit balances in cash and *securities* margin accounts shall be included in the member's report. Balances in short accounts and in [S]special [M]memorandum [A]accounts ([as defined in Section 2.2 of] *see* Regulation T [under the Exchange Act] of the Board of Governors of the Federal Reserve System) shall not be considered as free credit balances.

(B) Reported debit or credit balance information shall not include the accounts of other [organizations that are] FINRA members, or of the associated persons of the member submitting the report where such associated person's account is excluded from the definition of customer pursuant to SEA Rule 15c3-3.

(e) through (f) No Change.

* * * Supplementary Material:

.01 No Change.

* * * * *

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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 4, 2009, the Commission approved FINRA Rule 4521 (Notifications, Questionnaires and Reports) as part of a new, consolidated set of financial responsibility rules⁴ for inclusion in FINRA's consolidated rulebook ("Consolidated FINRA Rulebook").⁵ FINRA announced in *Regulatory Notice* 09-71 that the new financial responsibility rules will be implemented on February 8, 2010.⁶

FINRA Rule 4521(d) sets forth certain reporting requirements for members carrying margin accounts for customers. The proposed rule change would make several non-substantive technical changes to the rule. FINRA Rule 4521(d)(2)(B) would be revised to clarify that members must submit the total of all free credit balances in all cash accounts and all securities margin accounts. Similarly, in FINRA Rule 4521(d)(3)(A) "margin accounts" would be revised to read "securities margin accounts." Further, the reference to special memorandum accounts in FINRA Rule 4521(d)(3)(A) would be revised to align with Regulation T of the Board of Governors of the Federal Reserve System. Lastly, in FINRA Rule 4521(d)(3)(B) "other organizations that are FINRA members" would be revised to read "other FINRA members."

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change on February 8, 2010.

⁴ See *Regulatory Notice* 09-71 (December 2009) (SEC Approves Consolidated FINRA Rules Governing Financial Responsibility). See also Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (Order Granting Approval to Proposed Rule Change; File No. SR-FINRA-2008-067).

⁵ 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).

⁶ See note 4.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the purposes of the Act because it will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

A proposed rule change filed under 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. As noted above, on November 4, 2009, the Commission approved FINRA 4521 (Notifications, Questionnaires and

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that FINRA has satisfied the five-day pre-filing notice requirement.

Reports) as part of a new, consolidated set of financial responsibility rules.¹¹ FINRA has requested that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii) under the Act¹² in order for the rule to become operative upon filing. The Commission notes that the proposed rule changes makes technical non-substantive changes to Rule 4521. The Commission further notes that the operative date of FINRA 4150 is February 8, 2009.¹³ The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change permits FINRA to implement the rule without further delay and in time for the operative date of the financial responsibility rules.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2010-004 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-2010-004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹¹ See notes 4 and 5.

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ See FINRA Regulatory Notice 09-71 (December 2009).

¹⁴ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2010-004 and should be submitted on or before February 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-1662 Filed 1-27-10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61403; File No. SR-NYSE Amex-2009-85]

Self-Regulatory Organizations; NYSE Amex, Inc.; Order Approving Proposed Rule Change To Establish the NYSE Amex Realtime Reference Prices Service

January 22, 2010.

I. Introduction

On November 30, 2009, the NYSE Amex, Inc. ("NYSE Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to

establish the NYSE Amex Realtime Reference Prices service and to establish a flat monthly fee and a per-query fee for that service. The proposed rule change was published for comment in the **Federal Register** on December 18, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

a. The Service

The Exchange proposes to establish the NYSE Amex Realtime Reference Prices service and to establish a flat monthly fee and a per-query fee for that service. The Exchange believes that the NYSE Amex Realtime Reference Prices service would provide a low-cost service that makes real-time prices widely available to casual investors, provides vendors with a useful real-time substitute for delayed prices; and relieves vendors of administrative burdens. The Exchange states that the product would respond to the requirements for distribution of real-time last sale prices over the internet for reference purposes, rather than as a basis for making trading decisions.

The NYSE Amex Realtime Reference Prices service would allow internet service providers, traditional market data vendors, and others ("NYSE Amex-Only Vendors") to make available NYSE Amex Realtime Reference Prices on a real-time basis.⁴ The NYSE Amex Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange, updated in real-time. In addition, the product also includes open, high and low prices and cumulative volume. The Exchange anticipates that it would update these data elements every second, though initially it would update them once per minute. The product does not include bid/ask quotations or the size of each trade.

The Exchange would not permit NYSE Amex-Only Vendors to provide NYSE Amex Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE Amex-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as Rule 603(c)(1) of Regulation NMS requires.

The Exchange states that the service would eliminate some of the

administrative burdens associated with the distribution of real-time CTA prices. The service would feature a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

b. The Fees

The Exchange proposes to establish a \$10,000 monthly flat fee that entitles an NYSE Amex-Only Vendor to receive access to the NYSE Amex Realtime Reference Prices datafeed. For that fee, the NYSE Amex-Only Vendor could provide unlimited NYSE Amex Realtime Reference Prices to an unlimited number of the NYSE Amex-Only Vendor's subscribers and customers. The Exchange does not propose to impose any device or end-user fee for the NYSE Amex-Only Vendors' distribution of NYSE Amex Realtime Reference Prices.

In addition, the Exchange proposes to establish as an alternative to the fixed monthly fee a fee of \$.004 for each real-time reference price that a NYSE Amex-Only Vendor disseminates to its customers. The Exchange proposes to limit a NYSE Amex-Only Vendor's exposure under this alternative fee by setting \$10,000, the same amount as the proposed fixed monthly rate, as the maximum fee that an NYSE Amex-Only Vendor would have to pay for real-time reference prices that it disseminates in any calendar month pursuant to the per-query fee.

In order to take advantage of the per-query fee, a NYSE Amex-Only Vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries and must have the ability to report aggregate query quantities on a monthly basis.

The Exchange states that it would impose the per-query fee only on the dissemination of real-time reference prices. NYSE Amex-Only Vendors may provide delayed data services in the same manner as they do today.

The per-query charge would be imposed on NYSE Amex-Only Vendors, not end-users, and would be payable on a monthly basis. NYSE Amex-Only Vendors may elect to disseminate NYSE Amex Realtime Reference Prices pursuant to the per-query fee rather than the fixed monthly fee.

c. Justification of Fees

The Exchange believes that the proposed flat monthly fee and per-query fee for the NYSE Amex Realtime Reference Prices service enable Internet service providers and traditional vendors to contribute to the Exchange's operating costs in a manner that is

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61144 (December 10, 2009), 74 FR 67275.

⁴ The Exchange notes that it will make the NYSE Amex Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA and Nasdaq/UTP Plans.

appropriate for the distribution of last sale price information in the form taken by the proposed service.

In setting the level of the NYSE Amex Realtime Reference Prices fee, the Exchange took into consideration several factors, including:

(1) The fees that Nasdaq, NYSE and NYSE Arca are charging for similar services;

(2) consultation with some of the entities that the Exchange anticipates would be the most likely to take advantage of the proposed service;

(3) the contribution of market data revenues that the Exchange believes is appropriate for entities that are most likely to take advantage of the proposed service;

(4) the contribution that revenues accruing from the proposed fee would make to meet the overall costs of the Exchange's operations;

(5) the savings in administrative and reporting costs that the NYSE Amex Realtime Reference Prices service would provide to NYSE Amex-Only Vendors; and

(6) the fact that the proposed fees provide alternatives to existing fees under the CTA and Nasdaq/UTP Plans, alternatives that vendors would purchase only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the levels of the fixed monthly fee and the per-query fee are consistent with the approach set forth in the order by which the Commission approved ArcaBook fees.⁵ The Exchange submits that the NYSE Realtime Reference Prices constitute "non-core data;" *i.e.*, the Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange states that it distributes the product voluntarily. In addition, the Exchange believes that both types of the competitive forces that the Commission described in the NYSE Arca Order are present in the case of NYSE Amex Realtime Reference Prices: (i) The Exchange has a compelling need to attract order flow; and (ii) the product competes with a number of alternative products.

The Exchange states that it must compete vigorously for order flow to maintain its share of trading volume, which requires the Exchange to act reasonably in setting market data fees for non-core products such as NYSE Amex Realtime Reference Prices. The

Exchange hopes that NYSE Amex Realtime Reference Prices will enable vendors to distribute NYSE Amex last sale price data widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and 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.⁶ In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁷ which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of an exchange be designed 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,⁹ which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,¹⁰ adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.¹¹

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(8).

¹⁰ 17 CFR 242.603(a).

¹¹ NYSE Amex is an exclusive processor of NYSE Amex depth-of-book data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

Under this proposal, the Exchange would (1) establish a \$10,000 monthly flat fee that entitles vendors to receive access to the NYSE Amex Realtime Reference Prices datafeed and (2) establish a usage-based fee alternative of \$.004 for each real-time reference price that a vendor disseminates to its customers (capped at the monthly fee level). The \$10,000 monthly fee would allow vendors to provide unlimited NYSE Amex Realtime Reference Prices to an unlimited number of subscribers and customers: (1) Without vendor reporting requirements, and (2) without professional or non-professional subscriber agreements. In order to take advantage of the usage-based fee alternative, a vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries and must have the ability to report aggregate query quantities on a monthly basis.

The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.¹² In the NYSE Arca Order, the Commission stated that "when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory."¹³ It noted that the "existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."¹⁴ If an exchange "was subject to significant competitive forces in setting the terms of a proposal," the Commission will approve a proposal unless it determines that "there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder."¹⁵

There are a variety of alternative sources of information that impose significant competitive pressures on the Exchange in setting the terms for distributing its market data. The Commission believes that the availability of those alternatives, as well as the NYSE Amex's compelling need to attract order flow, imposed significant

¹² See *supra* note 5. In the NYSE Arca Order, the Commission describes in great detail the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

¹³ *Id.* at 74781.

¹⁴ *Id.* at 74781–82.

¹⁵ *Id.* at 74781.

⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) ("NYSE Arca Order").

competitive pressure on the NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR–NYSEAmex–2009–85) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1695 Filed 1–27–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61406; File No. SR–NYSE–2009–120]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to Changes in NYSE Realtime Reference Prices Service

January 22, 2010.

I. Introduction

On November 27, 2009, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² a proposed rule change to add data elements to its “NYSE Realtime Reference Prices” service, to reduce the fixed monthly fee that applies to that service, and to add a usage-based fee alternative for that service. The proposed rule change was published for comment in the **Federal Register** on December 18, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes several changes to the NYSE Realtime Reference Prices service. In a recent filing,⁴ the Exchange established a fixed monthly fee for its NYSE-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange. The Exchange has found that the NYSE Realtime Reference Prices service provides a low-cost service that makes real-time prices widely available to many millions of casual investors, provides vendors with a real-time substitute for delayed prices, and relieves vendors of all administrative burdens. The service allows Internet service providers, traditional market data vendors, and others (“NYSE-Only Vendors”) to make available NYSE Realtime Reference Prices on a real-time basis.⁵ NYSE Realtime Reference Prices information includes last sale prices for all securities that are traded on the Exchange.

The Exchange proposes to make the following changes to the service and its fees:

a. Data Elements

Currently, the NYSE Realtime Reference Price Service includes only prices. It does not include the size of each trade and does not include bid/ask quotations. For each security, the Exchange is proposing to add the following data elements to the service:

- High price.
- Low price.
- Cumulative volume.

The Exchange states that it anticipates that it would update these data elements every second, though initially it would update them once per minute. A security’s high (low) price would reflect the highest (lowest) price at which the security has traded on the Exchange during the trading session through the point in time at which it is disseminated. Further, the cumulative volume would reflect a security’s aggregate volume during a trading session through the point in time at which it is last disseminated. The Exchange believes that adding these data elements would make the product more attractive to the customers of NYSE-Only Vendors.

b. Reduction in the Fixed Monthly Fee

Currently, the NYSE Realtime Reference Price service features a flat, fixed monthly vendor fee of \$70,000 and no user-based fees. For that fee, a NYSE-Only Vendor may provide unlimited NYSE Realtime Reference Prices to an unlimited number of the NYSE-Only Vendor’s subscribers and customers without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

The Exchange states that it has now had experience with the product and has received feedback from its customers. As a result of the comments of the Exchange’s customers, the response to the product from the vendors most likely to subscribe to the product, and the past year’s market corrections, the Exchange is now proposing to reduce the fixed monthly fee to \$60,000. In addition, in combination with the proposed usage-based fee and the proposed addition of new data elements to the product, the Exchange hopes that the fee reduction would allow the Exchange to broaden the universe of vendors that would find the product appropriate for their business models.

The Exchange believes that the proposed reduced fee would enable Internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange’s operating costs in a manner that is appropriate for their means of distribution. The Exchange further believes that the proposed reduction in the fixed monthly fee for the NYSE Realtime Reference Prices service would make the product more attractive to vendors and that an increase in the number of vendors that determine to provide free access to NYSE Realtime Reference prices to their Internet users would benefit the investment community. The Exchange states that the fee reduction would also respond to the price competition provided by alternative exchanges, ECNs and the market for delayed data and would better reflect the perceived value of the NYSE product and provide a more equitable allocation of the Exchange’s overall costs to users of its facilities.

c. Usage-Based Fee

The Exchange proposes to establish as an alternative to the fixed monthly fee a fee of \$.004 for each real-time reference price that a NYSE-Only

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 61145 (December 10, 2009), 74 FR 67287.

⁴ See Securities Exchange Act Release No. 60004 (May 29, 2009), 74 FR 26905 (June 4, 2009) (SR–NYSE–2009–42).

⁵ The Exchange notes that it makes the NYSE Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

Vendor disseminates to its customers. The Exchange proposes to limit a NYSE-Only Vendor's exposure under this alternative fee by setting \$60,000, the same amount as the proposed fixed monthly rate, as the maximum fee that an NYSE-Only Vendor would have to pay for real-time reference prices that it disseminates in any calendar month pursuant to the per-query fee.

In order to take advantage of the per-query fee, a NYSE-Only Vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries and must have the ability to report aggregate query quantities on a monthly basis.

The Exchange states that it would impose the per-query fee only on the dissemination of real-time reference prices. NYSE-Only Vendors may provide delayed data services in the same manner as they do today.

The per-query charge would be imposed on NYSE-Only Vendors, not end-users, and would be payable on a monthly basis. Because it would represent a new and additional alternative to the monthly fixed fee, NYSE-Only Vendors may elect to disseminate NYSE Realtime Reference Prices pursuant to the per-query fee rather than the fixed monthly fee.

d. Justification of Fees

The Exchange believes that the fee enables Internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange's operating costs in a manner that is appropriate for their means of distribution. According to the Exchange, reducing the flat monthly fee and adding a per-query payment option would reduce the costs of the service to those Internet service providers and traditional vendors. The Exchange believes that this would enable NYSE Realtime Reference Prices vendors to make a more appropriate contribution to the Exchange's operating costs.

In re-setting the level of the NYSE Realtime Reference Prices flat monthly fee and in establishing the per-query fee, the Exchange took into consideration several factors, including:

(1) The fees that Nasdaq and NYSE Arca are charging for similar services and that NYSE Amex has proposed to charge;

(2) Consultation with some of the entities that currently receive the service or that the Exchange anticipates may commence to take advantage of the service;

(3) The contribution of market data revenues that the Exchange believes is appropriate for entities that are most

likely to take advantage of the proposed service;

(4) The contribution that revenues accruing from the proposed fees would make to meet the overall costs of the Exchange's operations;

(5) The savings in administrative and reporting costs that the NYSE Realtime Reference Prices service would provide to NYSE-Only Vendors; and

(6) The fact that the proposed fees provide even more attractive alternatives to existing fees under the CTA Plan than the current flat fee, alternatives that vendors would purchase only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the levels of the fixed monthly fee and the per-query fee are consistent with the approach set forth in the order by which the Commission approved ArcaBook fees.⁶ The Exchange submits that the NYSE Realtime Reference Prices constitute "non-core data;" *i.e.*, the Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange states that it distributes the product voluntarily. In addition, the Exchange believes that both types of the competitive forces that the Commission described in the NYSE Arca Order are present in the case of NYSE Realtime Reference Prices: (i) The Exchange has a compelling need to attract order flow; and (ii) the product competes with a number of alternative products.

The Exchange states that it must compete vigorously for order flow to maintain its share of trading volume, which requires the Exchange to act reasonably in setting market data fees for non-core products such as NYSE Realtime Reference Prices. The Exchange hopes that NYSE Realtime Reference Prices will enable vendors to distribute NYSE last sale price data widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and 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.⁷ In particular, the

⁶ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) ("NYSE Arca Order").

⁷ In approving this proposed rule change, the Commission notes that it has considered the

Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁸ which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and Section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of an exchange be designed 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,¹⁰ which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,¹¹ adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.¹²

Under this proposal, the Exchange would (1) add high price, low price, and cumulative volume data elements to its "NYSE Realtime Reference Prices" service, (2) reduce the fixed monthly fee for the service to \$60,000, and (3) add a usage-based fee alternative of \$.004 for each real-time reference price that a vendor disseminates to its customers (capped at the monthly fee level). In order to take advantage of the usage-based fee alternative, a vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries and must have the ability to report aggregate query quantities on a monthly basis.

The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core

proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(8).

¹¹ 17 CFR 242.603(a).

¹² NYSE is an exclusive processor of NYSE depth-of-book data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

market data fees.¹³ In the NYSE Arca Order, the Commission stated that “when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.”¹⁴ It noted that the “existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”¹⁵ If an exchange “was subject to significant competitive forces in setting the terms of a proposal,” the Commission will approve a proposal unless it determines that “there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.”¹⁶

There are a variety of alternative sources of information that impose significant competitive pressures on the Exchange in setting the terms for distributing its market data. The Commission believes that the availability of those alternatives, as well as the NYSE’s compelling need to attract order flow, imposed significant competitive pressure on the NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NYSE-2009-120) is hereby approved.

¹³ See *supra* note 6. In the NYSE Arca Order, the Commission describes in great detail the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

¹⁴ *Id.* at 74781.

¹⁵ *Id.* at 74781-82.

¹⁶ *Id.* at 74781.

¹⁷ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-1696 Filed 1-27-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61402; File No. NYSEAmex-2010-05]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Postponing the Implementation Date of Information Memo 10-03, Which Provides Updated Parameters for, and Guidance on the Application of, the Exchange’s Gap Quote Policy

January 22, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b-4 thereunder,² notice is hereby given that on January 19, 2010, 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 change the implementation date of Information Memo 10-03, which provides updated parameters for, and guidance on the application of, the Exchange’s Gap Quote Policy (the “Policy”). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the implementation date of Information Memo 10-03, which provides updated parameters for, and guidance on the application of, the Policy.³

The updated Policy was adopted by the Exchange and approved by the Commission in a separate rule filing.⁴ In that filing, the Commission approved the changes to the Policy contingent on their implementation within 10 business days of the date of the Commission’s approval order, *i.e.*, by January 19, 2010. On January 7, 2010, the Exchange announced these changes to the Policy through the publication of Information Memo 10-03.

As set forth in Information Memo 10-03, the Exchange proposed to implement the changes to the Policy on January 11, 2010. However, implementation of the new requirements was delayed and did not occur on January 11, 2010, as planned. The Exchange notified the public of the implementation delay by a Trader Update Notice issued on January 11, 2010, and by Information Memo 10-06 published on January 11, 2010.

Because the Exchange will not be able to implement the changes to the Policy described in Information Memo 10-03 by January 19, 2010, the Exchange now proposes that the changes to the Policy will be implemented on or before February 15, 2010, and that the Exchange will notify the public of the specific implementation date by issuing both a Trader Update Notice and an Information Memo. In addition, should the Exchange again need to change the implementation date, it will do so by issuing a Trader Update Notice and an Information Memo.

³ The Exchange’s corporate affiliate, New York Stock Exchange LLC (“NYSE”), has submitted an identical companion filing. See SR-NYSE-2010-05. Information Memo 10-03 was issued by NYSE Regulation, Inc. on behalf of both the Exchange and NYSE.

⁴ See Securities Exchange Act Release No. 61276 (January 4, 2010), 75 FR 1439 (January 11, 2010) (SR-NYSEAmex-2009-82) (approving Information Memo 10-03).

¹⁸ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,⁵ in general, and further the objectives of Section 6(b)(5) of the Act,⁶ in particular, in that they 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 a national market system, and, in general, to protect 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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ 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)⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁰ 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 so that the Exchange may keep the public, including market participants, aware of the implementation date for the revised Policy and thereby prevent investor confusion. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.¹¹

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 NYSEAmex-2010-05 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 NYSEAmex-2010-05. 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/>

change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹¹ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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 NYSEAmex-2010-05 and should be submitted on or before February 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-1694 Filed 1-27-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61399; File No. SR-BX-2010-007]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Order Routing Pilot on the Boston Options Exchange Facility

January 22, 2010.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder,² notice is hereby given that on January 15, 2010, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") 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 Exchange filed the proposed rule change

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule

pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XII, Section 5 (Order Routing to Away Exchanges) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to extend the effective date of the Order Routing Pilot. The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov> and also on the Exchange's Web Site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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

On October 16, 2009 the Commission approved⁵ the Exchange's proposal to amend Chapter XII of the BOX Rules to provide for the use by BOX of certain non-affiliated third party routing broker/dealers ("Routing Broker(s)") to route options orders to one or more Away Exchange(s) when such Away Exchange(s) display the Best Bid or Best Offer in accordance with the Options Order Protection and Locked/Crossed

Market Plan ("Decentralized Plan").⁶ In particular, the Commission approved adding new Section 5 to Chapter XII of the BOX Rules as new rule text that would govern the outbound order routing process ("Order Routing Rule").⁷

The Exchange requested that the proposal be approved on a pilot basis for three (3) months starting from the date of the approval of submission of filing. The Commission approved the Exchange's proposal on an accelerated basis for a pilot period to expire on January 15, 2010 ("Order Routing Pilot").⁸

The Exchange now proposes to extend the effective date of the Order Routing Pilot on BOX until March 15, 2010.

2. Statutory Basis

This proposed rule change seeks to extend the effective date of the Order Routing Pilot on BOX. Such an extension will afford the Commission further time to consider the merits and impact of the Order Routing Pilot in advance of any request from the Exchange that the Order Routing Pilot be made permanent. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁹ in general, and Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect 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 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 neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹³ However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that the proposal will allow the Order Routing Pilot on BOX to remain operational on an uninterrupted basis to the benefit of investors, and does not raise any additional or substantive issues from those raised when the Exchange initially sought to implement the Order Routing Pilot.¹⁵ The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption through March 15, 2010. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.¹⁶

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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ *Id.*

¹⁵ See SR-BX-2010-007, Item 7.

¹⁶ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 60832 (October 16, 2009), 74 FR 54607 (October 22, 2009) (SR-BX-2009-066) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Chapter XII of the BOX Rules). Terms not otherwise defined herein shall have the meaning proscribed in the BOX Rules.

⁶ See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Market Plan).

⁷ See Chapter XII, Section 5 of the BOX Rules.

⁸ See *supra* note 5.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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-BX-2010-007 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-BX-2010-007. 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 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-BX-2010-007 and should be submitted on or before February 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-1692 Filed 1-27-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61401; File No. NYSE-2010-05]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Postponing the Implementation Date of Information Memo 10-03, Which Provides Updated Parameters for, and Guidance on the Application of, the Exchange's Gap Quote Policy

January 22, 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 January 19, 2010, New York Stock Exchange LLC (the "Exchange" or "NYSE") 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 change the implementation date of Information Memo 10-03, which provides updated parameters for, and guidance on the application of, the Exchange's Gap Quote Policy (the "Policy"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to change the implementation date of Information Memo 10-03, which provides updated parameters for, and guidance on the application of, the Policy.³

The updated Policy was adopted by the Exchange and approved by the Commission in a separate rule filing.⁴ In that filing, the Commission approved the changes to the Policy contingent on their implementation within 10 business days of the date of the Commission's approval order, *i.e.*, by January 19, 2010. On January 7, 2010, the Exchange announced these changes to the Policy through the publication of Information Memo 10-03.

As set forth in Information Memo 10-03, the Exchange proposed to implement the changes to the Policy on January 11, 2010. However, implementation of the new requirements was delayed and did not occur on January 11, 2010, as planned. The Exchange notified the public of the implementation delay by a Trader Update Notice issued on January 11, 2010, and by Information Memo 10-06 published on January 11, 2010.

Because the Exchange will not be able to implement the changes to the Policy described in Information Memo 10-03 by January 19, 2010, the Exchange now proposes that the changes to the Policy will be implemented on or before February 15, 2010, and that the Exchange will notify the public of the specific implementation date by issuing both a Trader Update Notice and an Information Memo. In addition, should the Exchange again need to change the implementation date, it will do so by issuing a Trader Update Notice and an Information Memo.

³ The Exchange's corporate affiliate, NYSE Amex LLC ("NYSE Amex"), has submitted an identical companion filing. See SR-NYSEAmex-2010-05. Information Memo 10-03 was issued by NYSE Regulation, Inc. on behalf of both the Exchange and NYSE Amex.

⁴ See Securities Exchange Act Release No. 61275 (January 4, 2010), 75 FR 1438 (January 11, 2010) (SR-NYSE-2009-112) (approving Information Memo 10-03).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,⁵ in general, and further the objectives of Section 6(b)(5) of the Act,⁶ in particular, in that they 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 a national market system, and, in general, to protect 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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ 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)⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁰ 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 so that the Exchange may keep the public, including market participants, aware of the implementation date for the revised Policy and thereby prevent investor confusion. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.¹¹

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 NYSE-2010-05 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 NYSE-2010-05. 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/>

change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹¹ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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 NYSE-2010-05 and should be submitted on or before February 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-1693 Filed 1-27-10; 8:45 am]

BILLING CODE 8011-01-P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice covers a collection in use without an OMB number.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection to the OMB Desk Officer and

¹² 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule

the SSA Reports Clearance Officer to the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, E-mail address: OIRA_Submission@omb.eop.gov.
(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1340 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-8783, E-mail address: OPLM.RCO@ssa.gov.

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than March 29, 2010. Individuals can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer or by writing to the above e-mail address.

Centenarian Project Development Worksheets: Face-to-Face Interview; Telephone Interview; Third Party Contact; Unable To Locate—20 CFR 416.204(b) and 422.135—0960—NEW. SSA is conducting interviews with centenary beneficiaries age 103 and older to assess: (1) If the beneficiaries are still living; (2) to prevent fraud, through either identity misrepresentation or representative payee misuse of funds; and (3) to assess the well-being of the beneficiaries. SSA's San Francisco field offices are currently using this survey and we intend to expand its use to all other SSA field offices. Field office personnel obtain the information through one-time, in-person interviews with centenarians. During the interview, SSA employees will make overall observations of the centenarian and their representative payee (if applicable). The interviewer will use the appropriate Centenarian Development Worksheet as a guide for the interview and to document findings. SSA will conduct the interview one time only at the beneficiary's residence or over the phone if a site visit is not possible. Refusal of the interview will not result in the suspension of the centenarian's payments. Respondents are Supplemental Security Income recipients or Social Security beneficiaries 103 years old or older, their representative payees, or caregivers.

Type of Request: Existing information collection in use without an OMB number.

Number of Respondents: 14,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 3,500 hours.

Dated: January 22, 2010.

Faye Lipsky,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 2010-1635 Filed 1-27-10; 8:45 am]

BILLING CODE 4191-02-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Free Trade Agreements; Invitation for Applications for Inclusion on Dispute Settlement Rosters for the U.S.-Chile Free Trade Agreement ("FTA"), the Dominican Republic-Central America-United States FTA, the North American FTA, and the U.S.-Peru Trade Promotion Agreement

AGENCY: Office of the United States Trade Representative ("USTR").

ACTION: Invitation for Applications.

SUMMARY: A number of trade agreements to which the United States is a party call for the parties to establish rosters of persons available to serve on dispute settlement panels to hear disputes under those agreements. These agreements include the United States-Chile Free Trade Agreement, the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA-DR"), the North American Free Trade Agreement ("NAFTA"), and the United States-Peru Trade Promotion Agreement. In some instances, an agreement will call for the establishment of more than one roster. For example, the CAFTA-DR requires the establishment of four rosters of individuals who would be available to serve as panelists in dispute settlement proceedings arising under that agreement: a general roster and rosters for disputes concerning financial services, labor, and environment matters. USTR is inviting interested persons to apply to be on one or more of these several rosters under the various agreements.

DATES: Applications should be received no later than March 15, 2010 to be assured of consideration.

ADDRESSES: Applications should be submitted electronically to <http://www.regulations.gov>, docket number USTR-2010-0007. If you are unable to submit an application using <http://www.regulations.gov>, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

FOR FURTHER INFORMATION CONTACT: For information regarding the form of the application, contact Sandy McKinzy, Legal Technician, USTR Office of

Monitoring and Enforcement, at (202) 395-3582. For other inquiries, contact María L. Pagán, Associate General Counsel, at (202) 395-7305 (for the U.S.-Chile FTA and U.S.-Peru TPA), Leigh Bacon, Associate General Counsel, at (202) 395-5859 (for the CAFTA-DR), and Suzanne Garner, Assistant General Counsel, at (202) 395-9663 (for the NAFTA).

SUPPLEMENTARY INFORMATION: USTR is seeking applications from interested persons to serve on any of the rosters under any of the listed agreements. The details for how to apply are provided below as is a short description of the rosters for each agreement. A person is free to apply for a single roster or any combination of rosters. Through this **Federal Register** Notice, USTR will accept applications from U.S. citizens and nationals of other countries.

Dispute Settlement Mechanism of U.S.-Chile Free Trade Agreement

The Chile FTA sets out detailed procedures for the resolution of disputes over compliance with the obligations set out in the agreement. Dispute settlement involves three stages: (1) Lower level consultations between the Parties to try to arrive at a mutually satisfactory resolution of the matter; (2) cabinet-level consultations; and, (3) resort to a neutral panel to make a determination as to whether a Party is in compliance with its obligations under the agreement. The panel is composed of three individuals chosen by the Parties.

The Chile FTA requires the establishment of a general dispute settlement roster from which panelists shall normally be selected. The roster must be comprised of at least 20 individuals, six of whom should be non-nationals of either Party. Once established, the roster remains in effect for a minimum of three years. *See* Chile FTA, Article 22.7. The Chile FTA also requires the establishment of three additional rosters, one each for disputes under the Financial Services Chapter (Chapter Twelve), the Labor Chapter (Chapter Eighteen), and the Environment Chapter (Chapter Nineteen). The financial services roster must be comprised of up to 10 individuals, up to four of whom must be non-nationals of either Party. *See* Chile FTA, Article 12.17. The labor roster must be comprised of up to 12 individuals, four of whom must be non-nationals of either Party. *See* Chile FTA, Article 18.7. The environment roster must be comprised of at least 12 individuals, four of whom must be non-nationals of either Party. *See* Chile FTA, Article 19.7.

Upon each request for establishment of a panel, potential panelists will be requested to complete a disclosure form, which will be used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the potential panelist and, if applicable, clients of the potential panelist's firm.

The text of the Chile FTA can be found through the Office of the U.S. Trade Representative Web site (<http://www.ustr.gov/trade-agreements/free-trade-agreements>).

Criteria for Eligibility for Qualification as Panelist

To qualify as a panelist for the general roster an individual must: (1) Have expertise or experience in law, international trade, other matters covered by the Agreement, or the resolution of disputes arising under international trade agreements; (2) be objective, reliable, and possess sound judgment; (3) be independent of, and not be affiliated with or take instructions from any Party; and (4) comply with a code of conduct.

To qualify as a panelist for the financial services roster an individual must have expertise or experience in financial services law or practice, which may include the regulation of financial institutions, and meet the qualifications set out in (2) through (4) above.

To qualify as a panelist for the labor roster an individual must have expertise or experience in labor law or its enforcement, or in the resolution of disputes arising under international agreements, and meet the qualifications set out in (2) through (4) above.

To qualify as a panelist for the environment roster an individual must have expertise or experience in environmental law or its enforcement, international trade, or the resolution of disputes arising under international trade agreements, and meet the qualifications set out in (2) through (4) above.

Dispute Settlement Under the Dominican Republic-Central America-United States Free Trade Agreement

The CAFTA-DR is a plurilateral agreement in force between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua ("CAFTA-DR Parties"). The CAFTA-DR sets out detailed procedures for the resolution of disputes arising under the Agreement. Dispute settlement involves three stages: (1) Lower level consultations between the disputing CAFTA-DR Parties to try

to arrive at a mutually satisfactory resolution of the matter; (2) cabinet-level consultations between the disputing CAFTA-DR Parties; and, (3) resort to a neutral panel to make a determination regarding the matter at issue between the disputing CAFTA-DR Parties. The panel is composed of three individuals chosen by the disputing CAFTA-DR Parties.

The CAFTA-DR requires the establishment of a general dispute settlement roster from which panelists shall normally be selected. The roster is to be composed of up to 70 individuals, up to 14 of whom are to be individuals who are not a national of any CAFTA-DR Party. Once established, the roster remains in effect for a minimum of three years. *See* CAFTA-DR Article 20.7. The CAFTA-DR also requires the establishment of three additional rosters, one each for disputes arising under Chapter Twelve (Financial Services), Chapter Sixteen (Labor), and Chapter Seventeen (Environment). Each of these three rosters shall remain in effect for a minimum of three years and is to be composed of up to 28 individuals, up to seven of whom are to be individuals who are not a national of any CAFTA-DR Party. *See* CAFTA-DR Articles 12.18, 16.7, and 17.11.

Upon each request for establishment of a panel, potential panelists may be requested to complete a disclosure form, which could be used to identify possible conflicts of interest or appearances thereof. The disclosure form may request information regarding financial interests and affiliations, including information regarding the identity of clients of the potential panelist and, if applicable, clients of the potential panelist's firm.

The text of the CAFTA-DR can be found through the Office of the U.S. Trade Representative Web site (<http://www.ustr.gov/trade-agreements/free-trade-agreements>).

Criteria for Eligibility for Inclusion on a CAFTA-DR Roster

To qualify for inclusion on the general roster an applicant must: (1) Have expertise or experience in law, international trade, other matters covered by the Agreement, or the resolution of disputes arising under international trade agreements; (2) be objective, reliable, and possess sound judgment; (3) be independent of, and not be affiliated with or take instructions from any CAFTA-DR Party; and (4) comply with a code of conduct.

To qualify for inclusion on the financial services roster an applicant must have expertise or experience in financial services law or practice, which

may include the regulation of financial institutions, and meet the qualifications set out in (2) through (4) above.

To qualify for inclusion on the labor roster an applicant must have expertise or experience in labor law or its enforcement, international trade, or the resolution of disputes arising under international agreements, and meet the qualifications set out in (2) through (4) above.

To qualify for inclusion on the environment roster an applicant must have expertise or experience in environmental law or its enforcement, international trade, or the resolution of disputes arising under international trade or environmental agreements, and meet the qualifications set out in (2) through (4) above.

The United States seeks applications for inclusion on the rosters from qualified persons.

Dispute Settlement under NAFTA Chapter Twenty

Procedures under Chapter Twenty of the NAFTA apply to the avoidance or settlement of most types of disputes between the Parties arising under the NAFTA. If the NAFTA Parties cannot settle a dispute through consultations, they may convene a dispute settlement panel to consider the matter.

Chapter Twenty Roster and Composition of Panels

Article 2009 of the NAFTA provides for a roster of up to 30 persons to serve on Chapter Twenty dispute settlement panels. A separate five-member panel is formed for each dispute. Panelists normally are selected from the roster (although non-roster panelists may be selected, for instance, when a dispute involves a matter for which a particular expertise not reflected on the roster would be helpful). For each case, roster members under consideration to serve as a panelist will be requested to complete a disclosure form, which is used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of any clients the roster member may have and, if applicable, clients of the roster member's firm.

Criteria for Eligibility for Inclusion on Chapter Twenty Roster

Article 2009 provides that roster members shall (1) have expertise or experience in law, international trade, other matters covered by the NAFTA or the resolution of disputes arising under trade agreements, and shall be chosen

strictly on the basis of objectivity, reliability and sound judgment; (2) be independent of, and not be affiliated with or take instructions from, any Party; and (3) comply with the code of conduct for Chapter Twenty panelists.

The text of the NAFTA can be found through the Office of the U.S. Trade Representative Web site (<http://www.ustr.gov/trade-agreements/free-trade-agreements>).

Dispute Settlement under the United States-Peru Trade Promotion Agreement

The PTPA is a bilateral agreement in force between the United States and Peru (the "Parties"). The PTPA sets out detailed procedures for the resolution of disputes arising under the Agreement. Dispute settlement involves three stages: (1) Lower level consultations between the Parties to try to arrive at a mutually satisfactory resolution of the matter; (2) cabinet-level consultations between the Parties; and, (3) resort to a neutral panel to make a determination regarding the matter at issue between the Parties. The panel is composed of three individuals chosen by the Parties.

The PTPA requires the establishment of an indicative roster from which panelists may be selected by lot if the Parties have otherwise failed to appoint panelists. The indicative roster is to be composed of eight individuals, two of whom are to be individuals who are not a national of either Party. Once established, the roster remains in effect for a minimum of three years. See PTPA Articles 21.7 and 21.9.

Upon each request for establishment of a panel, potential panelists may be requested to complete a disclosure form, which could be used to identify possible conflicts of interest or appearances thereof. The disclosure form may request information regarding financial interests and affiliations, including information regarding the identity of clients of the potential panelist and, if applicable, clients of the potential panelist's firm.

The text of the PTPA can be found through the Office of the U.S. Trade Representative Web site (<http://www.ustr.gov/trade-agreements/free-trade-agreements>).

Criteria for Eligibility for Inclusion on the PTPA Indicative Roster

To qualify for inclusion on the indicative roster an applicant must: (1) Have expertise or experience in law, international trade, other matters covered by the Agreement, or the resolution of disputes arising under international trade agreements; (2) be objective, reliable, and possess sound

judgment; (3) be independent of, and not be affiliated with or take instructions from either Party; and (4) comply with a code of conduct.

The United States seeks applications for inclusion on the indicative roster from qualified persons.

Procedures for Selection of Roster Members

An interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the various rosters. After consultation with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, USTR selects the final list of individuals that the United States will nominate for inclusion on the rosters. The members of a roster under a particular agreement are appointed by consensus of the parties to the agreement.

Applications

Eligible individuals who wish to be considered for inclusion on one or more of the rosters are invited to submit applications. Persons who previously submitted an application for a CAFTA-DR roster in response to the April 13, 2009 **Federal Register** Notice do not need to re-submit their application, but should simply indicate that they remain interested, should update any information in that application, and should indicate whether they also wish to be considered for any other roster under this notice.

Persons submitting applications should submit one copy electronically to <http://www.regulations.gov>, docket number USTR-2010-0007. If you are unable to submit an application using <http://www.regulations.gov>, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

Applications must be typewritten, and should be headed "Application for Inclusion on a Roster." Applicants must specify for which of the agreements and, where applicable, for which roster under the agreement they wish to be considered (for example, General, Financial Services, Labor, or Environment). Applicants may specify more than one roster. Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and e-mail address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.

5. Relevant education and professional training.
6. Spanish or French language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, concerning the relevant area of expertise. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches, and decisions need be submitted.
10. A list of international trade proceedings or domestic proceedings relating to international trade matters or other relevant matters in which the applicant has provided advice to a party or otherwise participated.
11. Summary of any current and past employment by, or consulting or other work for, the Government of the United States and the Government(s) of the other party(ies) to each agreement for which the applicant is applying (*i.e.*, Canada, Chile, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, or Peru).
12. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods.
13. A short statement of qualifications and availability for service on dispute settlement panels under the relevant agreement, including information relevant to the applicant's familiarity with international trade law and relevant area(s) for the roster(s) for which the applicant seeks to be considered, and willingness and ability to make time commitments necessary for service on panels.
14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with the relevant area of expertise.

Public Disclosure

Applications normally will not be subject to public disclosure and will not be posted publicly on <http://www.regulations.gov>. Applications may be shared with other agencies, the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Government(s) of the other Party(ies) for their consideration in determining whether to appoint persons to the rosters.

False Statements

False statements by an applicant regarding his or her personal or professional qualifications, or financial or other relevant interests that bear on the applicant's suitability for placement on a roster or appointment to a panel are subject to criminal sanctions under 18 U.S.C. 1001.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act ("PRA") that has been approved by the Office of Management and Budget ("OMB"). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to apply for inclusion on a roster. It is expected that the collection of information burden will be under three hours. This collection of information contains no annual reporting or recordkeeping burden. This collection of information was approved by OMB under OMB Control Number 0350-0014. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at <http://www.regulations.gov>.

Privacy Act

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). Provision of the information requested above is voluntary; however, failure to provide the information will preclude consideration as a candidate for inclusion on a roster. This information is maintained in a system of records entitled "Dispute Settlement Panelists Roster." Notice regarding this system of records was published in the **Federal Register** on November 30, 2001. The information provided is needed, and

will be used by USTR, other Federal government trade policy officials concerned with dispute settlement under the relevant agreement, and officials of the other Party(ies) to select well-qualified individuals for inclusion on the rosters and for service on dispute settlement panels.

Daniel E. Brinza,

Senior Counsel for Dispute Settlement.

[FR Doc. 2010-1778 Filed 1-27-10; 8:45 am]

BILLING CODE 3190-W0-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2009-0375]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration.

ACTION: Notice and request for comments.

SUMMARY: On November 24, 2009, as required by the Paperwork Reduction Act of 1995, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice in the **Federal Register** (74 FR 61403) of its intent to renew an information collection under Office of Management and Budget (OMB) Control No. 2137-0604, titled "Pipeline Integrity Management in High Consequence Areas Operators with more than 500 Miles of Hazardous Liquid Pipeline." No comments were received. PHMSA is publishing this notice to provide the public with an additional 30 days to comment and announce that the Information Collection renewal will be submitted to the Office of Management and Budget (OMB) for approval.

DATES: Comments on this notice must be received by March 1, 2010.

ADDRESSES: Comments may be submitted to the docket identified as PHMSA-2009-0375 by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 1-202-395-6566.
- **Mail:** Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 726 Jackson Place, NW., Washington, DC 20503, *Attn:* Desk Officer for Department of Transportation (DOT).
- **E-mail:** Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the

following address:

oira_submissions@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Cameron Satterthwaite by telephone at 202-366-1319, by fax at 202-366-4566, or by mail at U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., PHP-30, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection renewal that PHMSA will be submitting to OMB for approval. This information collection is contained in the pipeline safety regulations, 49 CFR parts 190-199. PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Type of request; (4) Abstract of the information collection activity; (5) Description of affected public; (6) Estimate of total annual reporting and recordkeeping burden; and (7) Frequency of collection. PHMSA will request a three-year term of approval for each information collection activity.

PHMSA requests comments on the following information collection:

Title of Information Collection: Pipeline Integrity Management in High Consequence Areas Operators with more than 500 Miles of Hazardous Liquid Pipeline.

OMB Control Number: 2137-0604.

Type of Request: Renewal of a currently approved information collection.

Abstract: Hazardous liquid operators with pipelines in high consequence areas (*i.e.*, commercially navigable waterways, high population areas, other populated areas, and unusually sensitive areas as defined in 49 CFR 195.450) are subject to certain information collection requirements relative to the Integrity Management Program provisions of 49 CFR 195.452. This information collection (2137-0604) covers each operator that has more than 500 miles of hazardous liquid pipelines.

Affected Public: Operators of hazardous liquid pipelines located in high consequence areas that operate more than 500 miles of pipeline.

*Recordkeeping:**Estimated number of responses:* 71.*Estimated annual burden hours:*

57,510 hours.

Frequency of collection: Annually.

Issued in Washington, DC on January 26, 2010.

Jeffrey D. Wiese,*Associate Administrator for Pipeline Safety.*

[FR Doc. 2010-1876 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****[Docket No. FHWA-2010-0007]****Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 27, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 1, 2010.**ADDRESSES:** You may submit comments identified by DOT Docket ID Number FHWA-2010-0007, by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

Hand Delivery or Courier: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Jensen, 202-366-2048, Office of Planning, Environment & Realty, HEP-2, Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:*Title:* National Scenic Byways Program.*OMB Control #:* 2125-0611.*Form #:* FHWA-1569, FHWA-1570, FHWA-1577.

Background: The National Scenic Byways Program was established under the Intermodal Surface Transportation Efficiency Act of 1991, and reauthorized in 1998 under the Transportation Equity Act for the 21st Century. Under the program, the U.S. Secretary of Transportation recognizes certain roads as National Scenic Byways or All-American Roads based on their archaeological, cultural, historic, natural, recreational, and scenic qualities. There are 151 such designated byways in 46 states, which the FHWA promotes as the America's Byways. It is a voluntary, grassroots program that recognizes and supports outstanding roads while providing resources to help manage the intrinsic qualities within the broader byway corridor to be treasured and shared. The vision of the FHWA's National Scenic Byways Program is to create a distinctive collection of American roads, their stories and treasured places. The program's mission is to provide resources to the byway community in creating a unique travel experience and enhanced local quality of life through efforts to preserve, protect, interpret, and promote the intrinsic qualities of designated byways. Title 23, Section 162 of the United States Code lays out the statutory structure of the National Scenic Byways Program. This legislation was most recently amended in 2005 upon passage of the Public Law 109-59 Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU). The legislation includes provisions for review and dissemination of grant monies by the U.S. Secretary of Transportation. Grant applications are solicited on an annual basis. Eligible projects are on State designated byways, National Scenic Byways, All-American Roads, or Indian Tribe Scenic Byways. Applications are completed by Federal, State, or local governmental agencies; Tribal Governments; and non-profit organizations. The application information is collected electronically

via the online Grant system and is used to determine project eligibility. The legislation also includes information about the nomination of scenic byways to become one of America's Byways, a collection of distinct and diverse roads designated by the U.S. Secretary of Transportation. America's Byways include the National Scenic Byways and All-American Roads. Additional information on the National Scenic Byways Program, its grant program, and the nomination process is available at <http://www.bywaysonline.org>.

Grants Respondents: In a typical grants cycle, it is estimated that 400 applications will be received. These applications will be submitted online and reviewed for eligibility through a process involving State Byway or Indian Tribe Scenic Byway Coordinators and FHWA division offices before being submitted to FHWA Headquarters for funding consideration. Respondents include: 50 State Departments of Transportation, the District of Columbia and Puerto Rico (Right-of-Way Department), Federal Land Management Agencies, State and local governments, non-profit agencies, and Tribal Governments.

Frequency: Annual.*Estimated Average Burden per Response:* 16 hours.*Estimated Sub-Total Annual Burden Hours:* 6,400 hours.

Nominations Respondents: Based on previous nomination cycles, it is estimated that a total of 75 nominations will be received, originating from any local government, including Tribal Governments, or any private group or individual. Nominations may also originate from the U.S. Forest Service, the National Park Service, the Bureau of Land Management, or the Bureau of Indian Affairs. Roads determined to be appropriate for nomination by the State, an Indian tribe, or a Federal land management agency based on its intrinsic qualities must first be designated as a State Scenic Byway, an Indian Tribe Scenic Byway, or, in the case of a road on federal land, as a Federal Land Management Agency Byway.

Frequency: Biannual.*Estimated Average Burden per Response:* 200 hours.*Estimated Sub-Total Annual Burden Hours:* 15,000 hours.*Estimate Total Annual Burden Hours:* 21,400.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 20, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010-1699 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2010-0004]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 3, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 1, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA-2010-0005, by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

Hand Delivery or Courier: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Highway Safety Improvement Program.

OMB Control No: 2125-0025.

Background: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) amended Section 148 of Title 23 U.S.C.

to establish a new "core" Highway Safety Improvement Program (HSIP) that provides funds to State Departments of Transportation (DOTs) to improve conditions at hazardous highway locations and hazardous railway-highway grade crossings on all public roads, including those maintained by Federal, State and local agencies. The existing provisions of Title 23 U.S.C. Sections 130, Railway-Highway Crossings Program, and 152, Hazard Elimination Program, as well as implementing regulations in 23 CFR 924, remain in effect. Included in these combined provisions are requirements for State DOTs to annually produce and submit to FHWA by August 31 three reports related to the conduct and effectiveness of their HSIPs, that are to include information on: (a) Progress being made to implement HSIP projects and the effectiveness of these projects in reducing traffic crashes, injuries and fatalities [Sections 148(g) and 152(g)]; (b) progress being made to implement the Railway-Highway Crossings Program and the effectiveness of the projects in that program [Sections 130(g) and 148(g)], which will be used by FHWA to produce and submit biennial reports to Congress required on April 1, beginning April 1, 2006; and, (c) description of at least 5 percent of the State's highway locations exhibiting the most severe safety needs, including an estimate of the potential remedies, their costs, and impediments to their implementation other than cost for each of the locations listed (i.e. the "5 percent report") [Section 148(c)(1)(D)]. To be able to produce these reports, State DOTs must have crash data and analysis systems capable of identifying and determining the relative severity of hazardous highway locations on all public roads, and determining the "before" and "after" crash experiences at HSIP project locations. This information provides FHWA with a means for monitoring the effectiveness of these programs and may be used by Congress for determining the future HSIP program structure and funding levels. Per SAFETEA-LU, State DOTs have much flexibility in the methodology they use to rank the relative severity of their public road locations in terms of fatalities and serious injuries. The list of 5 percent of these locations exhibiting the most severe safety needs will result from the ranking methodology used, and may include roadway segments and/or intersections. For example, a State may compare its roadway locations against statewide average rates of fatalities and serious injuries per 100 million vehicle miles traveled for similar type facilities

and determine that those segments whose rates exceed the statewide rates are the locations with the "most severe" safety needs, and then at least 5 percent of those locations would be included in the required annual report.

Respondents: 51 State Transportation Departments, including the District of Columbia.

Frequency: Annually.

Estimated Average Burden per

Response: 500 hours (This is an increase of 300 burden hours from the current OMB approved 200 burden hours. The new report will take an additional 300 hours plus the 200 hours for the existing two reports).

Estimated Total Annual Burden

Hours: 25,500 hours (51 states at an average of 500 hours each).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: January 20, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010-1701 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA 2010-0008]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We

published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 3, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 1, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA-2010-0005, by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

Hand Delivery or Courier: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Raj Ailaney, Office of Bridge Technology, HIBT-1, (202) 366-6749, Fax (202) 366-3077, or e-mail Raj.Ailaney@dot.gov. For legal questions, please contact Mr. Robert Black, Office of the Chief Counsel, (202) 366-1359, robert.black@fhwa.dot.gov; Federal Highway Administration, Department of Transportation, Room E84-461, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Innovative Bridge Research and Deployment (IBRD) program.

Background: The Innovative Bridge Research and Deployment (IBRD) program was established by the passage of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59 on August 10, 2005. Per Section 5202(b)(1) of SAFETEA-LU, the Secretary shall establish and carry out a program to promote, demonstrate, evaluate, and document the application of innovative designs, materials, and construction methods in the construction, repair, and rehabilitation of bridges and other highway structures.

This program was funded by SAFETEA-LU, Section 5101(a)(1) at \$13.1 M for each of the fiscal years 2005 through 2009. Of this amount, \$4.125 M for fiscal years 2006 through 2009 was

directed to conduct research and deploy technologies related to high-performance concrete bridges. The actual amount available varied in yearly congressional appropriations. For fiscal year 2008, Congress rescinded the IBRD program. Under the current Continuing Resolution, the IBRD Program is authorized and continued for FY 2010.

The IBRD activities include identification and selection of candidate projects from 50 State DOTs, Puerto Rico and the District of Columbia, which meet one or more goals of the program as established by the Congress. Projects may be selected that meet one or more program goals as follows:

A. The development of new, cost-effective, innovative highway bridge applications;

B. The development of construction techniques to increase safety and reduce construction time and traffic congestion;

C. The development of engineering design criteria for innovative products, materials, and structural systems for use in highway bridges and structures;

D. The reduction of maintenance costs and life-cycle costs of bridges, including costs of new construction, replacement or rehabilitation of deficient bridges;

E. The development of highway bridges and structures that will withstand natural disasters;

F. The documentation and wide dissemination of objective evaluations of the performance and benefits of these innovative designs, materials, and construction methods;

G. The effective transfer of resulting information and technology; and,

H. The development of improved methods to detect bridge scour and economical bridge foundation designs that will withstand bridge scour.

Additional activities include collection of project information; documentation, promotion and wide dissemination of objective evaluations of the performance and benefits of these innovative designs, materials, and construction methods resulting from the project studies.

Respondents: 50 State Departments of Transportation, the District of Columbia and Puerto Rico.

Frequency: Annual.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: It is estimated that a total of 100 responses will be received to give us a total annual burden of 100 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated

burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 20, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010-1700 Filed 1-27-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2010-0006]

Agency Information Collection

Activities: Request for Comments for New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 5, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 1, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA-2010-0005, by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

Hand Delivery or Courier: Docket Management Facility, U.S. Department

of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Truck Parking Initiatives Grant Program, please contact Thomas Kearney, Office of Freight Management and Operations, HOFM-1, at (518) 431-4125 ext. 218, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Truck Parking Initiative.
OMB Control #: 2125-0610.

Background

The shortage of long-term truck parking on the National Highway System (NHS) is a problem that needs to be addressed. It is nationally recognized that truck drivers frequently cannot find adequate, safe parking in order to obtain rest needed to comply with the Federal Motor Carrier Safety Regulations and ensure safety. Further, parking areas are often designed or maintained for short-term parking only, and as a result, allow parking for limited time periods. Section 1305 of the Safe, Accountable, Flexible, Efficient, and Transportation Equity Act: A Legacy for Users (SAFETEA-LU) directed the Secretary of Transportation to establish a Pilot program to address the long-term parking shortages along the NHS. Eligible projects under Section 1305 include:

1. Promoting the real-time dissemination of publicly or privately provided commercial motor vehicle parking availability on the NHS using ITS and other means;
2. Opening non-traditional facilities to commercial motor vehicle parking, including inspection and weigh stations, and park and ride facilities;
3. Making capital improvements to public commercial motor vehicle parking facilities currently closed on a seasonal basis to allow the facilities to remain open year round;
4. Constructing turnouts along the NHS to facilitate commercial motor vehicle access to parking facilities, and/or improving the geometric design of interchanges to improve access to commercial motor vehicle parking facilities;
5. Constructing commercial motor vehicle parking facilities adjacent to commercial truck stops and travel plazas;
6. Constructing safety rest areas that include parking for commercial motor

Vehicles. In considering the award of funds to projects applications, the Secretary was directed to give priority to projects that:

1. Demonstrate a severe shortage of commercial vehicle parking capacity in the corridor;
2. Have consulted with affected State and local governments, community groups, private providers of commercial vehicle parking and trucking and motorist organizations; and
3. Demonstrate that implementation will likely contribute to positive effects on highway safety, traffic congestion or air quality.

It is the belief of FHWA that, given the limited resources available, the broad dissemination of information regarding the availability of public or private long-term parking spaces provides the greatest opportunity to maximize the effectiveness of this pilot program.

Guidelines and Administration

To administer this program, the FHWA will collect information necessary to evaluate and rank projects. The information collection is intended to only address the project funding allotted through the program.

1. Projects funded under this section shall be treated as projects on a Federal-Aid System under Chapter 1 of Title 23, United States Code.

2. Grants may be funded at an 80 to 100 percent funding level based on the criteria specified in Section 120 of Title 23, U.S. Code.

As soon as practicable, a **Federal Register** Notice will be published with information and guidance relating to the application process. Also, a solicitation letter will be sent to all FHWA Division Offices containing the same information. This information will also be posted on the FHWA Web site, <http://www.fhwa.dot.gov/>. All applications must be submitted through a State Department of Transportation to FHWA's Office of Freight Management and Operations, via the FHWA Division Office in the state in which the application was submitted. Awarded projects will be administered by the applicable State Department of Transportation as a Federal-aid grant.

Information Proposed for Collection

Information recommended under SAFETEA-LU and proposed for the current program includes the following:

1. *Project Description.* The proposal should include a detailed project description, which would include the extent of the long-term truck parking shortage in the corridor/area to be addressed, along with contact

information for the project's primary point of contact, and whether funds are being requested under 120 U.S.C. (b) or (c) of Title 23. Data helping to define the shortage may include truck volume (Average Daily Truck Traffic—ADTT) in the corridor to be addressed, current number of long-term commercial motor vehicle parking spaces, utilization of current long-term parking spaces, driver surveys, observational field studies, proximity to freight loading/unloading facilities, proximity to the NHS, etc.

2. *Project Rationale.* The proposal should set forth the rationale for the project and should include an analysis and demonstration of how the proposed project will positively affect truck parking, safety, traffic congestion, or air quality in the identified corridor. Examples may include: Advance information on availability of parking that may help to reduce the number of trucks parked on roadsides and increase the utilization of available truck parking spaces, etc.

3. *Scope of work.* The scope of work should include a complete listing of activities to be funded through the grant; including technology development, information processing, information integration activities, developmental phase activities (planning, feasibility analysis, environmental review, engineering or design work, and other activities), construction, reconstruction, acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements. Also to be included should be a 3-year performance measurement plan that continues beyond the demonstration period of the project.

4. *Stakeholder identification.* Stakeholder identification should include evidence of prior consultation and/or partnership with affected Metropolitan Planning Organizations (MPO), local governments, community groups, private providers of commercial motor vehicle parking, and motorist and trucking organizations. It should include a listing of all public and private partners, and the role each will play in the execution of the project. Consultation examples may include: Memorandums of Agreement, Memorandums of Understanding, contracts, meeting minutes, letters of support/commitment, documentation in a Transportation Improvement Program (TIPS) or Statewide Transportation Improvement Program (STIPS) plans, etc.

5. *Cost estimate.* Applicants should provide a detailed quantification of eligible project costs by activity, an identification of all funding sources that will supplement the grant and be necessary to fully fund the project, and the anticipated dates on which the additional funds are to be made available. Public and private sources of funds (non-federal commitment) will be considered by FHWA as an in-kind match contributing to the project. State matching funds will be required for projects eligible under 120 U.S.C. (b).

6. *Timeline.* Applicants should also submit a timeline that includes work to be completed and anticipated funding cycles. Gantt charts are preferred.

7. *Environmental process.* Applicants should show the timeline for complying with the National Environmental Policy Act (NEPA), if applicable.

8. *Project map.* Applicants should include a project map consisting of schematic illustrations depicting the project and connecting transportation infrastructure.

9. Proposals should not exceed 20 pages in length.

Burden Hours for Information Collection

Frequency: Annual.

Respondents: The 50 State DOTs and Puerto Rico and the District of Columbia.

Estimated Average Burden per Response: Burden hours estimates and discussions are provided for each item presented and required within the application submittal process.

- **Project Description (16 hours)**—The project description will be submitted through the submitting State agency, in conjunction with local governments, MPOs, and other potential partners.

- **Project Rationale (8 hours)**—Project rationale should include an analysis and demonstration of how the proposed project will positively effect truck parking, safety, traffic congestion, or air quality in the identified corridor.

- **Scope of Work (6 hours)**—A complete listing of activities to be funded through the grant; including technology development, information processing, information integration activities, developmental phase activities (planning, feasibility analysis, environmental review, engineering or design work, and other activities), construction, reconstruction, acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment, operational improvements, and a 3 year performance measurement plan that

continues beyond the demonstration period of the project.

- **Stakeholder Identification (1 hour)**—Evidence of prior consultation and/or partnership with affected MPOs, local governments, community groups, private providers of commercial motor vehicle parking, and motorist and trucking organizations. A listing of all public and private partners, and the role each will play in the execution of the project should also be included.

- **Cost estimate (4 hours)**—A detailed quantification of eligible project costs by activity, and an identification of all funding sources that will supplement the grant and be necessary to fully fund the project, and the anticipated dates on which the additional funds are to be made available. Public and private sources of funds (non-federal commitment) will be considered. State matching funds will be required for projects eligible under 120 U.S.C. (b).

- **Project Timeline (1 hour 30 minutes)**—That includes work to be completed and anticipated funding cycles. Gantt charts preferred.

- **Environmental process (2 hours)**—Applicant should show the timeline for complying with the National Environmental Policy Act (NEPA), if applicable.

- **Project Map (1 hour)**—Consisting of schematic illustrations depicting the project and connecting transportation infrastructure.

- **Contact information for the State DOT, Local Agency or MPO (if applicable), FHWA Division Office (5 minutes)**—This requires providing a list of contacts and involves a nominal amount of time.

The total amount of time estimated to complete the application is 39 hours and 35 minutes.

Estimated Total Annual Burden Hours: 1187 hours and 30 minutes. It is estimated 30 applications will be processed annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 20, 2010.

Juli Huynh,
Chief, Management Programs and Analysis Division.

[FR Doc. 2010-1697 Filed 1-27-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA 2010-0005]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB's) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 5, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 1, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA-2010-0005, by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

Hand Delivery or Courier: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For questions concerning the NHCBP program, please contact Mr. Everett Mattias, Office of Bridge Technology, HIBT-30, at (202) 366-6712, FAX (202)

366–3077, or e-mail everett.mattias@dot.gov. For legal questions, please contact Mr. Robert Black, Office of the Chief Counsel, (202) 366–1359, robert.black@dot.gov; Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Historic Covered Bridge Preservation Program.
OMB Control Number: 2125–0609.
Frequency: Annual.
Respondents: The 50 State DOTs, Puerto Rico and the District of Columbia.

Background

Covered bridges are unique structures embodying character, functionality and historical prominence. The National Historic Covered Bridge Preservation Program has been established to find comprehensive and proven means of maintaining the ability of these vestiges of our bridge-building heritage to continue to serve current and future generations. The program was originally established under section 1224 of TEA–21 and continued under Section 1804 of SAFETEA–LU. The legislation authorizes \$10 million annually to be appropriated for each fiscal year between FY 2006 and FY 2009. The program has been authorized for continuation under the current continuing resolution. The program is established to provide grants to States for rehabilitation, repair and preservation of historic covered bridges and to enable the Secretary of Transportation to perform research and initiate education programs on historic covered bridges.

Projects eligible for grants include rehabilitation and repair together with preservation through: installation of fire protection systems, including a fireproofing or fire detection system and sprinklers, installation of a system to prevent vandalism and arson, or relocation of a bridge to a preservation site. The statute requires that, to the maximum extent practicable, grant projects are carried out in the most historically appropriate manner, preserve the existing structure of the historic covered bridge, and provide for the replacement of wooden components with wooden components, unless the use of wood is impracticable for safety reasons.

Research and education activities include the collection and dissemination of information on historic covered bridges; conducting educational

programs relating to the history and construction techniques of historic covered bridges; conducting research on the history of historic covered bridges; and conducting research on, and study techniques for, protecting historic covered bridges from rot, fire, natural disasters, or weight-related damage.

Guidelines and Administration

To administer this program, the FHWA will collect information necessary to evaluate and rank projects. The information collection was developed considering public input¹ and is intended to only address the project funding allotted through the program. Research funding will be administered separately through the FHWA Office of Infrastructure Research and Development (R&D) at the Turner Fairbank Highway Research Center, who will also administer the research and education activities. The FHWA Office of Bridge Technology will administer the grant program to assist the States in their efforts to rehabilitate, repair or preserve the Nation's historic covered bridges, which are listed or eligible for listing on the National Register of Historic Places. The FHWA will award grants based on applications received and funds available through accompanying appropriations legislation.

Information Proposed for Collection

Information recommended under TEA–21 and proposed for the current program includes the following:

- State's Priority Ranking;
- National Bridge Inventory (NBI) Structure Number;
- Bridge Name;
- Description of Location;
- Congressional District and Representative;
- Year Built;
- Whether the structure is on or eligible for listing on the National Register of Historic Places and description of the qualities that qualify the bridge for the National Register;
- Structure description (*e.g.*, number of spans, length, width, design type, description of decking, beams/stringers, sides and roof, wood species, wood preservation system in use, builder, traffic carried, *etc.*);
- General plan and elevation;
- Description of previous repair work (description, year, *etc.*);
- Description of proposed work including wood preservative system, fire protection, vandalism and arson prevention systems to be used;

¹ Implementation Guidance for the National Historic Covered Bridge Preservation Program, August 23, 2000; 65 FR 51401.

• Indication of whether the State has a historic bridge inventory/management plan accepted by the State Historic Preservation Officer (SHPO). A programmatic agreement for historic bridges with the SHPO, FHWA and the Advisory Council on Historic Preservation (ACHP) may substitute;

• Description of whether the SHPO has reviewed and certified this project is warranted in accordance with the SHPO's statewide historic preservation plan; how it benefits statewide preservation efforts; how it enhances cultural tourism or enhances the history/economic development of the community; and other benefits upon successful completion of this project;

• Amount of State or local government matching funds or other resources (donated materials or labor may qualify);

• A statement addressing when the project is complete, and if the bridge will meet the current State or American Association of State Highway and Transportation Officials (AASHTO) standards for the roadway classification that it carries;

• Plan for documentation of the bridge and the work performed;

• Scheduled start and completion date for the project (month and year); and

• Contact information for the State DOT, Local Agency (if applicable), FHWA Division Office, and SHPO.

As indicated above, the FHWA has developed a template for the application. The application may be made based on this template provided by the FHWA including this information. This template is available through the FHWA Division Offices and through the FHWA Office of Bridge Technology and is available at the following URL: <http://www.fhwa.dot.gov/bridge/022803a.htm#application>. The template is not required but rather is provided for convenience of the applicants.

Burden Hours for Information Collection

Burden hour estimates and discussions are provided for each item presented and required within the application submittal process.

• State's Priority Ranking: 30 minutes.

○ The priority ranking will be performed by the submitting agency. Given that a small number of applications will be submitted by an individual State, the prioritization process will be limited and 30 minutes is conservatively assumed to include any potential discussion.

• NBI Structure Number: 5 minutes.

○ Projects submitted must be legally defined as a “bridge” and must be located on a public road. With this constraint, each structure will already have an NBI Structure Number assigned.

- Bridge Name: 5 minutes.

○ A description of the bridge may be included in the NBI database; however, this may or may not be the commonly referenced name used locally. A burden of 5 minutes is assumed to permit the applicant to review the NBI record and any additional documentation to isolate the common bridge name.

- Description of Location: 10 minutes.

○ The location is already included in the NBI database. A burden of 10 minutes is provided assuming that the applicant will elaborate on the location information.

- Congressional District and Representative: 5 minutes.

○ The location of the bridge will be known from the information in the NBI database. A 5-minute burden is specified assuming that the applicant will have to cross reference the location with Congressional district maps. This time would be negligible if the State has employed a GIS system including the infrastructure information and the political boundaries.

- Year Built: 5 minutes.

○ The year built is already recorded in the National Bridge Inventory

- Whether the structure is on or eligible for listing on the National Register of Historic Places and description of the qualities that qualify the bridge for the National Register: 15 minutes.

○ The NBI record indicated whether the structure is located on or eligible for the National Register of Historic Places. The 15-minute burden is assumed to allow the applicant to describe the qualities that qualify the bridge for the National Register.

- Structure description (*e.g.*, number of spans, length, width, design type, description of decking, beams/stringers, sides and roof, wood species, wood preservation system in use, builder, traffic carried, *etc.*): 15 minutes.

○ Most of this information will be included within the NBI database or on the inspection reports. 15 minutes is assumed for the applicant to synthesize information.

- General plan and elevation: 5 minutes.

○ This information is available for structures that have been placed on the National Register of Historic Places or for those, which are eligible and have applications complete. This information is also available for projects that have

completed conceptual and preliminary engineering and design.

- Description of previous repair work (description, year, *etc.*): 15 minutes.

○ This information is available from bridge inspection reports and bridge files located within the State Transportation Agency. Time estimated is intended for synthesis of information from other sources.

- Description of proposed work including wood preservative system, fire protection, vandalism and arson prevention systems to be used: 15 minutes.

○ This information will be established by the need when identified and the details will be identified through the conceptual and preliminary engineering process, which is done independently. A 15-minute burden is assumed to synthesize the existing information.

- Indication of whether the State has a historic bridge inventory/management plan accepted by the SHPO. A programmatic agreement for historic bridges with the SHPO, FHWA and the ACHP may substitute: 5 minutes.

○ This item is readily obtained through contact with the SHPO.

- Description of whether the SHPO has reviewed and certified this project is warranted in accordance with the SHPO's statewide historic preservation plan; how it benefits statewide preservation efforts; how it enhances cultural tourism or enhances the history/economic development of the community; and other benefits upon successful completion of this project: 45 minutes.

○ This information is readily obtained through contact with the SHPO. A total of 45 minutes includes time for the State Historic Preservation Officer to review the project, in relation to the statewide preservation efforts, to articulate the benefits, and to document the findings.

- Amount of State or local government matching funds or other resources (donated materials or labor may qualify): 5 minutes.

○ A nominal amount of time is required to document the matching funds and amounts.

- When the project is complete, will the bridge meet the current State or AASHTO standards for the roadway classification that it carries: 5 minutes.

○ A nominal amount of time is required to ascertain and identify whether the bridge will meet the standards for the roadway classification as any exception to the standard will be identified through the preliminary engineering process and already documented.

- Plan for documentation of the bridge and the work performed: 15 minutes.

○ A plan for documentation is encouraged. Typically, each State Transportation Agency will already have a process in place to document work performed. Applicants are encouraged to identify any additional requirements warranted for these historical structures and to articulate the overall plan within the application.

- Scheduled start and completion date for the project (month and year): 5 minutes

○ This will be determined through other processes that are performed independent of this program, including preliminary engineering and the STIP process. The available information must be synthesized on the application, which takes a nominal amount of time.

- Contact information for the State DOT, Local Agency (if applicable), FHWA Division Office, and SHPO: 5 minutes.

○ This requires providing a list of contacts and involves a nominal amount of time.

Respondents: 51 State Transportation Departments, including the District of Columbia.

Frequency: Annually.

Individual Respondent Burden: The total amount of time estimated to complete the application is 3½ hours.

Estimated Total Annual Burden Hours: 105 hours (FHWA estimates receiving 30 reports from the State Transportation Departments).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 20, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010-1698 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials
Safety Administration****Office of Hazardous Materials Safety;
Notice of Applications for Special
Permit**

AGENCY: Pipeline and Hazardous
Materials Safety Administration
(PHMSA), DOT.

ACTION: List of Applications for Special
Permits.

SUMMARY: In accordance with the
procedures governing the application
for, and the processing of, special
permits from the Department of
Transportation's Hazardous Material
Regulations (49 CFR Part 107, Subpart

B), notice is hereby given that the Office
of Hazardous Materials Safety has
received the application described
herein. Each mode of transportation for
which a particular special permit is
requested is indicated by a number in
the "Nature of Application" portion of
the table below as follows: 1—Motor
vehicle, 2—Rail freight, 3—Cargo vessel,
4—Cargo aircraft only, 5—Passenger-
carrying aircraft.

DATES: Comments must be received on
or before March 1, 2010.

ADDRESS COMMENTS TO: Record Center,
Pipeline and Hazardous Materials,
Safety Administration, U.S. Department
of Transportation, Washington, DC
20590.

Comments should refer to the
application number and be submitted in

triplicate. If confirmation of receipt of
comments is desired, include a self-
addressed stamped postcard showing
the special permit number.

FOR FURTHER INFORMATION: Copies of the
applications are available for inspection
in the Records Center, East Building,
PHH-30, 1200 New Jersey Avenue, SE.,
Washington, DC or at <http://www.regulations.gov>.

This notice of receipt of applications
for special permit is published in
accordance with Part 107 of the Federal
hazardous materials transportation law
(49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 21,
2010.

Delmer F. Billings,

*Director, Office of Hazardous Materials,
Special Permits and Approvals.*

NEW SPECIAL PERMITS

Application No.	Docket number applicant	Regulation(s) affected	Nature of special permits thereof
14950-N	Certified Cylinder, Division of American Welding & Tank, LLC Crossville, TN.	49 CFR 180.211	To authorize the rebuilding or modification and sale of certain DOT Specification 4B, 4BA, and 4BW cylinders for use in the transportation in commerce of certain hazardous materials. (mode 1).
14952-N	Mebrom NV Ertvelde-Rieme	49 CFR 173.193	To authorize the transportation in commerce of Methyl bromide and Chloropicrin and methyl bromide mixtures in non-DOT specification cylinders by motor vehicle and cargo vessel for export only. (modes 1, 3).
14953-N	Applied Laboratories, Inc. Columbus, IN	49 CFR 173.306(a)(3)(v).	To authorize the transportation in commerce of DOT Specification 2Q non-refillable aluminum inside containers which have been tested by an alternative method in lieu of the hot water bath test. (modes 1, 2, 3, 4, 5).
14954-N	Zotos International, Inc. Geneva, NY	49 CFR 173.306(a)(3)(v).	To authorize the transportation in commerce of DOT Specification 2P non-refillable aluminum inside containers which have been subject to an automated pressure test on the line in lieu of the hot water bath test. (mode 1).
14956-N	American Type Culture Collection (ATCC)	49 CFR 173.196, 178.609.	To authorize the one-way transportation in commerce of certain Category A infectious substances by motor vehicle in alternative packaging. (mode 1).
14957-N	Sika Corporation Lyndhurst, NJ	49 CFR 173.4	To authorize the transportation in commerce of approximately 80,000 packages under the terms of 49 CFR 173.4 with alternative marking to deplete carton stock. (modes 1, 2).
14959-N	Skagit County Public Works Department Mount Vernon, WA.	49 CFR 176.91	To authorize the transportation in commerce Class 3 Gasoline in approved containers of 6 gallon or less capacity on passenger ferry vessels transporting motor vehicles. (mode 6).
14960-N	Cheltec, Inc. Sarasota, FL	49 CFR 173.154(d)	To authorize the transportation of certain Class 8 materials that are corrosive only to steel in non-bulk packagings made of non-reactive materials without being subject to the Hazardous Materials Regulations. (modes 1, 2).

[FR Doc. 2010-1455 Filed 1-27-10; 8:45 am]

BILLING CODE 4909-60-M

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****Intent to Prepare an Environmental Impact Statement on Transportation Improvements Within the Blue-Line Corridor in Shaker Heights and Warrensville Heights, Cuyahoga County, OH****AGENCY:** Federal Transit Administration, U.S. Department of Transportation.**ACTION:** Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and the Greater Cleveland Regional Transit Authority (GCRTA or RTA) are issuing this notice to advise interested agencies and the public that, in accordance with the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) may be prepared for the proposed transportation improvements in the Blue Line Corridor and extended areas located in Shaker Heights and Warrensville Heights, Cuyahoga County, Ohio.

The EIS will evaluate the following alternatives: (a) A no-build alternative; (b) a Transportation System Management (TSM) alternative; and (c) various build alternatives that emerge from the scoping process. Scoping will be accomplished through meetings and correspondence with interested persons, organizations, the general public, and federal, state and local agencies.

The EIS will address the need to: (a) Improve mobility and accessibility in the corridor; (b) minimize adverse environmental impacts of the transportation improvements; (c) provide long-term, cost-effective transportation infrastructure and services; and (d) enhance regional economic development.

DATES: *Comment Due Date:* Written comments on the purpose and need for the improvements, and the scope of the alternatives and impacts to be considered, should be sent to the address listed below in **ADDRESSES** by February 11, 2010. An interagency scoping meeting will be held on the following date:

- Monday, February 22, 2010, from 6 p.m. to 8 p.m., at the Warrensville Branch of the Cuyahoga County Public Library, 22035 Clarkwood Parkway, Warrensville Heights, Ohio 44128.

The location of the scoping meeting is accessible to persons with disabilities.

Any individual with a disability who requires special assistance to participate in the scoping meetings should contact Maribeth Feke, Director of Programming and Planning, The Greater Cleveland Regional Transit Authority, 1240 W.6th Street, Cleveland, Ohio 44113-1331. Phone: 216-566-5160; Fax (216) 771-4424; E-mail to

BlueLineExtension@pbworld.com no later than a week before the meeting date in order for GCRTA to make necessary arrangements.

ADDRESSES: Written comments on the purpose and need for the project, alternatives to be considered, scope of the analysis and the impacts to be considered should be sent by February 11, 2010 to: Maribeth Feke, Director of Programming and Planning, The Greater Cleveland Regional Transit Authority, 1240 W.6th Street, Cleveland, Ohio 44113-1331. Phone: 216-566-5160; Fax (216) 771-4424; E-mail:

BlueLineExtension@pbworld.com.

FOR FURTHER INFORMATION CONTACT:

Stephen Polito, Federal Transit Administration, Region 5, 200 West Adams Street, Suite 320, Chicago, IL 60606. Phone: (312) 353-1552; Fax: (312) 886-0351.

SUPPLEMENTARY INFORMATION: FTA, the federal lead agency, in cooperation with GCRTA, the local lead agency, may prepare an EIS for proposed transportation improvements in the Blue Line Corridor and extended areas. The lead agencies will also seek the cooperation of the Ohio Department of Transportation (ODOT); the Northeast Ohio Area Coordinating Agency (NOACA), the Metropolitan Planning Organization (MPO) responsible for transportation planning in metropolitan Cleveland; the City of Shaker Heights; and the City of Warrensville Heights.

The transportation improvements are being defined through an Alternatives Analysis. Issues and alternatives will be identified through a scoping process in accordance with the regulations implementing the National Environmental Policy Act (NEPA) of 1969, as amended. The scoping process will include refinement of the purpose and need for the project, and the identification and evaluation of alternative design concepts. It also will provide the basis for the selection of a preferred design concept for inclusion in the regional transportation plan. Subsequently, alternative alignments and designs that are consistent with the selected concept and scope may be addressed in an EIS.

The RTA is evaluating the potential extension of the Blue Line Rapid Transit Route beyond its current terminus in the

Warrensville—Van Aken area of Shaker Heights. A major bus transfer center is co-located with the Blue Line, forming a major hub in RTA's service network. The major transportation improvement to be evaluated by this alternatives analysis includes light rail, bus access and circulation, and pedestrian access.

Although RTA completed a Major Investment Study (MIS) on this corridor in 2001, and a Draft Environmental Impact Statement (DEIS) was initiated with the MIS, no recommendation for a locally-preferred alternative was made. Since then, the City of Shaker Heights has completed a Transit-Oriented Development (TOD) Study of the Warrensville—Van Aken area, resulting in recommendations to redevelop the area. Major components of that plan are to: (a) Reconfigure the existing six-leg Warrensville—Van Aken intersection into a standard four-leg intersection; (b) modify the surrounding roadway network to accommodate the intersection reconfiguration and to improve walkability; and (c) to generally enhance the economic development opportunities in the area. Reconfiguration of the Warrensville—Van Aken intersection includes the relocation of the Blue Line's Van Aken station and the associated bus transfer center from the northwest quadrant to the southeast quadrant of the intersection. The City of Shaker Heights is currently engaged in another related project, the Warrensville—Van Aken Intermodal Facility Plan, which will guide redevelopment in the area of the relocated rail transit station and bus transfer center. The roadway reconfiguration project and the Intermodal Facility Plan are on-going, concurrent with the Blue Line Corridor Alternatives Analysis study.

Taking into account these existing plans, the Blue Line Corridor Alternatives Analysis study will evaluate the potential extension of the Blue Line in accordance with requirements of the FTA New Starts/Small Starts/Very Small Starts Program. The study will incorporate a community outreach and engagement program, designed to obtain and incorporate the opinions and ideas of the stakeholders and general public into the development and evaluation of the potential alternatives to extend the Blue Line and relocate the bus transfer center. The Blue Line Corridor Alternatives Analysis study consists of three phases, as described below:

Phase 1—Alternatives Analysis: The Alternatives Analysis will identify the transportation and development needs of the extended Blue Line Corridor and a preferred strategy for meeting those

needs. In doing this, the Alternatives Analysis will carry forward the work performed under the 2001 Blue Line Extension MIS, the Warrensville—Van Aken TOD study and the Warrensville—Van Aken Intermodal Facility Plan. The outcome of the alternatives analysis will be a local consensus on a preferred alternative, for which environmental documentation would be developed in Phase 2, and FTA documentation for entry into Preliminary Engineering under FTA's New Starts (or Small Starts or Very Small Starts) Program can be prepared.

Phase 2—NEPA Documentation: This phase addresses NEPA investigations and environmental coordination. The NEPA investigation will begin in the alternatives evaluation phase, with identification of environmental fatal flaws and sensitive areas for each alternative as part of the alternatives screening. This will include input obtained through the community engagement process.

Phase 3—FTA New Starts Coordination: The project team will coordinate with FTA to ensure that all reporting requirements related to the project evaluation and rating, the financial capacity of the project sponsor, and the technical methods and planning assumptions used to prepare the travel demand and cost forecasts are met.

I. Scoping

RTA and the FTA invite interested individuals, organizations, and federal, state, and local agencies to participate in establishing the purpose, alternatives, schedule, and analysis approach, as well as an active public involvement program. The public is invited to comment on: (a) The purpose and need; (b) the alternatives to be addressed; (c) the modes and technologies to be evaluated; (d) the alignments and station locations to be considered; (e) the environmental, social, and economic impacts to be analyzed; and (f) the evaluation approach to be used to select a locally-preferred alternative. Scoping comments should focus on the issues and alternatives for analysis, and not on the preference for particular alternatives. (Individual preference for particular alternatives should be communicated during the comment period for the DEIS that will be prepared subsequent to the Alternatives Analysis study. Refer to FTA Procedures below.) Comments may be made at the meetings or in writing no later than March 15, 2010 (see **DATES** and **ADDRESSES** above).

NEPA "scoping" (40 CFR 1501.7) has specific and fairly limited objectives, one of which is to identify the

significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an Environmental Impact Statement—should be identified. Impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on impacts of consequence consistent with the ultimate objectives of the NEPA implementing regulations, which is "to make the Environmental Impact Statement process more useful to decision-makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives * * * [by requiring] impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses." (See Executive Order 11991, of May 24, 1977.) Transit projects may also generate environmental benefits; these should be highlighted as well. The impact statement process should draw attention to positive impacts, not just negative impacts.

Once the scope of the environmental study, including significant environmental issues to be addressed, is settled, an annotated outline of the document will be prepared and shared with interested agencies and the public. The outline serves at least three worthy purposes, including:

1. Documenting the results of the scoping process;
2. Contributing to the transparency of the process; and
3. Providing a clear roadmap for concise development of the environmental document.

II. Description of Study Area and Purpose and Need

The RTA completed a Strategic Plan for its future capital investments. The plan examined both the opportunities for expansion of RTA's system, and the constraints placed on it by RTA's financial capacities. Financial plans are suggesting that RTA will have to be very prudent in its capital investments to develop highly cost-effective improvements while maintaining its significant existing infrastructure. The Shaker Heights TOD plan suggested a relatively short extension of the Blue

Line south and west of the existing station site.

The Shaker Heights TOD plan and the Blue Line Extension MIS provide a starting place for the Alternatives Analysis. The study area is within the urban settings of the City of Shaker Heights and the City of Warrensville Heights, but it also includes the communities of Highland Hills and North Randall. The project is bounded approximately by Interstate 271 to the east, Interstate 480 to the south, Warrensville-Center Road to the west, and Cedar Road to the North. The project area contains a diverse mix of medium-density residential developments, retail centers, large office developments, recreation uses of a golf course and horse racing track, and the major institutions of Cuyahoga Community College and the new University Hospital's Chagrin Highland Campus.

The purpose of the Blue Line Corridor Extension is to: (a) Develop transportation improvements that reach new transit markets located to the south and east of the corridor; (b) improve transit connections between downtown Cleveland and the southeastern portion of the region; (c) improve access for existing users of the corridor to destinations within the study area; and (d) promote redevelopment and/or development along the existing and extended Blue Line corridor. Among the defined transportation needs assessed in this document are the following issues and items.

- There is no direct freeway access from the southeastern portion of the region to downtown Cleveland or University Circle. This lack of direct access makes travel by personal automobile and transit difficult. Travelers must either take a longer interstate route (I-480 west to I-77 north) or congested and slow regional arterials.

- The bus and rail options for inbound travelers are limited and suffer from the same lack of direct routes as those operating personal automobiles. Bus service to downtown can either operate indirectly on freeways or use congested and slow regional arterials. The existing Blue Line offers an expedited ride on an exclusive guideway, but is limited because it does not have direct access to the freeway network, nor does it directly access University Circle.

- The RTA has limited park-and-ride opportunities in the study area for transit service to downtown Cleveland and University Circle. The nearest RTA park-and-ride lot, Southgate, only has 28 spaces, and is not adjacent to the

freeway network. Commuters desiring to park-and-ride at the Warrensville—Van Aken Blue Line terminus must first deal with navigating the local street network, and then must park over ¼-mile from the station.

- Travelers who do use the existing roadway system experience significant congestion. Congestion occurs on all local freeways, with I-480 experiencing a LOS of F during both AM and PM peak periods. This congestion results in a loss of time and productivity for those traveling to and from the study area. Many of the arterials also experience LOS of D or worse.

- Outbound commuters who live along the existing Blue Line corridor in both Cleveland and Shaker Heights have connectivity issues using transit to connect to jobs and retail located within the study area.

III. Alternatives

The scoping meetings, other community meetings, and written comments will be a major source of alternatives for consideration in the Alternatives Analysis. Transportation alternatives proposed for consideration in the Blue Line Extension will include:

1. *No Action Alternative*—Existing and planned transit service and programmed new transportation facilities to the year 2030 with no new change to transportation services or facilities in the area beyond already committed projects.

2. *Light Rail Build Alternative*—Extension of the Blue Line south and west of the existing Warrensville—Van Aken Station site at the northwest corner to the southeast corner of Chagrin Avenue and Warrensville-Center Road; from the existing location south to the area of Interstate 480; or from the existing location east to south east to the area of Interstate 271.

3. *Transportation System Management (TSM) Alternative*—Other technology alternatives: TSM will include signal prioritization of bus transit corridor(s) through the use of GPS chips and signal controller upgrades.

Based on public and agency input received during scoping, variations of the above alternatives and other transportation-related improvement options, both transit and non-transit, will be considered for the Blue Line Extension project.

IV. Probable Effects/Potential Impacts for Analysis

The FTA and RTA will consider probable effects and potentially significant impacts to social, economic and environmental factors associated

with the alternatives under evaluation in the EIS. Potential environmental issues to be addressed will include: land use, historic and archaeological resources, traffic and parking, noise and vibration, environmental justice, regulatory floodway/floodplain encroachments, coordination with transportation and economic development projects, and construction impacts. Other issues to be addressed in the EIS include: natural areas, ecosystems, rare and endangered species, water resources, air/surface water and groundwater quality, energy, potentially contaminated sites, displacements and relocations, and parklands. The potential impacts will be evaluated for both the construction period and the long-term operations period of each alternative considered. In addition, the cumulative effects of the proposed project alternatives will be identified. Measures to avoid or mitigate any significant adverse impacts will be developed.

Evaluation criteria will include consideration of the local goals and objectives established for the study, measures of effectiveness identified during scoping, and criteria established by FTA for "New Start" transit projects.

V. FTA Procedures

In accordance with the regulations and guidance established by the Council on Environmental Quality (CEQ), as well as the Code of Federal Regulations, Title 23, Part 771 (23 CFR 771) of the FHWA/FTA environmental regulations and policies, the EIS will include an analysis of the social, economic and environmental impacts of each of the alternatives selected for evaluation. The EIS will also comply with the requirements of the 1990 Clean Air Act Amendments (CAAA) and with Executive Order 12898 regarding Environmental Justice. After its approval, the DEIS will be available for public and agency review and comment. Public hearings will be held on the DEIS. The DEIS will also constitute the Alternative Analysis required by the New Starts regulations.

The Final EIS will consider comments received during the DEIS public review and will identify the preferred alternative. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: January 20, 2010.

Marisol Simón,
Regional Administrator.

[FR Doc. 2010-1707 Filed 1-27-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of a Public Meeting on the Draft Solicitation for a Center of Excellence for Commercial Space Transportation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a public meeting.

SUMMARY: The FAA Office of Commercial Space Transportation will hold a public meeting to discuss the FAA Centers of Excellence Program and the technical requirements for the proposed Center of Excellence for Commercial Space Transportation (COE CST). A Draft Solicitation for the COE CST is available for public review. For a copy of the Draft Solicitation, contact Dr. Patricia Watts (the Contact Person listed below).

DATES: The meeting will take place on Tuesday, February 9, 2010 from 9 a.m. until 2:30 p.m.

ADDRESSES: The public meeting will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703) 920-3230.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Watts, National Program Director, FAA Centers of Excellence Program Office, FAA William J. Hughes Technical Center, Atlantic City International Airport, NJ 08405; Telephone: (609) 485-5043; E-mail: patricia.watts@faa.gov.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The agenda will include an overview of the FAA Centers of Excellence Program, discussions on the proposed COE CST and the Draft Solicitation, and open discussion and Q & A period on the Draft Solicitation.

Issued in Washington, DC, January 22, 2010.

George C. Nield,
Associate Administrator for Commercial Space Transportation.

[FR Doc. 2010-1771 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2000-7363; FMCSA-2001-10578; FMCSA-2003-16241]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 10 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at <http://www.regulations.gov>.

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on January 11, 2010 (74 FR 65846).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 10 renewal applications, FMCSA renews the Federal vision exemptions for Ronald G. Austin, Rickey C. Dalton, Martiniano L. Espinosa, James G. LaBair, Dennis A. Leschke, Lonnie Lomax, Jr., Eugene C. Murphy, Carl W. Skinner, Jr., John H. Voigts and Daniel G. Wilson.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked

earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: January 22, 2010.

Charles A. Horan III,

Acting Associate Administrator for Policy and Program Development.

[FR Doc. 2010-1764 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2009-0290]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt forty-six individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective January 28, 2010. The exemptions expire on January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Room W64-224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at <http://Docketinfo.dot.gov>.

Background

On December 11, 2009, FMCSA published a notice of receipt of Federal diabetes exemption applications from forty-six individuals and requested comments from the public (74 FR 65836). The public comment period closed on January 11, 2010, and no comments were received.

FMCSA has evaluated the eligibility of the forty-six applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation (49 CFR 391.41(b)(3)).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441) **Federal Register** Notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These forty-six applicants have had ITDM over a range of 1 to 34 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that

required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage his/her diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the December 11, 2009 **Federal Register** Notice; therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical

examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the forty-six exemption applications, FMCSA exempts Bob A. Bauer, Michael P. Berger, William D. Blossch, Michael Bohlen, Bradley N. Brown, Victor M. Brunner, Tom L. Cooley, Wallace E. Crouse, Jr., Jesse A. DeCoux, Robert G. Dohman, Jr., Andrew J. Dreyer, Danny E. Edmondson, Steven W. Edwards, Mark W. Espeaignette, Andrew C. Everett, Paul J. Failla, Wendell G. Fordham, Eugene G. Friedman, Edward L. Gilbert, Donald W. Hansen, Joseph S. Hernandez, Corrine J. Hoffman, Robert E. Holden, Shondell S. Ivy, Kevin Joaquin, Jordan T. Johnston, Jere W. Kirkpatrick, Joshua J. Kramer, Kyle A. Leach, Robert J. Lewis, Jr., Mitchell D. Luft, Martin E. Marandola, Richard W. McNeil, Stacy R. Oberholzer, Michael S. Ogle, Walter L. Patrick, Clifford A. Peters, Richard L. Piercefield, Steven F. Riley, Kevin A. Roginski, Herman Smalls, Jr., Bruce M. Stockton, Rick M. Tiu, Todd R. Vickers, Shaun M. Wheeler and Charles A. Witt from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: January 22, 2010.

Charles A. Horan III,

Acting Associate Administrator for Policy and Program Development.

[FR Doc. 2010-1732 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA-2009-0303]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 27 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective January 28, 2010. The exemptions expire on January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-

addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at <http://Docketsinfo.dot.gov>.

Background

On November 19, 2009, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (74 FR 60022). That notice listed 27 applicants' case histories. The 27 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 27 applications on their merits and made a determination to grant exemptions to all of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 27 exemption applicants listed in this notice are in this category. They are

unable to meet the vision standard in one eye for various reasons, including amblyopia, optic nerve hyperplasia, retinopathy of prematurity, macular hole, central serous retinopathy, prosthesis, macular degeneration, cataract, extropia, diabetic retinopathy, aphakia, and loss of vision due to trauma. In most cases, their eye conditions were not recently developed. All but 7 of the applicants were either born with their vision impairments or have had them since childhood. The 7 individuals who sustained their vision conditions as adults have had them for periods ranging from 13 to 44 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 27 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce.

They have driven CMVs with their limited vision for careers ranging from 3 to 38 years. In the past 3 years, three of the drivers had convictions for traffic violations and one of the drivers was involved in a crash.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the November 19, 2009 notice (74 FR 60022).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater

level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years.

Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA-1998-3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An

Application of Multiple Regression Analysis of a Poisson Process,” Journal of the American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 27 applicants, one of the applicants had a traffic violation for speeding, one of the applicants had a traffic violation for failure to obey a traffic sign and another had a traffic violation for failure to yield the right of way to another vehicle, and one applicant was involved in a crash. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants’ ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants’ intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 27 applicants

listed in the notice of November 19, 2009 (74 FR 60022).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 27 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency’s vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist’s or optometrist’s report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver’s qualification file, or keep a copy in his/her driver’s qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 27 exemption applications, FMCSA exempts Teddy S. Bioni, John K. Butler, James J. Coffield, Roy E. Crayne, Ralph G. DeBardi, James A. DuBay, Chad D. Grose, Donald E. Halvorson, Gerald Harrison, Roger D. Kool, Curtis M. Lawless, Michael E. Lindquist, Philip J.C. Locke, Travis J. Luce, Cameron S. McMillen, Carl L. Miles, Rashawn L. Morris, Brian T. Nelson, James C. New, Thomas E. O’Compo, Christopher M. Rivera, Richard J. Robb, Larry L. Sapp, Temesgn H. Teklezig, Robert E. Whitney, Robert D. Williams, and James M. Wood from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has

resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: January 11, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–1766 Filed 1–27–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2001–9258; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2005–21711]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 22 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at <http://www.regulations.gov>.

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on December 30, 2009 (74 FR 62632).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 22 renewal applications, FMCSA renews the Federal vision exemptions for Thomas E. Adams, Terry J. Aldridge, Lennie D. Baker, Jr., Jerry D. Bridges, William J. Corder, Gary R. Gutschow, Richard J. Hanna, James J. Hewitt, Albert E. Malley, Eugene P. Martin, David L. Menken, Rodney M. Mimbs, Walter F. Moniowczak, William G. Mote, James R. Murphy, Chris A. Ritenour, Ronald L. Roy, Thomas D. Walden, Thomas E. Walsh, Kevin P. Weinhold, Charles M. Wilkins and Thomas A. Wise.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: January 22, 2010.

Charles A. Horan III,

Acting Associate Administrator for Policy and Program Development.

[FR Doc. 2010-1765 Filed 1-27-10; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE TREASURY

Order Granting a Temporary Exemption From Certain Government Securities Act Provisions and Regulations in Connection With a Request From ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments

AGENCY: Department of the Treasury, Office of the Under Secretary for Domestic Finance.

ACTION: Notice of temporary exemption.

SUMMARY: The Department of the Treasury (Treasury) is issuing a temporary exemption from certain Government Securities Act of 1986 provisions and regulations in connection with a request from ICE Trust U.S. LLC to accommodate customer clearing of credit default swaps that reference government securities. Treasury is also soliciting public comment on this order.

DATES: *Effective Date:* January 28, 2010.

FOR FURTHER INFORMATION CONTACT: Lori Santamorenna, Lee Grandy, or Kevin Hawkins, Bureau of the Public Debt, Department of the Treasury, at 202-504-3632.

SUPPLEMENTARY INFORMATION: The following is Treasury's order providing a temporary exemption:

I. Introduction

Treasury regulates transactions in government securities¹ by government securities brokers² and government securities dealers³ under Section 15C of the Securities Exchange Act of 1934 (Exchange Act), as amended by the Government Securities Act of 1986 (GSA). These regulations impose obligations concerning financial responsibility, protection of customer securities and balances, and recordkeeping and reporting.

On March 6, 2009, Treasury granted temporary exemptions⁴ from certain

¹ The term *government securities* is defined at 15 U.S.C. 78c(a)(42).

² A *government securities broker* generally is "any person regularly engaged in the business of effecting transactions in government securities for the account of others," with certain exclusions. 15 U.S.C. 78c(a)(43).

³ A *government securities dealer* generally is "any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise," with certain exclusions. 15 U.S.C. 78c(a)(44).

⁴ 74 FR 10647, March 11, 2009 Order Granting Temporary Exemptions from Certain Provisions of the Government Securities Act and Treasury's Government Securities Act Regulations in Connection with a Request on Behalf of ICE US Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments,

GSA provisions and regulations to ICE Trust U.S. LLC, formerly ICE US Trust LLC (ICE Trust), certain ICE Trust participants, and certain eligible contract participants (ECPs)⁵ (the March 6, 2009 order). On December 7, 2009, Treasury extended the expiration date of these exemptions until March 7, 2010 (the December 7, 2009 order),⁶ in response to a request from ICE Trust (the request).⁷

ICE Trust also requested that Treasury grant supplemental exemptive relief to permit the clearance of credit default swaps (CDS)⁸ transactions on behalf of customers of ICE Trust clearing members. ICE Trust requested an exemption for clearing members, including certain entities affiliated with ICE Trust clearing members,⁹ from provisions of the Exchange Act governing government securities transactions, to the extent such provisions would otherwise apply to such clearing members in regard to cleared CDS.¹⁰

available at: http://www.treasurydirect.gov/instit/statreg/gsareg/gsareg_treasexemptiveorder309.pdf.

⁵ ECPs are defined in Section 1a(12) of the Commodity Exchange Act, 7 U.S.C. 1 et seq. The use of the term ECPs in this order refers to the definition of ECPs as in effect on the date of this order, and excludes persons that are ECPs under Section 1a(12)(C). The temporary exemption provided to ECPs in this order also applies to interdealer brokers that are ECPs.

⁶ 74 FR 64127, December 7, 2009 Order Extending Temporary Exemptions from Certain Government Securities Act Provisions and Regulations in Connection with a Request from ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, available at: <http://www.treasurydirect.gov/instit/statreg/gsareg/>

[FR_Treasury_Order_ICE_Extension_\(12-7-09\).pdf](http://www.treasurydirect.gov/instit/statreg/gsareg/).

⁷ Letter from Kevin McClear, General Counsel, ICE Trust to the Commissioner of the Public Debt, Van Zeck, December 3, 2009, available at <http://www.treasurydirect.gov/instit/statreg/gsareg/gsareg.htm>.

⁸ A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity ("reference entity") or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in bonds or in segments of the debt market as represented by an index, or to take positions on the volatility in credit spreads during times of economic uncertainty.

⁹ ICE Trust stated that, for purposes of its request, an affiliate means an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or that is under common control with, a clearing member.

¹⁰ For purposes of this order, *cleared CDS* means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to ECPs (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this order

Based on the facts presented and the representations made in the request,¹¹ Treasury is granting this temporary exemption to accommodate customer clearing. We are granting this exemption for ICE Trust clearing members and certain ECPs from government securities broker and government securities dealer registration requirements and related requirements in connection with using ICE Trust to clear CDS transactions of their customers. The exemption is subject to certain conditions and will expire on March 7, 2010, unless Treasury renews, revokes, or modifies it.

In providing this temporary exemption from certain provisions of Section 15C of the Exchange Act, Treasury is not determining whether particular CDS are "government securities" under 15 U.S.C. 78c(a)(42).

II. Discussion

A. ICE Trust's Activities and Proposed Customer Clearing Activities

The request describes how ICE Trust currently clears CDS and how the proposed arrangements for central clearing of customers' CDS transactions would operate, including the safeguards associated with customer clearing, as summarized below.¹²

1. ICE Trust's CDS Clearing Activity

According to the request, as of October 30, 2009, ICE Trust has cleared approximately \$2.64 trillion notional amount of the proprietary CDS transactions of its clearing members, based on indices of securities. ICE Trust also intends to clear single-name CDS contracts based on individual reference entities or securities.

(other than a person that is an ECP under paragraph (C) of that section)), and that references a government security.

¹¹ See note 7, *supra*. The temporary exemption Treasury is granting in this order is based on representations made in the request from ICE Trust, which incorporate representations made by ICE Trust in its request upon which the March 6, 2009 order was based. Treasury recognizes, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if this temporary exemption becomes unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in cleared CDS associated with persons subject to the unavailable exemption will remain unchanged, but no new positions can be established pursuant to the temporary exemption until all of the underlying representations are again accurate.

¹² ICE Trust represents that there have been no material changes to the representations made in the letter requesting the relief we provided in the March 6, 2009 order, apart from the proposal to clear customer CDS transactions, and ICE Trust has incorporated those representations into the request. See the request for a detailed description of ICE Trust's proposed customer CDS clearing activities.

2. Proposed Activity Clearing CDS Transactions of Members' Clients

ICE Trust has proposed a "Non-Member Framework" for clearing the CDS transactions of its clearing members' clients, under which its clearing members would submit client positions to ICE Trust in one of two ways. Both ways will result in ICE Trust having no market exposure in connection with the cleared CDS transaction. Under the "bilateral model," clients execute a CDS transaction directly with a clearing member (acting in a principal capacity), followed by the clearing member submitting a trade to ICE Trust with corresponding terms. ICE Trust will create two positions: A Client Position of the clearing member that mirrors the transaction between the client and the clearing member, and an offsetting House Position of the clearing member.

Under the "prime broker" or "designated clearing member" model, a client agrees to a CDS transaction with a clearing member (executing dealer) other than the member that clears the client's transactions. The clearing member, as prime broker, and the executing dealer would enter into a trade and submit it to ICE Trust for clearing, and the clearing member and the client would simultaneously enter into an offsetting trade. The net result would be that the client's clearing member and the client would be counterparties to one transaction, the clearing member would have a Client Position with ICE Trust that mirrors its transaction with the client, and the executing dealer would have a House Position with ICE Trust.

Under the Non-Member Framework, ICE Trust would have no direct relationship with or liability to clients. To facilitate the transfer or liquidation of clearing member-client transactions if a clearing member defaults, ICE Trust will require clearing members to pledge to ICE Trust their rights under the clearing member-client transactions and their rights to related margin. This pledge would secure the clearing members' obligations to ICE Trust under the related client positions, and their obligations to other clients under other clearing member-client transactions. The request states that a negotiated International Swaps and Derivatives Association (ISDA) master agreement between the clearing member and its client, supplemented by a Standard Annex approved by ICE Trust,¹³ will

¹³ The Standard Annex would treat these clearing member-client CDS transactions differently from other derivatives transactions between those parties. It would make the CDS transactions

document the CDS transaction between those parties.

3. Margin Requirements for Clearing Members and Clients

ICE Trust states that the Non-Member Framework is intended to protect clients from default by their clearing members, particularly with regard to their initial margin, and that central clearing of CDS generally is intended to enhance the financial stability of CDS markets as a whole.

ICE Trust rules establish a framework for the collection and protection of client margin and will require clearing members to collect sufficient amounts of initial and variation margin from clients for CDS transactions that ICE Trust clears.¹⁴ Clearing members will be able to collect additional margin from customers beyond what ICE Trust rules require.

Under ICE Trust rules, promptly upon receipt clearing members must post ICE Gross Margin (the gross initial margin collected from clients) to ICE Trust as custodian. Prior to posting, the clearing member must segregate that ICE Gross Margin.

ICE Trust will determine the ICE Net Margin requirement for each clearing member with regard to the cleared CDS positions of all of the member's clients. Clearing members could use collateral posted by clients to satisfy this obligation. ICE Trust rules require that clearing members post both the ICE Net Margin, and the remainder of the margin that clearing members collect from their clients pursuant to ICE Trust rules, to the Custodial Client Omnibus Margin Account that would be maintained at ICE Trust or a subcustodian.¹⁵

ICE Trust or the subcustodian will hold the Custodial Client Omnibus Margin Account for the benefit of all clients of the relevant clearing member (or for the clearing member as agent or custodian on behalf of such clients), and segregate it from other assets of the

submitted to ICE Trust for clearing subject to separate ICE Trust margin requirements; incorporate a standard definition of clearing member default (based on a determination by ICE Trust); and specify procedures for remedies in the case of a clearing member default. The client also could agree that certain default portability rules would apply.

¹⁴ ICE Trust rules permit clearing members to calculate the initial margin collected from individual clients on a net basis, across all of the CDS transactions of that customer that are cleared through ICE Trust. The rules will not permit clearing members to net across multiple clients cleared through ICE Trust. ICE Gross Margin collected by a clearing member from a client must be pledged by the client to the clearing member, and must not be subject to liens or other encumbrances in favor of third parties.

¹⁵ This order contains several conditions related to this account.

clearing member (including assets in its proprietary House Account). ICE Trust rules require clearing members to maintain records that include the clients' identities, the margin they post, the transfer of those assets to the Custodial Client Omnibus Margin Account, and the use of that margin.

4. Default and Portability Rules

ICE Trust rules also require clearing members to agree to the transfer of clearing member-client transactions and related positions upon a client's request, provided that the client obtains a new clearing member willing to accept the positions. In connection with that transfer, ICE Trust would move related margin between the Custodial Client Omnibus Margin Accounts of the two clearing members.

In the event of a client or clearing member default, ICE Trust's rules provide for an orderly transfer, termination, or liquidation of clearing member-client transactions. Upon a clearing member default, if ICE Trust terminates a clearing member-client transaction, ICE Trust will not net termination amounts owed by a client against termination amounts owed with respect to the client's other trades with that clearing member. This is intended to facilitate portability of positions. ICE Trust also would undertake a close-out process, including calculating separate net termination amounts with respect to the closeout of the clearing member's House Positions and its Client Positions,¹⁶ which would not permit netting between those positions. To protect the clearing system, however, ICE Trust would offset any amount that the clearing member owes to ICE Trust with respect to Client Positions against any amount that ICE Trust owes to the clearing member with respect to House Positions.

The default rules in the Standard Annex provide that, if a clearing member defaults, ICE Trust may transfer clearing member-client transactions to a new clearing member, or otherwise establish replacement transactions. If ICE Trust is unable to transfer, or terminate and replace the transactions, the client may terminate them.

ICE Trust states that if a clearing member default is due to a client's default, ICE Trust may use the margin posted to the clearing member's Custodial Client Omnibus Margin Account up to the amount of the ICE

Net Margin requirement, but will not be able to access the remainder of a non-defaulting client's assets. As a result, the clients of a clearing member are subject to the risk of loss resulting from the default of another client of that clearing member, up to the amount of the clearing member's net margin requirement.

If a client owes amounts to the clearing member with respect to the cleared CDS transactions, ICE Trust will apply the client's margin in the Custodial Client Omnibus Margin Account to satisfy that obligation, and the client's margin thereafter would be available to pay amounts that client owed to ICE Trust and to other clients with respect to their clearing member-client transactions. Conversely, clients owed by the clearing member on a net basis will have a claim for that amount, together with their pro rata share of margin being used to satisfy the ICE Net Margin requirement.

Clients will be entitled to the return of their remaining excess margin in the Custodial Client Omnibus Margin Account, except to the extent that ICE Trust applies the margin to satisfy the client's obligation to the clearing member. Clients will share in the assets in the Custodial Client Omnibus Margin Account in proportion to their claims, but will not be entitled to the return of specific assets in that account.

B. Conditional Temporary Exemption for Certain Clearing Members and Certain ECPs

In the March 6, 2009 order, Treasury concluded that the central counterparty (CCP) clearing facility for CDS proposed by ICE Trust may increase transparency, enhance counterparty risk management, and contribute generally to the goal of mitigating systemic risk. Treasury further recognized the possibility that applying the full range of GSA requirements to certain CDS market participants that are not registered or noticed government securities brokers or government securities dealers could deter some of them from using ICE Trust to clear CDS transactions where the CDS references a government security, and thereby reduce the potential systemic risk mitigation and other benefits of central clearing. Consistent with these findings, as well as with the public interest and the protection of investors, Treasury temporarily exempted ICE Trust, certain clearing members, and certain ECPs from some of the GSA provisions. For similar reasons, Treasury extended these temporary exemptions in the December 7, 2009 order.

Treasury believes that facilitating the central clearing of CDS transactions with an appropriate, temporary exemption will increase transparency, enhance counterparty risk management, and contribute generally to the goal of mitigating systemic risk. Treasury also believes that facilitating the central clearing of customer CDS transactions will help the customers of clearing members manage counterparty risk.

Treasury is mindful that such an exemption must require securities intermediaries that receive or hold funds and securities on behalf of others to comply with standards that safeguard the interests of their customers. For example, a registered or noticed government securities broker or government securities dealer must segregate assets held on behalf of customers from proprietary assets because segregation will assist customers in recovering assets in the event the government securities broker or government securities dealer fails. To the extent that funds and securities are not segregated, they could be used by an intermediary to fund its own business and satisfy its debts if it were to fail. Moreover, the maintenance of adequate capital and liquidity protects customers, CCPs, and other market participants. Adequate books and records (including both transactional and position records) are necessary to facilitate day-to-day operations as well as to help resolve situations in which an intermediary fails and either a regulatory authority or receiver must liquidate the firm. Appropriate records also are necessary to allow examiners to review for improper activities.

At the same time, requiring such intermediaries to register as government securities brokers or government securities dealers may deter the use of CCPs for customer CDS transactions, which could lessen the counterparty risk and systemic risk reduction benefits associated with central clearing.

Those factors weigh in favor of not applying the requirements of the GSA to these intermediaries, conditioned on them taking reasonable steps to increase the likelihood that their customers would be protected if the intermediary became insolvent. This requires balancing the promotion of central clearing of customer CDS transactions and customer protection. While the conditions imposed in this order serve to minimize the risk to customers, these conditions cannot provide legal certainty that customer collateral would be protected if an ICE Trust clearing member were to become insolvent.

Treasury recognizes that requiring clearing members that receive or hold

¹⁶ ICE Trust would not undertake this process, however, if the defaulting clearing member's receiver (such as the Federal Deposit Insurance Corporation or similar authority) transfers the relevant positions to another non-defaulting entity in accordance with applicable law.

customer collateral to satisfy these conditions will not guarantee the return of a customer's assets if a clearing member becomes insolvent, particularly in light of the fact-specific nature of the insolvency process and the diversity of insolvency regimes that may apply to ICE Trust members clearing for U.S. customers. Treasury believes, however, that the customer segregation requirements we impose in this order as conditions on the temporary exemption are reasonable steps to increase the likelihood that customers could access their assets in such an insolvency event. Treasury also recognizes that these customers generally will be sophisticated market participants who can weigh the risks associated with entering into arrangements with intermediaries that are not registered or noticed government securities brokers or government securities dealers, particularly in light of the disclosures required as a condition of this temporary exemption.

For these reasons, the Secretary finds that it is consistent with the public interest, the protection of investors, and the purposes of the Exchange Act to grant the conditional, temporary exemption set forth below. This exemption will expire on March 7, 2010, unless Treasury renews, revokes, or modifies it. This exemption is consistent with a recent modification and extension of temporary exemptions the Securities and Exchange Commission (SEC) granted related to a request from ICE Trust concerning central clearing of CDS.¹⁷

C. Consultations and Considerations

In ordering this exemption, Treasury has consulted with and considered the views of the staffs of the SEC, the Commodity Futures Trading Commission (CFTC), and the financial institution appropriate regulatory agencies.¹⁸

Treasury finds that the circumstances upon which it issued and extended the March 6, 2009 order, including

mitigation of potential systemic risk, still exist and therefore Treasury believes that granting this temporary exemption to accommodate customer clearing is warranted and appropriate.

Treasury bases this order on the facts and circumstances presented and representations made by ICE Trust in the request. ICE Trust has indicated that there have been no material changes to any of the facts or circumstances set forth in its request in support of the March 6, 2009 order, and the request for extension and modification of that order, that would cause such representations to no longer be materially accurate.

III. Solicitation of Comments

When Treasury issued the March 6, 2009 order, we solicited comment on all aspects of the temporary exemptions, and specifically requested comment as to the duration of the temporary exemptions and the appropriateness of the exemptive conditions. We received no comments.

In connection with this order to accommodate central clearing of customer CDS transactions, we request comments on the relief we are granting in connection with customer clearing and whether the conditions we have placed on the relief adequately protect customer funds and securities from the threat posed by clearing member insolvency.

Treasury will continue to monitor ICE Trust's progress and the development of CCPs for the CDS market and determine to what extent, if any, additional action might be necessary. For example, as circumstances warrant, certain conditions could be added, altered, or eliminated from this order. Treasury will consider whether the temporary exemption should be extended or allowed to expire.

Treasury also will continue to consult with the staffs of the SEC, the CFTC, and the appropriate regulatory agencies for financial institutions on this matter.

You may send comments to: Government Securities Regulations Staff, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239-0001. You may also send comments by e-mail to govsecreg@bpd.treas.gov. Please provide your full name and mailing address. You may download this order, and review the comments we receive, from the Bureau of the Public Debt's Web site at <http://www.treasurydirect.gov>. The order and comments also will be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW.,

Washington, DC 20220. To visit the library, call (202) 622-0990 for an appointment.

IV. Conclusion

It is hereby ordered, pursuant to Section 15C(a)(5) of the Exchange Act, that, until March 7, 2010:

Exemption—Conditional Temporary Exemption for Certain ECPs and Certain Clearing Members.

(a) *Persons eligible.* This exemption is available to certain ECPs¹⁹ and certain clearing members. Excluded from eligibility for the exemption are clearing members and ECPs that are registered or noticed as government securities brokers or government securities dealers under Section 15C(a)(1) of the Exchange Act, ECPs as defined in Section 1a(12)(C) of the Commodity Exchange Act, and ECPs that are not clearing members and that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding cleared CDS positions for other persons.

(b) *Scope of exemption.* Subject to the conditions specified in paragraph (c) of this section, certain ECPs and certain clearing members, solely with respect to cleared CDS, are exempt from the provisions of Section 15C(a), (b), and (d) (other than subsection (d)(3)) of the Exchange Act, and the rules thereunder.

(c) Conditions for all clearing members.

(1) Each clearing member relying on this exemption must be in material compliance with ICE Trust rules.

(2) Each clearing member relying on this exemption that participates in the clearing of cleared CDS transactions on behalf of other persons must promptly provide a certification to ICE Trust that states that the clearing member is relying on the temporary exemption.

(d) *Additional conditions for certain clearing members.* Each clearing member that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding cleared CDS positions for U.S. persons (or for any persons if the clearing member is a U.S. clearing member)—other than for an affiliate that controls, is controlled by, or is under common control with the clearing member—also must comply with the following six conditions with respect to such activities:

(1) *No natural persons.* The U.S. persons (or any persons if the clearing member is a U.S. clearing member) for whom the clearing member receives or holds such funds or securities may not be natural persons.

¹⁹ See note 5, *supra*.

¹⁷ Securities Exchange Act Release No. 34-61119 (December 4, 2009). Order Extending and Modifying Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request from ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments. See <http://www.sec.gov>. The SEC's order relates only to and is necessary only for CDS that are not swap agreements under Section 206A of the Gramm-Leach-Bliley Act.

¹⁸ The definition of *appropriate regulatory agency* with respect to a government securities broker or a government securities dealer is set out at 15 U.S.C. 78c(a)(34)(G). The definition includes the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of Thrift Supervision, and in limited circumstances the SEC.

(2) *Disclosures.* The clearing member must disclose to such U.S. persons (or to any such persons if the clearing member is a U.S. clearing member) that: (i) The clearing member is not regulated by Treasury or the SEC; (ii) U.S. government securities broker and government securities dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member; (iii) the insolvency law of the applicable jurisdiction may affect such persons' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding; and (iv) if applicable, that non-U.S. clearing members may be subject to an insolvency regime that is materially different from that applicable to U.S. persons.

(3) *Prompt transfer of funds and securities.* As promptly as practicable after receipt, the clearing member must transfer such funds and securities (other than those promptly returned to such other person) to: (i) The clearing member's Custodial Client Omnibus Margin Account at ICE Trust; or (ii) an account held by a third-party custodian, subject to the requirements in paragraph (6) of this section.

(4) *Segregation until transfer.* To the extent there is any delay in transferring such funds and securities (collateral) to the third parties identified in paragraph (3) of this section, the clearing member must segregate the collateral in a way that, pursuant to applicable law, is reasonably expected to protect such collateral from the clearing member's creditors. The clearing member must not permit persons for whom the clearing member receives or holds such funds and securities to "opt out" of such segregation even if regulations or laws otherwise would permit it.

(5) *Cooperation with SEC.* The clearing member must provide the SEC, upon request, with:

(i) Information or documents within its possession, custody, or control; (ii) Testimony of its personnel; and (iii) Assistance in taking evidence relating to cleared CDS transactions from other persons, wherever located, upon the SEC's request or pursuant to agreements between the SEC or the U.S. Government and any foreign securities authority (as defined in Section 3(a)(50) of the Exchange Act). If applicable foreign law or regulation prohibits the clearing member from providing this information, documents, testimony, or assistance, the clearing member must exercise its best efforts to provide it, including requesting the appropriate governmental body and, if legally

necessary, its customers (with respect to customer information) to permit the clearing member to provide it to the SEC. If the clearing member is still unable to provide it despite the clearing member's best efforts, then this exemption shall no longer be available to the clearing member.

(6) *Requirements for third-party custodian account.* A clearing member that transfers customer assets to an account held by a third-party custodian under paragraph (3) of this section must notify such custodian that the following requirements apply:

(i) *How funds and securities are held.* Funds and securities maintained by a third-party custodian must be held:

(A) In the name of a customer, subject to an agreement to which the customer, the clearing member, and the custodian are parties, which states that the assets held are customer assets used to collateralize obligations of the customer to the clearing member, and the clearing member or the custodian must not pledge or rehypothecate the assets held in that account; or

(B) In an omnibus account for which the clearing member maintains a daily record as to the amount held in the account that is owed to each customer, and which is subject to an agreement between the clearing member and the custodian, which states that:

(1) The custodian is holding all assets in that account for the exclusive benefit of the clearing member's customers and separate from any other accounts maintained by the clearing member with the custodian;

(2) The custodian will not use the account assets as security for a loan to the clearing member and account assets must not be subject to right, charge, security interest, lien, or claim of any kind in favor of the custodian or any person claiming through the custodian; and

(3) Neither the clearing member nor the custodian will pledge or rehypothecate the assets.

(ii) *No affiliation.* The third-party custodian must not be an affiliated person of the clearing member.

(iii) *Entity and capital requirements.*

(A) If the third-party custodian is a U.S. entity, it must be a bank (as that term is defined in section 3(a)(6) of the Exchange Act), have total capital, as calculated to meet the applicable requirements imposed by the entity's appropriate regulatory agency (as defined in section 3(a)(34) of the Exchange Act), of at least \$1 billion, and have been approved to engage in a trust business by its appropriate regulatory agency.

(B) If the custodian is not a U.S. entity, it must have total capital, as calculated to meet the applicable requirements imposed by the foreign financial regulatory authority (as defined in section 3(a)(52) of the Exchange Act) responsible for setting capital requirements for the entity, equating to at least \$1 billion, and must provide the clearing member, the customer, and ICE Trust with a legal opinion stating that:

(1) The account assets are subject to regulatory requirements in the custodian's home jurisdiction, designed to protect and provide for the prompt return of custodial assets in the event of the custodian's insolvency; and

(2) That the assets held in that account reasonably could be expected to be legally separate from the clearing member's assets in the event of the clearing member's insolvency.

(iv) *Investment of customer funds.* The clearing member may invest customer funds in Eligible Custodial Assets as that term is defined in ICE Trust's Custodial Asset Policies.

(v) *Notice to ICE Trust.* The clearing member must provide notice to ICE Trust that it is using the third-party custodian to hold customer collateral.

The temporary exemption contained in this order is based on the facts and circumstances presented in the request and is conditioned on compliance with the terms of this order. This temporary exemption could become unavailable if the facts or circumstances change such that the representations in the request are no longer materially accurate or in the event of non-compliance. If the SEC were to withdraw or modify the terms of its order, Treasury may revoke or modify this order accordingly. The status of cleared CDS submitted to ICE Trust prior to such change would be unaffected.

Michael S. Barr,

Acting Under Secretary for Domestic Finance.

[FR Doc. 2010-1664 Filed 1-27-10; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 2, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1-888-912-1227 or 206-220-6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Tuesday, February 2, 2010, at 1 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information, please contact Ms. Spinks at 1-888-912-1227 or 206-220-6098, or write TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Reason for Late Notice: Due to year end leave and mandatory training in January key TAP staff were unavailable to prepare and submit notice in time to meet the 15 day notice requirement. Scheduling conflicts with other meetings prevent rescheduling this meeting.

Dated: January 20, 2010.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2010-1705 Filed 1-27-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Season for Membership to the Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC) was established to provide continued input into the development and implementation of the Internal Revenue Service (IRS) strategy for electronic tax administration. The ETAAC provides an organized public

forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. Members of the ETAAC may not be federally registered lobbyists. This document seeks applicants for selection as committee members.

The Director, Electronic Tax Administration (ETA) and Refundable Credits will assure that the size and organizational representation of the ETAAC obtains balanced membership and includes representatives from various groups including: (1) Tax practitioners and preparers, (2) transmitters of electronic returns, (3) tax software developers, (4) large and small business, (5) employers and payroll service providers, (6) individual taxpayers, (7) financial industry (payers, payment options and best practices), (8) system integrators (technology providers), (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12) state and local governments. We are soliciting applicants from professional and public interest groups. Members will serve a three-year term on the ETAAC to allow for a rotation in membership which ensures that different perspectives are represented. All travel expenses within government guidelines will be reimbursed. Potential candidates must pass an IRS tax compliance check and Federal Bureau of Investigation (FBI) background investigation.

DATES: Application and resumes must be received no later than Monday, March 15, 2010.

ADDRESSES: Completed applications should be submitted using one of the following methods:

- *E-Mail:* Send to etaac@irs.gov.
- *Mail:* Send to Internal Revenue Service, ETA & Refundable Credits, SE:W:ETARC:S:RM, 5000 Ellin Road (M/Stop C4-470, Attn: Cassandra Daniels (C4-213), Lanham, Maryland 20706.
- *Fax:* Send via facsimile to (202) 283-2845 (not a toll-free number). An application can be obtained by sending an e-mail to etaac@irs.gov or calling (202) 283-2178 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Cassandra Daniels, (202) 283-2178 or send an e-mail to etaac@irs.gov.

SUPPLEMENTARY INFORMATION: The ETAAC will also provide an annual report to Congress on IRS progress in meeting the Restructuring and Reform Act of 1998 goals for electronic filing of tax returns. This activity is based on the authority to administer the Internal Revenue laws conferred upon the Secretary of the Treasury by section 7801 of the Internal Revenue Code and delegated to the Commissioner of the Internal Revenue under section 7803 of the Internal Revenue Code. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration.

Applicants should describe and document their qualifications for membership to the Committee. Equal opportunity practices will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals, with demonstrated ability to represent minorities, women, and persons with disabilities. The Secretary of Treasury will review the recommended candidates and make final selections.

Dated: January 19, 2010.

Angela D. Kraus,

Chief, Relationship Management.

[FR Doc. 2010-1704 Filed 1-27-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Women Veterans will be held on February 9-11, 2010, in Room 230 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC, from 8:30 until 4:30 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

The agenda will include an overview of issues related to women Veterans, VA's Women Veterans Health Strategic Health Care Group, updates on recommendations from the Committee's 2008 report, an update on mental health issues, briefings on VA's outreach to women Veterans, an overview of VA's administrations, and a visit to Capitol Hill.

Any member of the public wishing to attend should contact Ms. Shannon L. Middleton at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 461-6193, or fax at (202) 273-7092, or e-mail at 00W@mail.va.gov. Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: January 22, 2010.

By Direction of the Secretary:

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010-1716 Filed 1-27-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on February 22-23, 2010, in the Carlton Ballroom at the St. Regis, 923 16th and K Streets, NW., Washington, DC, from 8:30 a.m. to 5 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule and give advice on the most appropriate means of responding to the needs of veterans relating to disability compensation.

On both days, the Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other Veteran benefits programs. On the afternoon of February 22, time will be allocated for receiving public comments which will be limited to three minutes each.

Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1-2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Ms. Ersie Farber, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (211A), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Farber at (202) 461-9728 or Ersie.farber@va.gov.

Dated: January 25, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010-1763 Filed 1-27-10; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the annual meeting of the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will be held April 7-9, 2010, at the Hyatt Regency Cincinnati, 151 West Fifth Street, Cincinnati, Ohio. On April 7, the meeting will begin at 8 a.m. and end at 12 noon. On April 8-9, the meeting will begin at 8:30 a.m. and end at 4 p.m. The meeting is open to the public.

The Committee, comprised of sixty national voluntary organizations, advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The primary purposes of this meeting are to provide for Committee review of volunteer policies and procedures; to accommodate full and open communications between organization representatives and the Voluntary Service Office and field staff; to provide educational opportunities geared towards improving volunteer programs with special emphasis on methods to recruit, retain, place, motivate, and recognize volunteers; and to approve Committee recommendations.

The April 7 session will include a National Executive Committee Meeting,

Health Fair, VAVS Representative and Deputy training, and the opening awards dinner (requires prepayment) featuring the keynote address, recognition of the recipients of the American Spirit Awards, VAVS Award for Excellence, and the NAC Volunteer of the Year Awards.

The April 8 business session will include remarks from local officials, the Voluntary Service Report, Veterans Health Administration Update, and remarks by VA officials on suicide prevention, palliative care, medical home and social work service. Educational workshops will be held in the afternoon and focus on respite care, disabled volunteers, cultural transformation, and assisting homeless veterans.

On April 9, the educational workshops will be repeated in the morning and the business session will be held in the afternoon and will include subcommittee reports, a presentation on orientation, an inspirational presentation on perseverance, and closing remarks from the Chairman. The James H. Parke Memorial Scholarship recipient will be honored at the Parke Awards dinner (requires prepayment) to be held at 6 p.m.

No time will be allocated at this meeting for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Committee. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to Ms. Laura B. Balun, Director, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals interested in attending are encouraged to contact Ms. Balun at (202) 461-7300.

Dated: January 25, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010-1736 Filed 1-27-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice to delete system of records.

SUMMARY: The Department of Veterans Affairs (VA) is deleting a system of records entitled "Veterans and

Dependents (Living and Deceased) National Cemetery System Correspondence and Inquiry File-VA" (40VA42), which was first published at 42 FR 49749 (September 27, 1977). The System of Records was created to track inquiries from Veterans and their dependents regarding: burial location requests, issuances of headstones and markers, gravesite reservations, and other matters involving the National Cemetery Administration's (NCA) Memorial Programs. VA no longer maintains the System of Records. New

data has not been added to these records in several years and all previously existing files have been destroyed in accordance with applicable records disposal schedules; therefore, the System of Records is dormant.

A "Report of Intention to Publish a **Federal Register** Notice of Deletion of a System of Records" and a copy of the deletion of system notice have been provided to the appropriate Congressional committees and to the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r)

and guidelines issued by OMB 65 CFR 77677, dated (December 12, 2000).

DATES: *Effective Date:* January 28, 2010.

FOR FURTHER INFORMATION CONTACT: Willie L. Lewis, NCA Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-6746.

Approved: January 12, 2010.

John R. Gingrich,
Chief of Staff, Department of Veterans Affairs.
[FR Doc. 2010-1721 Filed 1-27-10; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Thursday,
January 28, 2010**

Part II

Department of the Treasury

**Office of the Comptroller of the
Currency**

12 CFR Part 3

Office of Thrift Supervision

12 CFR Part 567

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

**Risk-Based Capital Guidelines; Capital
Adequacy Guidelines; Capital
Maintenance; Regulatory Capital; Impact
of Modifications to Generally Accepted
Accounting Principles; Consolidation of
Asset-Backed Commercial Paper Programs;
and Other Related Issues; Final Rule**

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 3**

[Docket ID: OCC–2009–0020]

RIN 1557–AD26

FEDERAL RESERVE SYSTEM**12 CFR Parts 208 and 225**

[Regulations H and Y; Docket No. R–1368]

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 325**

RIN 3064–AD48

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Part 567**

[No. OTS–2010–0002]

RIN 1550–AC36

Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues

AGENCIES: Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) are amending their general risk-based and advanced risk-based capital adequacy frameworks by adopting a final rule that eliminates the exclusion of certain consolidated asset-backed commercial paper programs from risk-weighted assets; provides for an optional two-quarter implementation delay followed by an optional two-quarter partial implementation of the effect on risk-weighted assets that will result from changes to U.S. generally accepted accounting principles; provides for an

optional two-quarter delay, followed by an optional two-quarter phase-in, of the application of the agencies' regulatory limit on the inclusion of the allowance for loan and lease losses (ALLL) in tier 2 capital for the portion of the ALLL associated with the assets a banking organization consolidates as a result of changes to U.S. generally accepted accounting principles; and provides a reservation of authority to permit the agencies to require a banking organization to treat entities that are not consolidated under accounting standards as if they were consolidated for risk-based capital purposes, commensurate with the risk relationship of the banking organization to the structure. The delay and subsequent phase-in periods of the implementation will apply only to the agencies' risk-based capital requirements, not the leverage ratio requirement.

DATES: This rule is effective March 29, 2010. Banking organizations may elect to comply with this final rule as of the beginning of their first annual reporting period that begins after November 15, 2009.

FOR FURTHER INFORMATION CONTACT:

OCC: Paul Podgorski, Risk Expert, Capital Policy Division, (202) 874–5070, or Carl Kaminski, Senior Attorney, (202) 874–5090, or Hugh Carney, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Barbara J. Bouchard, Associate Director, (202) 452–3072, or Anna Lee Hewko, Manager, Supervisory Policy and Guidance, (202) 530–6260, Division of Banking Supervision and Regulation; or April C. Snyder, Counsel, (202) 452–3099, or Benjamin W. McDonough, Counsel, (202) 452–2036, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: James Weinberger, Senior Policy Analyst (Capital Markets), (202) 898–7034, Christine Bouvier, Senior Policy Analyst (Bank Accounting), (202) 898–7289, Division of Supervision and Consumer Protection; or Mark Handzlik, Senior Attorney, (202) 898–3990, or Michael Phillips, Counsel, (202) 898–3581, Supervision Branch, Legal Division.

OTS: Teresa A. Scott, Senior Policy Analyst, (202) 906–6478, Capital Risk, Christine Smith, Senior Policy Analyst, (202) 906–5740, Capital Risk, or Marvin Shaw, Senior Attorney, (202) 906–6639, Legislation and Regulation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:**I. Background****A. Changes to U.S. Accounting Standards and the Effect on Regulatory Capital**

On June 12, 2009, the Financial Accounting Standard Board (FASB) issued Statement of Financial Accounting Standards No. 166, *Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140* (FAS 166), and Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167). Among other things, FAS 166 and FAS 167 modified the accounting treatment under U.S. generally accepted accounting principles (GAAP) of certain structured finance transactions involving a special purpose entity.¹ FAS 166 and FAS 167 are effective as of the beginning of a banking organization's² first annual reporting period that begins after November 15, 2009 (implementation date), including interim periods therein, and for interim and annual periods thereafter.³

The agencies' risk-based measures for banking organizations (the general risk-based capital rules⁴ and the advanced approaches rules⁵ collectively the risk-based capital rules) establish capital requirements intended to reflect the risks associated with on-balance sheet exposures as well as off-balance sheet exposures, such as guarantees, commitments, and derivative transactions. The agencies use GAAP as the initial basis for determining whether an exposure is treated as on- or off-balance sheet for risk-based capital

¹ The accounting treatment of these transactions and structures was previously governed by the FASB's Statement of Financial Accounting Standards No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* (2000) (FAS 140) and FASB Interpretation No. 46(R), *Consolidation of Variable Interest Entities* (2003) (FIN 46(R)). References herein to FASB Statements of Financial Accounting Standards and Interpretations are to the FASB's "pre-Codification standards" documents and do not reflect modifications that have been made by the FASB as the related text is incorporated in the FASB Accounting Standards Codification that FASB announced on July 1, 2009.

² Unless otherwise indicated, the term "banking organization" includes banks, savings associations, and bank holding companies (BHCs). The terms "bank holding company" and "BHC" refer only to bank holding companies regulated by the Board.

³ See relevant provisions in FAS 166, paragraphs 5–7, and FAS 167, paragraphs 7–10.

⁴ 12 CFR part 3, appendix A (OCC); 12 CFR parts 208 and 225, appendix A (Board); 12 CFR part 325, appendix A (FDIC); and 12 CFR part 567, subpart B (OTS). The risk-based capital rules generally do not apply to BHCs with \$500 million or less in consolidated assets.

⁵ 12 CFR part 3, appendix C (OCC); 12 CFR part 208, appendix F; and 12 CFR part 225, appendix G (Board); 12 CFR part 325, appendix D (FDIC); 12 CFR 567, Appendix C (OTS).

purposes. Additionally, the agencies' leverage measure (leverage rule)⁶ uses consolidated on-balance sheet assets as the basis for setting minimum capital requirements that are intended to limit the degree to which a banking organization can leverage its equity capital base.

FAS 166 and FAS 167, among other things, establish new standards for reporting companies' transfers of assets to special purpose entities, known as variable interest entities (VIEs) under GAAP, and for consolidating VIEs. Under FAS 167, banking organizations may be required to consolidate assets, liabilities, and equity in certain VIEs that were not consolidated under the standards that FAS 166 and FAS 167 replaced. Most banking organizations will be required to implement the new consolidation standards as of January 1, 2010.⁷ The agencies' risk-based capital and leverage rules (collectively, the capital rules) generally would require a banking organization to include assets held by newly consolidated VIEs in its leverage and risk-based capital ratios determined under those rules. At the same time, a consolidating banking organization may need to establish an ALLL⁸ to cover estimated credit losses on the assets consolidated under FAS 167. As a consequence, absent a change in the capital rules and all other factors remaining constant, both the leverage and risk-based capital ratios of banking organizations that must consolidate due to FAS 167 VIEs that they did not previously consolidate are likely to fall by varying amounts.

B. Notice of Proposed Rulemaking

On September 15, 2009, the agencies published a notice of proposed rulemaking (NPR) that solicited

information and views from the public on the effect the accounting changes mandated by FAS 166 and FAS 167 would have on regulatory capital, the appropriateness of adjusting the risk-based capital treatment of some classes of assets that would be consolidated by banking organizations as a result of their implementation of FAS 167, and the utility of a phase-in of the regulatory capital effects of the accounting changes, among other issues.⁹

In addition, the NPR proposed modifying the agencies' risk-based capital rules by eliminating provisions that permit a banking organization to exclude assets of consolidated asset-backed commercial paper (ABCP) programs from risk-weighted assets (ABCP exclusion) and instead assess a risk-based capital requirement against any contractual exposures of the banking organization to such ABCP programs.¹⁰ The NPR also proposed eliminating an associated provision in the general risk-based capital rules (incorporated by reference in the advanced approaches) that excludes from tier 1 capital the minority interest in a consolidated ABCP program not included in a banking organization's risk-weighted assets.¹¹ In addition, the NPR proposed a new reservation of authority for the agencies' risk-based capital rules to permit a banking organization's primary Federal supervisor to treat entities that are not consolidated under GAAP as if they were consolidated for risk-based capital purposes, commensurate with the risk relationship of the banking organization to the entity.

Collectively, the agencies received approximately 41 comment letters from banking organizations, banking industry associations, mortgage companies, investment and asset management firms, and individuals. Commenters generally agreed with the agencies' preliminary identification of VIEs that are likely to be consolidated by banking organizations as a result of FAS 167. Most notably, these included VIEs

associated with (1) ABCP programs; (2) revolving securitizations structured as master trusts, including credit card and home equity line of credit (HELOC) securitizations; (3) certain mortgage loan securitizations not guaranteed by the U.S. government or a U.S. government-sponsored agency; and (4) certain term loan securitizations in which a banking organization retains a residual interest and servicing rights, including some student loan and automobile loan securitizations.¹²

A number of commenters asserted that the implementation of FAS 166 and FAS 167 without changes to the agencies' risk-based capital and leverage rules would increase regulatory capital requirements for banking organizations, as would the proposed elimination of the ABCP exclusion. They argued this would have a negative and procyclical impact on financial markets and the economy, particularly as banking organizations recover from the recent financial crises and recession, by increasing the cost of and ultimately curtailing lending. Most commenters also argued that there would be negative competitive equity effects from increased regulatory capital requirements that would disadvantage U.S. banking organizations relative to foreign and domestic competitors not subject to similarly high capital requirements. A few commenters asserted that competitive equity concerns were most severe with respect to foreign banking competitors. Some commenters also expressed concern that higher capital requirements would provide incentives for banking organizations to conduct more activity in less stringently regulated foreign jurisdictions.

Many commenters also argued that such implementation would inappropriately align regulatory capital requirements with GAAP's control-based approach to consolidation, in contrast to the credit-risk focus of the agencies' risk-based capital rules. Commenters overwhelmingly supported a delay and/or phase-in of the regulatory capital requirements associated with the implementation of FAS 167 for a period

⁶ 12 CFR part 3 (OCC); 12 CFR part 208, appendix B and 12 CFR part 225 appendix D (Board); 12 CFR 325.3 (FDIC); 12 CFR 567.8 (OTS).

⁷ While most banking organizations affected by FAS 166 and FAS 167 will implement the new standards on January 1, 2010, some banking organizations use annual reporting periods other than the calendar year and will implement the new standards at the beginning of their first annual reporting period that starts after November 15, 2009.

⁸ Under GAAP, an ALLL should be recognized when events have occurred indicating that it is probable that an asset has been impaired or that a liability has been incurred as of the balance sheet date and the amount of the loss can be reasonably estimated. Furthermore, under the risk-based capital rules, the ALLL is a component of tier 2 capital and, therefore, included in the numerator of the total risk-based capital ratio. However, the amount of the ALLL that may be included in tier 2 capital is limited to 1.25 percent of gross risk-weighted assets under the risk-based capital rules. 12 CFR part 3, appendix A § 2(b)(1) (OCC); 12 CFR part 208, appendix A § II.A.2.a and 12 CFR part 225, appendix A § II.A.2.a (Board); 12 CFR part 325, appendix A § I.A.2.i. (FDIC); 12 CFR 567.5 (OTS).

⁹ 74 FR 47138 (September 15, 2009).

¹⁰ 12 CFR part 3, appendix A, § 3(a)(5) and 12 CFR part 3, appendix C § 42(l) (OCC); 12 CFR part 208, appendix A, § III.B.6.b and appendix F § 42(l); and 12 CFR part 225, appendix A, § III.B.6.b and appendix G § 42(l) (Board); 12 CFR part 325, appendix A, § II.B.6.b and 12 CFR part 325, appendix D, § 42(l) (FDIC); 12 CFR 567.6(a)(2)(vi)(E) and 12 CFR part 567, appendix C, § 42(l) (OTS).

¹¹ 12 CFR part 3, appendix A, § 2(a)(3)(ii) (OCC); 12 CFR parts 208 and 225, appendix A, § II A.1.c (Board); 12 CFR part 325, appendix A, § I.A.1.(d) (FDIC); 12 CFR 567.5(a)(iii)(OTS). See 12 CFR part 3, appendix C § 11(a) (OCC); 12 CFR part 208, appendix F, § 11(a) and 12 CFR part 225, appendix G, § 11(a) (Board); 12 CFR part 325, appendix D, § 11(a) (FDIC); 12 CFR part 567, appendix C, § 11(a) (OTS).

¹² Many commenters also expressed concern regarding the possibility that VIEs used for asset management, money market, and private equity investments where the fund manager earns more than a non-significant performance fee could be subject to consolidation under FAS 167, and urged the agencies to implement alternative regulatory capital treatments for such funds. On December 4, 2009, FASB proposed that the application of FAS 167 to such entities be deferred for an undetermined period of time. As a result, both risk-based and leverage capital requirements related to these assets would remain unchanged for the duration of the deferral. The agencies are taking no action with respect to these assets at this time.

of up to three years. A number of commenters asserted that the proposed elimination of the exclusion of consolidated ABCP program assets from risk-weighted assets would lead to an inappropriate capital requirement for ABCP programs with certain structural features.

II. Final Rule

A. Transition Mechanism for Risk-Based Capital Requirements Associated With the Implementation of FAS 166 and FAS 167

In the final rule, the agencies are instituting a transition mechanism consisting of: (1) An optional two-quarter delay, through the end of the second quarter after the implementation date of FAS 166 and FAS 167 for a banking organization, of recognition of the effect on risk-weighted assets and ALLL includable in tier 2 capital that results from a banking organization's implementation of FAS 167 and (2) an optional phase-in, for a banking organization that has opted for the delay, of those effects over the next two quarters.¹³ A banking organization that chooses to implement this transition mechanism must apply it to all relevant VIEs. The effect of the transition mechanism on a banking organization's risk-based capital ratios would be reflected in the regulatory capital information the organization reports in its regulatory reports¹⁴ for the four calendar quarter-end regulatory report dates following the banking organization's implementation date.

In the NPR, the agencies requested comment on any significant costs or burdens, or other relevant considerations that the agencies should consider with respect to phasing-in the impact on capital requirements relating to banking organizations' implementation of FAS 167. The agencies also requested specific and detailed rationales, evidence, and data in support of commenters' positions and requested comment on one potential four-quarter phase-in method.

Almost every commenter asserted that a four-quarter phase-in of any additional capital requirements resulting from banking organizations' implementation of FAS 167 would be insufficient. The

majority of commenters requested at least a three-year phase-in period. The commenters offered three primary rationales for a longer phase-in period: (1) Any shorter phase-in would unfairly penalize banking organizations given their already established businesses, practices, and programs conceived in good faith to comply with the current capital standards; (2) banking organizations need a longer period to phase out structures designed for current regulatory capital treatment and/or adopt the more risk-sensitive capital treatment of the advanced approaches rules; and (3) corporate financing and capital planning covers more than a four-quarter horizon. In addition, some commenters asserted that the cost of raising new capital in the current economic environment is high. Several commenters requested, in addition to the increased phase-in time, a six-month delay on the effect of implementation of FAS 167 on capital requirements, during which the agencies would further study the effects of FAS 166 and FAS 167 implementation, including the appropriate regulatory capital treatment for VIEs consolidated as a result of FAS 167 implementation. A few commenters indicated that there should be no phase-in or that any phase-in should be as short as possible, on the grounds that any phase-in would delay needed changes.

The agencies have long maintained that a banking organization should hold capital commensurate with the level and nature of the risks to which it is exposed. As described below, the agencies believe that the effects of FAS 166 and FAS 167 on banking organizations' risk-based capital ratios will result in regulatory capital requirements that better reflect, in many cases, banking organizations' exposure to credit risk. As a result, the agencies do not believe it is appropriate for banking organizations to delay recognizing VIEs consolidated under FAS 167 and the risks associated with them in their risk-based capital ratios for several years, as some commenters proposed. However, as discussed below, in order to avoid abrupt adjustments that could undermine or complicate government actions to support the provision of credit to U.S. households and businesses in the current economic environment, the agencies are providing banking organizations with an optional two-quarter implementation delay followed by an optional two-quarter partial implementation of the effect of FAS 167 on risk-weighted assets and ALLL includable in tier 2 capital.

Many commenters asserted that banking organizations' implementation of FAS 166 and FAS 167 without a change to the regulatory capital rules would decrease the volume and increase the cost of lending to consumers and businesses. Commenters did not, however, provide adequate empirical analyses and projections of this impact. The agencies note that both the supply of and demand for credit has decreased over recent quarters due to many factors, including household, business, and financial sector deleveraging. As described in the NPR, affected banking organizations' risk-based and leverage capital ratios likely will decrease with their implementation of FAS 166 and FAS 167. However, based on public disclosures by some banking organizations and supervisory information, including the Supervisory Capital Assessment Program (SCAP),¹⁵ risk-based and leverage capital ratios at the largest banking organizations (the banking organizations most affected by FAS 166 and FAS 167) will remain substantially in excess of regulatory minimums. The agencies thus believe that, based on available information, these banking organizations will not encounter an immediate or near-term need to decrease lending or raise substantial amounts of new capital for risk-based capital purposes related to the incremental effects of this final rule. In addition, smaller banking organizations, including community banking organizations, generally did not raise concerns about an adverse impact on smaller banking organizations from the implementation of FAS 166 and FAS 167.

Although the agencies believe that a banking organization's implementation of FAS 166 and FAS 167 will result in regulatory capital requirements that more appropriately reflect risks to which the banking organization is exposed, the agencies also recognize that government initiatives may affect the securitization market in the near term. Several government programs supporting the securitization market, including the Commercial Paper Funding Facility and the non-commercial mortgage-backed securities

¹³ For example, if a banking organization has a calendar year reporting period, the optional two-quarter delay period ends June 30, 2010, and the optional phase-in period ends December 31, 2010.

¹⁴ For banks, Schedule RC-R of the Consolidated Reports of Condition and Income (Call Report); for savings associations, Schedule CCR of the Thrift Financial Report (TFR); and for bank holding companies, Schedule HC-R of the Consolidated Financial Statements for Bank Holding Companies (FR Y-9C).

¹⁵ The SCAP was a supervisory exercise conducted in the first half of 2009 to determine if the 19 largest banking organizations (the banking organizations most affected by FAS 166 and FAS 167 due to the volume of their securitization activities) held regulatory capital sufficient to absorb losses under a specified adverse scenario. The exercise included consideration of estimates of the impact of FAS 166 and FAS 167 on banking organizations' balance sheets and resulting risk-based capital requirements. Further information about SCAP results is available at <http://www.federalreserve.gov/bankinfo/scap.htm>.

portion of the Term Asset-Backed Securities Loan Facility, are scheduled to terminate in the first quarter of 2010. Moreover, the Congress and financial regulators, including the agencies, are considering a number of legislative and regulatory changes that would affect securitization activities. Because the agencies cannot fully assess the combined impact of these potential changes on the securitization market, and because securitization remains an important source of funding for banking organizations, the agencies are providing in the final rule an optional transition mechanism that permits a banking organization to phase in the impact of FAS 167 on its risk-weighted assets and ALLL includable in tier 2 capital.

The transition mechanism consists of an optional two-quarter delay in implementation followed by an optional two-quarter partial implementation of the effect of FAS 167 on risk-weighted assets and ALLL includable in tier 2 capital.¹⁶ The timing of the transition reflects the termination dates of the government programs supporting the securitization market and the potential for uncertainty regarding securitization reform initiatives to extend through 2010. The delay and partial implementation periods also provide time for financial market participants and the agencies to observe the effects of these changes on bank lending, financial markets and the overall economy. The transition mechanism is optional because it requires a banking organization to maintain two sets of records for the duration of the delay and partial implementation periods—to account for affected VIEs for financial reporting under GAAP and separately to track the implementation-date contractual exposures to these VIEs and the ALLLs attributable to their assets for regulatory capital reporting—a dual recordkeeping requirement that banking organizations have expressed concerns about in the past.

A banking organization generally would adopt the transition mechanism as of the date it implements FAS 166 and FAS 167, which is the starting date of its first annual reporting period beginning after November 15, 2009.

1. Transition for Risk-Weighted Assets

For the banking organization's first two quarters after the date it implements FAS 166 and FAS 167 (exclusion period), including for the two calendar quarter-end regulatory report dates within the exclusion period, the banking organization may choose to exclude from risk-weighted assets those assets held by VIEs that the banking organization must consolidate as a result of implementing FAS 167, provided that (1) the VIE existed prior to the banking organization's implementation date and (2) the banking organization did not consolidate the VIE on its balance sheet for calendar quarter-end regulatory report dates prior to the implementation date. A banking organization that applies this exclusion to any VIE must apply the exclusion to all VIEs that qualify for the exclusion.

During the exclusion period, the banking organization may also exclude from risk-weighted assets those assets held by VIEs that are consolidated ABCP programs (ABCP program VIEs), provided that the banking organization is the sponsor of the ABCP program and the banking organization consolidated the ABCP program VIE onto its balance sheet under GAAP and excluded the VIE's assets from its risk-weighted assets prior to the implementation date. A banking organization that applies this exclusion to any ABCP program VIE must apply the exclusion to all ABCP program VIEs that qualify for the exclusion.

A banking organization electing to exclude assets of any VIE pursuant to the transition mechanism described above may not, however, exclude from risk-weighted assets the assets of a VIE to which the banking organization has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold (implicit support).

During the exclusion period, the banking organization would include in risk-weighted assets an amount equal to the risk-weighted assets it would have been required to calculate for its contractual exposures to these VIEs on the implementation date, including direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, under the risk-based capital rules prior to its implementation of FAS 166 and FAS 167. The agencies expect a banking organization would calculate risk-weighted assets using a methodology similar to the methodology used to calculate the risk weights of exposures

to ABCP programs pursuant to the ABCP exclusion.

The amount of risk-weighted assets associated with assets held by VIEs subject to exclusion as described above as of the implementation date of FAS 166 and FAS 167 is the *exclusion amount*. For the third and fourth quarters after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates within those quarters, a banking organization that has adopted the optional transition mechanism for the first two quarters may exclude from risk-weighted assets 50 percent of the exclusion amount. However, the banking organization may not include in risk-weighted assets an amount less than the aggregate risk-weighted assets it held based on its contractual exposures to these VIEs as of the implementation date, had the VIEs not been consolidated. This floor on risk-weighted assets ensures that, notwithstanding these transition provisions, a banking organization always calculates risk-weighted assets in a manner that at a minimum reflects its contractual risk exposure to its consolidated VIEs as of the implementation date.

2. Transition for Allowance for Loan and Lease Losses

During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a banking organization that adopts the transition mechanism for risk-weighted assets described in section II.A.1. above by excluding assets of consolidated VIEs from risk-weighted assets may also include without limit in tier 2 capital the full amount of the ALLL calculated as of the implementation date that is attributable to the assets it excluded pursuant to the transition mechanism for risk-weighted assets (inclusion amount). That is, the ALLL included in tier 2 capital pursuant to this transition mechanism during the exclusion period would not be subject to (1) the 1.25 percent of risk-weighted assets limit (1.25 percent limit) on the ALLL in tier 2 capital contained in the agencies' general risk-based capital rules;¹⁷ or (2) the limits in section 13 of the agencies' advanced approaches rules on including ALLL in tier 2 capital.¹⁸

¹⁷ See footnote 8.

¹⁸ 12 CFR part 3, appendix C § 13(a)(2) and (b) (OCC); 12 CFR part 208, appendix F § 13(a)(2) and (b); and 12 CFR part 225, appendix G § 13(a)(2) and (b) (Board); 12 CFR part 325, appendix D, § 13(a)(2) and (b) (FDIC); 12 CFR part 567, appendix C, § 13(a)(2) and (b) (OTS).

¹⁶ One commenter expressed concern about a statutory provision in the Home Owner's Lending Act (HOLA), uniquely applicable to savings associations, which limits the amount of consumer loans to 35 percent of the amount of a savings association's total assets. OTS notes that any provision under HOLA would be treated consistent with the transition mechanism.

During the phase-in period, including for the two calendar quarter-end regulatory report dates within the phase-in period, a banking organization that has adopted the transition mechanism for risk-weighted assets during the phase-in period may include in tier 2 capital without limit 50 percent of the inclusion amount. The banking organization's ALLL in excess of 50 percent of the inclusion amount may be included in tier 2 capital subject to the 1.25 percent limit. As with the transition for risk-weighted assets, a banking organization may not adopt the transition mechanism for the ALLL for VIEs that it must consolidate after implementing FAS 167 to which it has provided implicit support. Therefore, a banking organization must count toward the 1.25 percent limit all ALLL it includes in tier 2 capital that is associated with assets of a VIE to which it has provided implicit support.

B. Regulatory Capital Requirements Associated With the Implementation of FAS 166 and FAS 167

1. Risk-Based Capital Rules

The agencies have concluded that it is appropriate to provide an optional delay of and then phase in the effect of banking organizations' implementation of FAS 166 and FAS 167 on risk-weighted assets and the ALLL included in tier 2 capital as described above. However, after careful consideration and analyses of commenters' arguments and supporting information, as well as banking organizations' financial disclosures, and supervisory data and analyses, the agencies have concluded that there is insufficient justification to warrant a permanent modification of the risk-based capital rules in response to banking organizations' implementation of FAS 166 and FAS 167.

a. Risk-Weighted Assets

As the agencies noted in the NPR, the qualitative analysis required under FAS 167, as well as enhanced requirements for recognizing transfers of financial assets under FAS 166, converge in many respects with the agencies' assessment of a banking organization's ongoing credit risk exposure to the VIEs that are required to be consolidated under FAS 167. Experience from the recent financial crisis demonstrates that credit risk exposure of sponsoring banking organizations to such structures (and to the assets of these structures) has in fact been greater than the agencies previously estimated, and more associated with non-contractual risks, including reputational risk, than the agencies had previously anticipated. In

the NPR, the agencies noted situations in which banking organizations provided implicit support to some securitization structures, revolving structures in particular, to reduce the likelihood that senior securities of the structures would experience credit ratings downgrades.¹⁹ These examples were intended to demonstrate that risk-based capital requirements based solely on a banking organization's contractual exposure may underestimate the true exposure of a sponsoring banking organization to the credit risk of securitization structures and other VIEs.²⁰

In the NPR, the agencies sought specific views from commenters, with supporting data and other documentation, regarding the types of VIEs and other special purpose entities that are more or less likely to elicit implicit support. The agencies also sought comment on any types of consolidated VIEs that might merit a different risk-based capital treatment than that which will result from the implementation of FAS 166 and FAS 167 without any change to regulatory capital requirements, together with a detailed explanation and supporting empirical analysis of why the features and characteristics of these structure types merit an alternative treatment, how the risks to the consolidating banking organization of the structures should be measured, and what an appropriate alternative capital treatment would be.

Many commenters identified reputational and operational risks as most likely to induce a banking organization to provide implicit support to a VIE. Some commenters noted that certain banking organizations did not follow their peers in providing implicit support during the recent crisis despite reputational risks. However, commenters generally argued that the risk-based capital rules should be modified to mitigate the effect of FAS 166 and FAS 167 on risk-based capital requirements, taking into account risks borne by third-party investors in VIEs; a substantial number of commenters

asserted that risk-based capital requirements should be limited to a banking organization's contractual exposure to VIEs consolidated under FAS 167. Other commenters suggested that the agencies consider using a sliding-scale to risk weight assets subject to consolidation under FAS 167 based on the likelihood of the VIE holding the assets receiving implicit support, as demonstrated by historical experience. Some commenters suggested an implicit support trigger approach that would require higher capital requirements based on a decrease in a VIE's excess spread (that is, the amount of income the VIE receives from assets in excess of that it pays to holders of its obligations), deterioration in VIE asset quality, downward changes in the credit ratings of the VIE's obligations, or other adverse credit events.

Many commenters recommended an approach to risk weighting assets held by consolidated VIEs that would consider each structure independently, calculate a banking organization's "net exposure" to the structure by subtracting third-party investor interests in the structure from the structure's total assets, and then consider the appropriate risk weight to be applied to the resulting net exposure based on the risk characteristics of the structure. Some commenters similarly suggested the agencies adjust risk weights for securitized assets case-by-case on the basis of credit risk mitigation instruments supporting the assets, or include in regulatory capital some subordinated debt instruments issued by consolidated VIEs. Others argued that the agencies should separate regulatory capital reporting from GAAP when establishing regulatory capital requirements for banking organizations' exposures to VIEs and look to the way banking organizations manage VIE exposures internally to determine treatment as "on"- or "off" balance sheet for regulatory capital purposes. Some commenters suggested that the size and risk profile of a banking organization should determine capital requirements for consolidated assets. Other commenters suggested the agencies develop risk weights for consolidated VIEs based on the agencies' guidance on synthetic securitizations. With regard to specific types of structures, many commenters asserted that certain multi-seller ABCP conduits (as discussed further below) and non-revolving, amortizing asset securitizations with certain features, such as term residential mortgage-backed securities structures, should receive more favorable capital

¹⁹ Typical structures of this type include securitizations that are backed by credit card or HELOC receivables, single- and multi-seller ABCP conduits, and structured investment vehicles.

²⁰ Some commenters expressed concern that the accounting changes coupled with the agencies' proposal would result in duplicative capital requirements and excessive regulatory capital being held on a system-wide basis. The agencies recognize that there will be some overlap in regulatory capital held by sponsoring and investing banking organizations in relation to the same assets. However, the agencies believe this overlap results in a fair reflection of the risks to which sponsoring and investing banking organizations are exposed on an individual basis.

treatment based on their low historical loss levels to sponsoring banking organizations or low likelihood of implicit support. Some commenters also requested the agencies provide capital relief for consolidated residential and commercial mortgage-backed securities structures in order to aid the real estate market.

Although commenters provided some empirical data in support of their arguments for favorable treatment of ABCP conduits (as discussed below), they provided much less data in support of other proposed alternative risk-based capital treatments. Commenters provided some examples of structural features (such as tax consequences) that may effectively minimize the possibility that a sponsoring banking organization will provide implicit support to certain structures. They did not, however, provide an explicit set of criteria, supported by broad-based empirical evidence, that the agencies could use to identify structures with minimal likelihood of implicit support, particularly during times of financial market stress, nor did they identify alternative risk-based capital treatments that would appropriately identify and measure risk and allay the agencies' concerns regarding regulatory capital arbitrage (that is, the structuring of transactions to obtain lower regulatory capital requirements without a commensurate reduction in risk). Commenters also did not empirically demonstrate the degree of competitive harm relative to foreign banks and other competitors that banking organizations would likely suffer as a result of the regulatory capital effects of their implementation of FAS 166 and FAS 167.

The agencies therefore are not implementing modifications to the risk-based capital rules to provide an alternative risk-based capital treatment for assets that will be newly consolidated on a banking organization's balance sheet following implementation of FAS 166 and FAS 167. The agencies believe that the optional interim relief provided by this final rule, through the delay and phase-in of the effects of FAS 167 upon risk-based capital requirements as described above, will give a banking organization that elects the option adequate time to adjust its risk profiles to address competitive concerns and to plan to develop structural features needed for future transactions with due consideration to its regulatory capital profiles.

b. Qualifying Total Capital

In the NPR, the agencies sought comment on whether securitized loans subject to consolidation on banking organizations' balance sheets under FAS 167 would be subject to the same ALLL provisioning process, including applicable loss rates, as similar loans that are not securitized. The agencies asked for comment on how banking organizations would reflect the benefits of risk sharing in cases where investors in VIEs holding such loans absorb realized credit losses, and for a quantification of such benefits and any other effects of loss sharing, wherever possible. The agencies also asked whether they should consider policy alternatives with regard to the ALLL provisioning process, including the limit on ALLL that may be included in tier 2 capital.

Commenters indicated that the ALLL provisioning process and amounts for loans held in VIEs consolidated under FAS 167 would be the same as for loans not held in VIEs. Commenters asserted that the addition to ALLL that would result from this consolidation would be significantly greater than the actual losses contractually borne by the consolidating banking organization and would distort the relationship of the ALLL to the contractual risk of the consolidating banking organization to the assets held in the affected VIEs. Commenters further noted that, because additions to ALLL are deducted from retained earnings, the additions have the effect of reducing tier 1 capital.

Many commenters also noted that a higher ALLL would result in higher deferred tax assets (DTAs)²¹ and significantly affect banking organizations' regulatory capital ratios due to the capital rules' limits on including DTAs and the ALLL in regulatory capital.²² Many commenters requested that the agencies relax or eliminate the restrictions on including DTAs in tier 1 capital and the ALLL in tier 2 capital to mitigate the effects of

consolidation due to the implementation of FAS 167 on regulatory capital. Specifically, some commenters recommended that the current limit (1.25 percent of risk-weighted assets) on the inclusion of the ALLL in tier 2 capital be increased, or that the entire ALLL related to the assets supporting VIEs' contractual obligations to third parties be included in tier 2 capital. Other commenters recommended that all ALLL related to losses contractually borne by third parties be eligible for inclusion in tier 1 capital. Commenters also noted that DTA balances will increase along with the ALLL, and recommended that either the current limit on DTAs in regulatory capital be removed or that all DTAs arising from ALLL related to the contractual loss absorption responsibilities of third parties to consolidated VIEs be included in tier 1 capital.

Under FAS 167, banking organizations have several financial reporting methods for recognizing the initial and ongoing consolidation of VIEs. One method is the fair value option, under which the assets of the VIE are recorded at fair value upon consolidation and no associated ALLL is recognized. Another method is to record newly consolidated assets at carrying value, which requires the establishment of an ALLL at a level appropriate to cover estimated credit losses.²³ Commenters suggested that by not relaxing the limit on the amount of ALLL that may be included in tier 2 capital, the agencies may encourage banking organizations to elect the fair value option for initial consolidation and/or ongoing accounting of affected consolidated VIEs.

The agencies have considered the concerns raised by commenters with respect to ALLL provisioning and DTAs created as a result of a banking organization's implementation of FAS 167. The agencies recognize the effects on tier 1 and tier 2 capital of the increased ALLL provisioning that will result from the consolidation of VIEs, and note the concern of some commenters that, in some cases, the provisioning may be disproportionate to the contractual risks borne by a banking organization with respect to the consolidated assets. However, as described above, a regulatory focus on contractual exposures may understate a banking organization's exposure to loss

²¹ Under GAAP, a DTA arises as a result of the recognition of an expense, in this case a loss provision, for financial reporting purposes in advance of its recognition as a deduction for income tax reporting purposes.

²² The agencies' risk-based capital rules limit the amount of DTAs dependent upon future taxable income that may be included in tier 1 capital to the lesser of two measures: (a) The amount of such DTAs that a banking organization could reasonably expect to realize within one year; or (b) ten percent of tier 1 capital that exists before the deduction of any disallowed servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing interest-only strips, and any disallowed deferred tax assets. See 12 CFR part 3, Appendix A, § 2(c)(1)(iii) (OCC); 12 CFR parts 208 and 225, Appendix A § II.B.4 (Board); 12 CFR 325.5(g) (FDIC); and 12 CFR 567.12(h) (OTS).

²³ If a banking organization makes use of a practicability exception to record the assets at fair value as of the date FAS 166 and FAS 167 are first implemented, no associated ALLL is recognized on that date, but an associated ALLL will be recognized in future periods.

with regard to a VIE's assets that the banking organization must consolidate under FAS 167. Moreover, the agencies have determined that the current limits on ALLL are appropriate given the policy benefits of maintaining consistency among international capital standards absent compelling policy justifications for deviating from such standards. The limit of 1.25 percent of risk-weighted assets on the amount of the ALLL that a banking organization may include in tier 2 capital is a standard included in the first capital accord of the Basel Committee on Banking Supervision (Basel Accord).²⁴ The agencies also note that the current limit on DTAs that a banking organization may include in tier 1 capital is currently being considered as part of an international review of the components of regulatory capital, including deductions from capital. Moreover, commenters generally did not quantify the effect of FAS 167 on banking organizations' ALLLs and DTAs, and the agencies believe that it may be difficult to identify on an ongoing basis the ALLLs and DTAs associated only with assets newly subject to consolidation under FAS 167.

For the above reasons, the agencies have decided not to modify current limits on the inclusion of the ALLL in tier 2 capital and of DTAs in tier 1 capital. However, as described in section II.A.2., this final rule provides substantial transitional relief from the agencies' limits on including ALLL in tier 2 capital to a banking organization implementing FAS 167 that elects to adopt the transition mechanism for risk-weighted assets described in section II.A.1 above. The agencies believe that this relief, along with the transitional relief for risk-weighted assets included in the final rule, will aid banking organizations with capital planning as they implement FAS 166 and FAS 167 and adjust their business practices accordingly.

2. Leverage Requirement

Under the leverage rule, tier 1 capital is assessed against a measure of a banking organization's total on-balance sheet assets, net of ALLL and certain other exposures (leverage ratio).²⁵ Therefore, previously unconsolidated assets that now must be recognized on a banking organization's balance sheet as a result of its implementation of FAS

167 will increase the denominator of the banking organization's leverage ratio. The agencies have maintained the leverage rule as a balance-sheet assessment to supplement the risk-based capital rules and limit the degree to which a banking organization can leverage its equity capital base.²⁶ By design, the leverage rule does not recognize the risk profile of on-balance sheet exposures, including any risk transference associated with those exposures.

Some commenters suggested, based on the same risk transference arguments referred to above with respect to the risk-based capital rules, that the agencies exclude the assets of VIEs consolidated by banking organizations under FAS 167 from the leverage ratio. Other commenters urged that the agencies apply any phase-in of capital requirements associated with the implementation of FAS 167 to the leverage rule as well as the risk-based capital rules.

Having considered commenters' views, the anticipated impact of the implementation of FAS 166 and FAS 167 on banking organizations' leverage ratios, and the history and purpose of the leverage rule, the agencies have concluded that a delay or phase-in of the effect of consolidation under FAS 167 on the leverage rule is not appropriate or justified. The agencies believe the maintenance of the leverage rule as a balance-sheet assessment separate from the assessment of relative risk is a particularly important feature of prudential regulation and did not find evidence that the impact of FAS 166 and FAS 167 on banking organizations' leverage ratios justifies any alteration of the leverage rule.

C. Asset-Backed Commercial Paper Programs

In the NPR, the agencies proposed to eliminate the ABCP exclusion, which permits a banking organization to exclude from risk-weighted assets the assets of an ABCP program that the banking organization is required to consolidate under GAAP and for which the banking organization acts as sponsor. Under the current risk-based capital rules, a banking organization that elects the ABCP exclusion must instead assess risk-based capital requirements only on its contractual exposures to the program. As proposed in the NPR, as with all other consolidated VIEs, a banking

organization would be required to include the assets of a consolidated ABCP program in risk-weighted assets. The agencies also proposed to eliminate the associated provision in the general risk-based capital rules (incorporated by reference in the advanced approaches) that excludes from tier 1 capital the minority interest in a consolidated ABCP program not included in a banking organization's risk-weighted assets.

Commenters generally opposed the proposal to eliminate the ABCP exclusion, particularly with respect to customer-focused, multi-seller ABCP programs (customer conduits). These commenters argued that such ABCP programs have a history of low loss rates (including during the recent financial crisis) and are important sources of funding for many businesses. These commenters also suggested that if the agencies eliminate the ABCP exclusion, the increased capital requirement associated with ABCP programs would increase the cost of funding and decrease credit availability for businesses that have used customer conduits to fund their operations, and therefore would adversely affect the economy and financial markets. Commenters also argued that the proposed elimination of the ABCP exclusion would raise significant competitive equity concerns for domestic banking organizations relative to foreign banks and domestic entities not subject to banking regulation. Some commenters additionally argued that the elimination of the ABCP exclusion would decrease incentives for banking organizations to transfer risk and might encourage banking organizations to invest in riskier, higher yield assets than those typically associated with consumer conduits. One commenter suggested that elimination of the ABCP exclusion was appropriate where liquidity facilities act as credit enhancement or where affiliates of the conduit sponsor are the largest holder of the ABCP obligations.

Additionally, in response to the agencies' proposal, a number of commenters suggested that the agencies allow early adoption of the advanced approaches rules' Internal Assessment Approach (IAA) methodology²⁷ for risk weighting these assets, or delay

²⁴ Basel Committee on Banking Supervision, *International Convergence of Capital Measurement and Capital Standards* (1988), paragraph 21.

²⁵ See 12 CFR 3.2(a) (OCC); 12 CFR part 208, appendix B § II.b and 12 CFR part 225, appendix D, § II.b (Board); 12 CFR 325.2(m) (FDIC); 12 CFR 567.5(b)(4) (OTS).

²⁶ 12 CFR 3.6(b) and (c) (OCC); 12 CFR part 208, appendix B, § I.a. and 12 CFR part 225, appendix D, § I.a (Board); 12 CFR 325.3 (FDIC); 12 CFR 567.5 (OTS).

²⁷ See 12 CFR part 3, appendix C, (OCC) § 44; 12 CFR part 208, appendix F, § 44; and 12 CFR part 225, appendix G, § 44 (Board); 12 CFR part 325, appendix D, § 44 (FDIC); 12 CFR 567, Appendix C, § 44 (OTS). Qualifying banking organizations using the IAA may calculate risk-weighted asset amounts for securitization exposures (as defined in the advanced approaches rule) to qualifying ABCP programs by using an internal credit assessment process mapped to equivalent external ratings.

eliminating the ABCP exclusion until banking organizations could operate fully under the advanced approaches rules. Other commenters urged the agencies not to implement the proposal to eliminate the ABCP exclusion at all, particularly for customer conduits.

The agencies have weighed the concerns raised by commenters, as described above, related to the proposal to eliminate the ABCP exclusion from the risk-based capital rules, against the agencies' own concerns regarding the possibility of sponsors providing implicit support to ABCP programs and regulatory capital arbitrage, among others. The agencies acknowledge that customer conduits appear to present a lower risk of loss to the sponsoring banking organization relative to other ABCP programs. However, recent events have raised serious questions about the original rationale for allowing the exclusion of consolidated ABCP programs from risk-weighted assets. As the agencies noted in the NPR, the 2004 implementation of the ABCP exclusion was based on the agencies' belief that sponsoring banking organizations' risk exposure to these entities was limited to their contractual exposure. However, as a result of some banking organizations having provided implicit support to a number of ABCP programs they sponsored during the recent financial turmoil, the agencies have observed that the premise of a contractual limit on risk was incorrect for some ABCP programs. In addition, and notwithstanding commenters' assertions to the contrary, the agencies believe that the type of customer conduit advocated by commenters to be considered for preferential exclusion from risk-weighted assets cannot be distinguished from other ABCP programs to a degree of certainty that would effectively mitigate the risk of regulatory capital arbitrage. Furthermore, commenters did not describe the features and characteristics of customer conduits that would effectively mitigate the risk of a banking organization providing implicit support to sponsored structures under the broadest range of circumstances. The agencies are sensitive to competitive concerns and recognize that some ABCP programs include generally high credit-quality assets. However, given the absence of a workable alternative proposal that satisfactorily addresses the agencies' concerns about regulatory capital arbitrage and implicit support, the agencies have decided to eliminate as proposed the ABCP exclusion, subject to the delay and phase-in described above.

With respect to the recommendation that the agencies allow early adoption of

the IAA, the agencies note that the IAA is applicable exclusively to a banking organization's exposures to off-balance sheet ABCP programs and not to a program's underlying assets when reported on balance sheet. Moreover, the IAA, like the ABCP exclusion, focuses on a banking organization's contractual exposures to an ABCP conduit. The IAA does not capture implicit support and thus an extension of the IAA to consolidated ABCP programs would not sufficiently reflect the risk to a sponsoring banking organization of such programs.

D. Reservation of Authority

The NPR proposed a new reservation of authority for the risk-based capital rules specifying that a banking organization's primary Federal supervisor would have the authority to require the banking organization to treat an off-balance sheet VIE (or similar entity) as if it were consolidated onto the banking organization's balance sheet. The banking organization would have to hold capital against the entity's exposures for risk-based capital purposes if the primary Federal supervisor determined that the banking organization's exposure or other relationship to the entity was not commensurate with the actual risk relationship of the banking organization to the entity.

The agencies received little comment with respect to the proposed reservation of authority. The few comments received regarding the proposed reservation of authority suggested that it be used in conjunction with recognition of contractual risk transfer. One commenter opposed the reservation of authority as proposed and requested that the agencies specify standards for the exercise of the authority. The agencies asked in the NPR if there are any features and characteristics of transactions not subject to consolidation on banking organizations' balance sheets under GAAP as modified by FAS 166 and FAS 167 that should be recognized as on-balance sheet exposures for regulatory capital purposes to more appropriately reflect risk. Commenters generally stated that they were not aware of any such transactions. Many commenters also asserted that such transactions were unlikely.

As stated in the NPR, the agencies believe the reservation of authority is essential to address instances when a banking organization structures a financial transaction with a VIE to avoid consolidation under FAS 167, and the resulting capital treatment is not commensurate with all risks of the

banking organization to the VIE, including non-contractual risks. The agencies have therefore decided to incorporate the reservation of authority in their risk-based capital rules as proposed in the NPR.

E. Other Related Matters

1. Department of the Treasury's Home Affordable Mortgage Program

In the NPR, the agencies solicited comment on whether banking organizations that service securitized residential mortgages, participate in the United States Department of the Treasury's Home Affordable Mortgage Program (HAMP), and receive certain incentive payments in connection with the program, would be required under FAS 167 to consolidate VIEs holding such mortgages solely due to loan modifications under HAMP. The agencies also asked if such consolidation were required, whether such assets should be included in regulatory capital requirements and what alternative capital treatment may be appropriate.

Commenters generally did not think that incentive payments under HAMP would independently trigger consolidation under FAS 167. Most also argued that if such consolidation were to occur as a result of actions related to or required by HAMP participation, regulatory capital treatment should be modified with respect to the relevant consolidated mortgage loan assets.

The agencies agree with commenters' assessment that it is unlikely that incentive payments under HAMP independently would cause servicers participating in HAMP to consolidate VIEs holding mortgage loans modified under HAMP. The agencies therefore do not see a basis for any modification of their capital requirements in relation to incentive payments made pursuant to HAMP.

2. Denial of Extension of Comment Period

A few commenters requested that the agencies extend the NPR comment period. As noted above, the agencies received approximately 41 comments following the publication of the NPR, which indicates that commenters had adequate time to express their views. Furthermore, the possible regulatory capital implications of FAS 166 and FAS 167 were publicly known for months prior to the NPR and several commenters expressed viewpoints on these matters to the agencies well before the publication of the NPR. The agencies therefore have concluded that the 30-day comment period provided

adequate time for commenters to provide views to the agencies and deny requests to extend the NPR comment period.

VI. Regulatory Analysis

Riegle Community Development and Regulatory Improvement Act

Section 302 of Riegle Community Development and Regulatory Improvement Act ²⁸ (RCDRIA) generally requires that regulations prescribed by Federal banking agencies which impose additional reporting, disclosures or other new requirements on insured depository institutions take effect on the first day of a calendar quarter unless an agency finds good cause that the regulations should become effective sooner and publishes its finding with the rule. The effective date of this rule is March 29, 2010.²⁹ The agencies believe that it is important to make this final rule effective before banking organizations generally must calculate their regulatory risk-based capital ratios at the end of the first quarter of 2010. This will allow banking organizations to implement the rule prior to calculating their first quarter 2010 risk-based capital ratios and mitigate possible negative impacts on securitization and financial markets as described in section II.A above. The RCDRIA also provides that an entity that is subject to such a regulation may elect to comply with the regulation before its effective date.³⁰ Accordingly, banking organizations may elect to comply with this final rule before the effective date (as of the beginning of their first annual reporting period that begins after November 15, 2009).

Regulatory Flexibility Act

In accordance with Section 3(a) of the Regulatory Flexibility Act (RFA),³¹ the agencies are publishing a final regulatory flexibility analysis for amendments to their capital rules. Under regulations issued by the Small Business Administration,³² a small entity includes a commercial bank, BHC, or savings association with assets of \$175 million or less (a small banking organization). As of September 30, 2009, there were approximately 2,484 small BHCs, 379 small savings associations, 722 small national banks, 419 small State member banks, and 2,818 small

State nonmember banks. As a general matter, the Board's general risk-based capital rules apply only to a BHC that has consolidated assets of \$500 million or more. Therefore, the proposed changes to the Board's general risk-based capital rules for BHCs will not affect small BHCs.

The agencies have determined that the final rule will not have a significant impact on a substantial number of small banking organizations. Small banking organizations do not sponsor ABCP programs and very few will be required to consolidate VIEs as a result of implementing FAS 167. The agencies expect that few small banking organizations will elect to implement the transition mechanism set forth in the final rule and they will not be affected by the removal of the ABCP exclusion. Therefore, the agencies certify that the final rule will not have a significant economic impact on a substantial number of small banking organizations.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995,³³ the agencies have reviewed the final rule. The Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The Board, the FDIC, and the OCC note that instructions related to ABCP conduits in Schedule RC-R of the Consolidated Reports of Condition and Income³⁴ and Schedule HC-R of the Consolidated Financial Statements for Bank Holding Companies³⁵ will require revision.³⁶ The Board, the FDIC, and the OCC also note that the instructions for other items in Schedules RC-R and HC-R will require revisions related to the delay and phase-in options included in the final rule. If these revisions are determined to be significant, the revisions would be incorporated into a proposal that the agencies would publish with a request for comment in accordance with the requirements of the PRA.

Executive Order 12866

Executive Order 12866 requires Federal agencies to prepare a regulatory impact analysis for agency actions that are found to be "significant regulatory

actions." Significant regulatory actions include, among other things, rulemakings that "have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities." Regulatory actions that satisfy one or more of these criteria are referred to as "economically significant regulatory actions."

The OCC and OTS have determined that this rulemaking is an economically significant regulatory action for purposes of Executive Order 12866. However, because the rule addresses changes to accounting standards that will become effective for national banks and savings associations as of the beginning of their first annual reporting period that begins after November 15, 2009, the issuance of this rule is subject to the procedures set forth in Section 6(a)(3)(D) of Executive Order 12866.

OCC/OTS Unfunded Mandates Reform Act of 1995 Determination

The Unfunded Mandates Reform Act of 1995³⁷ (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and the OTS each have determined that its proposed rule will not result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act³⁸ requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invited comment on how to make the proposed rule easier to understand. The agencies received no comment on plain language.

²⁸ 12 U.S.C. 4802.

²⁹ This final rule is a "major rule" under the Congressional Review Act and therefore may not take effect until at least 60 days after publication in the *Federal Register*. See 5 U.S.C. 801.

³⁰ 12 U.S.C. 4802(b)(2).

³¹ 5 U.S.C. 601 *et seq.*

³² See 13 CFR 121.201.

³³ 44 U.S.C. 3506.

³⁴ OMB Nos. 7100-0036, 1557-0081, and 3064-0052; FFIEC 031 and 041.

³⁵ OMB No. 7100-0128; FR Y-9C.

³⁶ OTS notes that the Thrift Financial Report (TFR) does not need any revisions, given that it does not currently ask for specific information like the call report. OTS does not anticipate the need to revise the TFR, but if the need arises OTS would request comment in accordance with the requirements of the PRA.

³⁷ See Public Law 104-4.

³⁸ Public Law 106-102.

Nevertheless, the agencies have endeavored to present this final rule, and all their capital rules, in a manner that is as brief, comprehensible, and straightforward as possible, in light of the nature and complexity of the subject matter.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, Banking, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, Banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Risk, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the common preamble, the Office of the Comptroller of the Currency is amending Part 3 of chapter I of Title 12, Code of Federal Regulations as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

■ 2. Section 3.4 is amended by adding paragraph (c) to read as follows:

§ 3.4 Reservation of authority.

(c) The OCC may find that the capital treatment for an exposure not subject to consolidation on the bank's balance sheet does not appropriately reflect the

risks imposed on the bank. Accordingly, the OCC may require the bank to treat the exposure as if it were consolidated onto the bank's balance sheet for the purpose of determining compliance with the bank's minimum risk-based capital requirements set forth in Appendix A or Appendix C to this Part. The OCC will look to the substance of and risk associated with the transaction as well as other relevant factors the OCC deems appropriate in determining whether to require such treatment and in determining the bank's compliance with minimum risk-based capital requirements.

■ 3. In appendix A to Part 3:

■ a. In section 2, remove and reserve paragraph (a)(3)(ii);

■ b. In section 3, remove and reserve paragraph (a)(5) and revise paragraph (a)(6); and

■ c. Revise section 5.

The revisions read as set forth below.

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 3. * * *

* * * * *

(a) * * *

(6) *Other variable interest entities subject to consolidation.* If a bank is required to consolidate the assets of a variable interest entity under generally accepted accounting principles, the bank must assess a risk-based capital charge based on the appropriate risk weight of the consolidated assets in accordance with sections 3(a) and 4 of this appendix A. Any direct credit substitutes and recourse obligations (including residual interests), and loans that a bank may provide to such a variable interest entity are not subject to a capital charge under section 4 of this appendix A.

Section 5. Optional transition provisions related to the implementation of consolidation requirements under FAS 167.

(a) This section 5 provides optional transition provisions for a national bank that is required for financial and regulatory reporting purposes, as a result of its implementation of Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167), to consolidate certain variable interest entities (VIEs) as defined under United States generally accepted accounting principles (GAAP). These transition provisions apply through the end of the fourth quarter following the date of a bank's implementation of FAS 167 (implementation date).

(b) *Exclusion period.* (1) *Exclusion of risk-weighted assets for the first and second quarters.* For the first two quarters after the implementation date (exclusion period), including for the two calendar quarter-end regulatory report dates within those quarters, a bank may exclude from risk-weighted assets:

(i) Subject to the limitations in paragraph (d) of this section 5, assets held by a VIE,

provided that the following conditions are met:

(A) The VIE existed prior to the implementation date;

(B) The bank did not consolidate the VIE on its balance sheet for calendar quarter-end regulatory report dates prior to the implementation date;

(C) The bank must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167; and

(D) The bank excludes all assets held by VIEs described in paragraphs (b)(1)(i)(A) through (C) of this section 5; and

(ii) Subject to the limitations of paragraph (d) of this section 5, assets held by a VIE that is a consolidated asset-backed commercial paper (ABCP) program, provided that the following conditions are met:

(A) The bank is the sponsor of the ABCP program;

(B) Prior to the implementation date, the bank consolidated the VIE onto its balance sheet under GAAP and excluded the VIE's assets from the bank's risk-weighted assets; and

(C) The bank chooses to exclude all assets held by ABCP program VIEs described in paragraphs (b)(1)(ii)(A) and (B) of this section 5.

(2) *Risk-weighted assets during exclusion period.* During the exclusion period, including the two calendar quarter-end regulatory report dates within the exclusion period, a bank adopting the optional provisions of this paragraph (b) of this section 5 must calculate risk-weighted assets for its contractual exposures to the VIEs referenced in paragraph (b)(1) of this section 5 on the implementation date and include this calculated amount in its risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

(3) *Inclusion of ALLL in Tier 2 capital for the first and second quarters.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a bank that excludes VIE assets from risk-weighted assets pursuant to paragraph (b)(1) of this section may include in Tier 2 capital the full amount of the allowance for loan and lease losses (ALLL) calculated as of the implementation date that is attributable to the assets it excludes pursuant to paragraph (b)(1) of this section 5 (inclusion amount). The amount of ALLL includable in Tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth in section 2(b)(1) of this Appendix A.

(c) *Phase-in period.* (1) *Exclusion amount.* For purposes of this paragraph (c), exclusion amount is defined as the amount of risk-weighted assets excluded in paragraph (b)(1) of this section as of the implementation date.

(2) *Risk-weighted assets during the third and fourth quarters.* A bank that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (b)(1) of this section may, for the third and fourth quarters after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates

within those quarters, exclude from risk-weighted assets 50 percent of the exclusion amount, provided that the bank may not include in risk-weighted assets pursuant to this paragraph an amount less than the aggregate risk-weighted assets calculated pursuant to paragraph (b)(2) of this section.

(3) *Inclusion of ALLL in Tier 2 capital during the third and fourth quarters.* A bank that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (c)(2) of this section may, for the phase-in period, include in Tier 2 capital 50 percent of the inclusion amount it included in Tier 2 capital during the exclusion period, notwithstanding the limit on including ALLL in Tier 2 capital in section 2(b)(1) of this Appendix A.

(d) *Implicit recourse limitation.* Notwithstanding any other provision in this section 5, assets held by a VIE to which the bank has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

* * * * *

■ 4. In Appendix C to part 3, amend the Table of Contents by adding a new Part IX and Section 81 as follows:

Appendix C to Part 3—Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches

Part I—General Provisions

Part IX—Transition Provisions

Section 81—Optional Transition Provisions Related to the Implementation of Consolidation Requirements Under FAS 167

■ 5. Further amend appendix C to Part 3 as follows:

■ a. In section 1, redesignate paragraph (c)(3) as paragraph (c)(4), and add a new paragraph (c)(3); and

■ b. Remove section 42(l) and redesignate section 42(m) as section 42(l).

The addition reads as set forth below.

Appendix C to Part 3—Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches

*Section 1. * * **

*(c) * * **

(3) *Regulatory capital treatment of unconsolidated entities.* If the OCC determines that the capital treatment for a bank's exposure or other relationship to an entity not consolidated on the bank's balance sheet is not commensurate with the actual risk relationship of the bank to the entity, for risk-based capital purposes, it may require the bank to treat the entity as if it were consolidated onto the bank's balance sheet and require the bank to hold capital against the entity's exposures. The OCC will look to the substance of and risk associated with the transaction as well as other relevant factors the OCC deems appropriate in determining whether to require such treatment and in determining the bank's compliance with

minimum risk-based capital requirements. In making a determination under this paragraph, the OCC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12.

■ 6. Further amend Appendix C to part 3 by adding a new part IX and section 81 to read as follows:

Appendix C to Part 3—Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches

* * * * *

Part IX—Transition Provisions

Section 81—Optional Transition Provisions Related to the Implementation of Consolidation Requirements Under FAS 167

(a) *Scope, applicability, and purpose.* This section 81 provides optional transition provisions for a bank that is required for financial and regulatory reporting purposes, as a result of its implementation of Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167), to consolidate certain variable interest entities (VIEs) as defined under GAAP. These transition provisions apply through the end of the fourth quarter following the date of a bank's implementation of FAS 167 (implementation date).

(b) *Exclusion period.* (1) *Exclusion of risk-weighted assets for the first and second quarters.* For the first two quarters after the implementation date (exclusion period), including for the two calendar quarter-end regulatory report dates within those quarters, a bank may exclude from risk-weighted assets:

(i) Subject to the limitations in paragraph (d) of this section 81, assets held by a VIE, provided that the following conditions are met:

(A) The VIE existed prior to the implementation date;

(B) The bank did not consolidate the VIE on its balance sheet for calendar quarter-end regulatory report dates prior to the implementation date;

(C) The bank must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167; and

(D) The bank chooses to exclude all assets held by VIEs described in paragraphs (b)(1)(i)(A) through (C) of this section 81; and

(ii) Subject to the limitations in paragraph (d) of this section 81, assets held by a VIE that is a consolidated asset-backed commercial paper (ABCP) program, provided that the following conditions are met:

(A) The bank is the sponsor of the ABCP program;

(B) Prior to the implementation date, the bank consolidated the VIE onto its balance sheet under GAAP and excluded the VIE's assets from the bank's risk-weighted assets; and

(C) The bank excludes all assets held by ABCP program VIEs described in paragraphs (b)(1)(ii)(A) and (B) of this section 81.

(2) *Risk-weighted assets during exclusion period.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a bank adopting the optional provisions in paragraph (b) of this section must calculate risk-weighted assets for its contractual exposures to the VIEs referenced in paragraph (b)(1) of this section 81 on the implementation date and include this calculated amount in risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

(3) *Inclusion of ALLL in Tier 2 capital for the first and second quarters.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a bank that excludes VIE assets from risk-weighted assets pursuant to paragraph (b)(1) of this section 81 may include in Tier 2 capital the full amount of the ALLL calculated as of the implementation date that is attributable to the assets it excludes pursuant to paragraph (b)(1) of this section 81 (inclusion amount). The amount of ALLL includable in Tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth in section 13(a)(2) and (b) of this Appendix C.

(c) *Phase-in period.* (1) *Exclusion amount.* For purposes of this paragraph (c), exclusion amount is defined as the amount of risk-weighted assets excluded in paragraph (b)(1) of this section as of the implementation date.

(2) *Risk-weighted assets for the third and fourth quarters.* A bank that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (b)(1) of this section may, for the third and fourth quarters after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates within those quarters, exclude from risk-weighted assets 50 percent of the exclusion amount, provided that the bank may not include in risk-weighted assets pursuant to this paragraph an amount less than the aggregate risk-weighted assets calculated pursuant to paragraph (b)(2) of this section 81.

(3) *Inclusion of ALLL in Tier 2 capital for the third and fourth quarters.* A bank that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (c)(2) of this section may, for the phase-in period, include in Tier 2 capital 50 percent of the inclusion amount it included in Tier 2 capital during the exclusion period, notwithstanding the limit on including ALLL in Tier 2 capital in section 13(a)(2) and (b) of this Appendix.

(d) *Implicit recourse limitation.* Notwithstanding any other provision in this section 81, assets held by a VIE to which the bank has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons stated in the common preamble, the Board of Governors of Federal Reserve System amends parts 208 and 225 of Chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 7. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o) 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3905–3909; 15 U.S.C. 78b, 78I(b), 78I(i), 780–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

■ 8. In appendix A to part 208:

■ A. Amend section I by adding a new paragraph immediately prior to the last undesignated paragraph;

■ B. Amend paragraph c. of section II.A.1 by removing the last sentence;

■ C. Remove paragraph b. of section III.B.6 and redesignate paragraph c. of section III.B.6 as paragraph b.;

■ D. Add new section IV.C after attachment 1.

The additions and revisions read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

I. * * *

The Federal Reserve may determine that the regulatory capital treatment for a bank's exposure or other relationship to an entity not consolidated on the bank's balance sheet is not commensurate with the actual risk relationship of the bank to the entity. In making this determination, the Federal Reserve may require the bank to treat the entity as if it were consolidated onto the balance sheet of the bank for risk-based capital purposes and calculate the appropriate risk-based capital ratios accordingly, all as specified by the Federal Reserve.

* * * * *

IV. Minimum Supervisory Ratios and Standards

* * * * *

C. Optional Transition Provisions Related to the Implementation of Consolidation Requirements Under FAS 167

This section IV.C. provides optional transition provisions for a bank that is required for financial and regulatory reporting purposes, as a result of its implementation of Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167), to consolidate certain variable interest entities (VIEs) as defined under United States generally accepted accounting principles (GAAP). These transition provisions apply through the end of the fourth quarter following the date of a bank's implementation of FAS 167 (implementation date).

1. Exclusion Period

a. *Exclusion of risk-weighted assets for the first and second quarters.* For the first two quarters after the implementation date (exclusion period), including for the two calendar quarter-end regulatory report dates within those quarters, a bank may exclude from risk-weighted assets:

i. Subject to the limitations in section IV.C.3, assets held by a VIE, provided that the following conditions are met:

(1) The VIE existed prior to the implementation date,

(2) The bank did not consolidate the VIE on its balance sheet for calendar quarter-end regulatory report dates prior to the implementation date,

(3) The bank must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167, and

(4) The bank excludes all assets held by VIEs described in paragraphs C.1.a.i.(1) through (3) of this section IV.C.1.a.i; and

ii. Subject to the limitations in section IV.C.3, assets held by a VIE that is a consolidated ABCP program, provided that the following conditions are met:

(1) The bank is the sponsor of the ABCP program,

(2) Prior to the implementation date, the bank consolidated the VIE onto its balance sheet under GAAP and excluded the VIE's assets from the bank's risk-weighted assets, and

(3) The bank chooses to exclude all assets held by ABCP program VIEs described in paragraphs (1) and (2) of this section IV.C.1.a.ii.

b. *Risk-weighted assets during exclusion period.* During the exclusion period, including for the two-calendar quarter-end regulatory report dates within the exclusion period, a bank adopting the optional provisions in section IV.C.1.a must calculate risk-weighted assets for its contractual exposures to the VIEs referenced in section IV.C.1.a on the implementation date and include this calculated amount in its risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

c. *Inclusion of allowance for loan and lease losses in tier 2 capital for the first and second quarters.* During the exclusion period, including for the two calendar quarter-end

regulatory report dates within the exclusion period, a bank that excludes VIE assets from risk-weighted assets pursuant to section IV.C.1.a may include in tier 2 capital the full amount of the allowance for loan and lease losses (ALLL) calculated as of the implementation date that is attributable to the assets it excludes pursuant to section IV.C.1.a (inclusion amount). The amount of ALLL includable in tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth in section II.A.2.a. of this Appendix.

2. Phase-In Period

a. *Exclusion amount.* For purposes of this section IV.C., *exclusion amount* is defined as the amount of risk-weighted assets excluded in section IV.C.1.a. as of the implementation date.

b. *Risk-weighted assets for the third and fourth quarters.* A bank that excludes assets of consolidated VIEs from risk-weighted assets pursuant to section IV.C.1.a. may, for the third and fourth quarters after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates within those quarters, exclude from risk-weighted assets 50 percent of the exclusion amount, provided that the bank may not include in risk-weighted assets pursuant to this paragraph an amount less than the aggregate risk-weighted assets calculated pursuant to section IV.C.1.b.

c. *Inclusion of ALLL in tier 2 capital for the third and fourth quarters.* A bank that excludes assets of consolidated VIEs from risk-weighted assets pursuant to section IV.C.2.b. may, for the phase-in period, include in tier 2 capital 50 percent of the inclusion amount it included in tier 2 capital during the exclusion period, notwithstanding the limit on including ALLL in tier 2 capital in section II.A.2.a. of this Appendix.

3. Implicit recourse limitation.

Notwithstanding any other provision in this section IV.C., assets held by a VIE to which the bank has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

■ 9. In appendix F to part 208:

■ A. In section 1(c), redesignate paragraph (3) as paragraph (4), and add a new paragraph (3);

■ B. Remove section 42(l) and redesignate section 42(m) as section 42(l);

■ C. Add a new part IX and section 81 at the end of appendix F.

The additions read as follows:

Appendix F to Part 208—Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches

* * * * *

1. * * *

(c) * * *

* * * * *

(3) *Regulatory capital treatment of unconsolidated entities.* The Federal Reserve may determine that the regulatory capital treatment for a bank's exposure or other

relationship to an entity not consolidated on the bank's balance sheet is not commensurate with the actual risk relationship of the bank to the entity. In making this determination, the Federal Reserve may require the bank to treat the entity as if it were consolidated onto the balance sheet of the bank for risk-based capital purposes and calculate the appropriate risk-based capital ratios accordingly, all as specified by the Federal Reserve.

* * * * *

Part IX—Transition Provisions

Section 81—Optional Transition Provisions Related to the Implementation of, Consolidation Requirements Under FAS 167

(a) *Scope, applicability, and purpose.* This section 81 provides optional transition provisions for a State member bank that is required for financial and regulatory reporting purposes, as a result of its implementation of Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167), to consolidate certain variable interest entities (VIEs) as defined under GAAP. These transition provisions apply through the end of the fourth quarter following the date of a bank's implementation of FAS 167 (implementation date).

(b) *Exclusion period.*

(1) *Exclusion of risk-weighted assets for the first and second quarters.* For the first two quarters after the implementation date (exclusion period), including for the two calendar quarter-end regulatory report dates within those quarters, a bank may exclude from risk-weighted assets:

(i) Subject to the limitations in paragraph (d) of this section 81, assets held by a VIE, provided that the following conditions are met:

(A) The VIE existed prior to the implementation date,

(B) The bank did not consolidate the VIE on its balance sheet for calendar quarter-end regulatory report dates prior to the implementation date,

(C) The bank must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167, and

(D) The bank excludes all assets held by VIEs described in paragraphs (b)(1)(i)(A) through (C) of this section 81; and

(ii) Subject to the limitations in paragraph (d) of this section 81, assets held by a VIE that is a consolidated asset-backed commercial paper (ABCP) program, provided that the following conditions are met:

(A) The bank is the sponsor of the ABCP program,

(B) Prior to the implementation date, the bank consolidated the VIE onto its balance sheet under GAAP and excluded the VIE's assets from the bank's risk-weighted assets, and

(C) The bank chooses to exclude all assets held by ABCP program VIEs described in paragraphs (b)(1)(ii)(A) and (B) of this section 81.

(2) *Risk-weighted assets during exclusion period.* During the exclusion period, including for the two calendar quarter-end

regulatory report dates within the exclusion period, a bank adopting the optional provisions in paragraph (b) of this section must calculate risk-weighted assets for its contractual exposures to the VIEs referenced in paragraph (b)(1) of this section 81 on the implementation date and include this calculated amount in risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

(3) *Inclusion of ALLL in Tier 2 capital for the first and second quarters.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a bank that excludes VIE assets from risk-weighted assets pursuant to paragraph (b)(1) of this section 81 may include in Tier 2 capital the full amount of the ALLL calculated as of the implementation date that is attributable to the assets it excludes pursuant to paragraph (b)(1) of this section 81 (inclusion amount). The amount of ALLL includable in Tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth in section 13(a)(2) and (b) of this Appendix.

(c) *Phase-in period.*

(1) *Exclusion amount.* For purposes of this paragraph (c), exclusion amount is defined as the amount of risk-weighted assets excluded in paragraph (b)(1) of this section as of the implementation date.

(2) *Risk-weighted assets for the third and fourth quarters.* A bank that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (b)(1) of this section may, for the third and fourth quarters after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates within those quarters, exclude from risk-weighted assets 50 percent of the exclusion amount, provided that the bank may not include in risk-weighted assets pursuant to this paragraph an amount less than the aggregate risk-weighted assets calculated pursuant to paragraph (b)(2) of this section 81.

(3) *Inclusion of ALLL in Tier 2 capital for the third and fourth quarters.* A bank that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (c)(2) of this section may, for the phase-in period, include in Tier 2 capital 50 percent of the inclusion amount it included in Tier 2 capital during the exclusion period, notwithstanding the limit on including ALLL in Tier 2 capital in section 13(a)(2) and (b) of this Appendix.

(d) *Implicit recourse limitation.*

Notwithstanding any other provision in this section 81, assets held by a VIE to which the bank has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 10. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

- 11. In appendix A to part 225,
- A. Amend section I by adding a paragraph immediately prior to the last undesignated paragraph;
- B. Amend paragraph iii. of section II.A.1.c by removing the last sentence;
- C. Remove paragraph b. of section III.B.6 and redesignate paragraph c. of section III.B.6 as paragraph b.;
- D. Add new section IV.C.

The additions and revisions read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

I. * * *

The Federal Reserve may determine that the regulatory capital treatment for a banking organization's exposure or other relationship to an entity not consolidated on the banking organization's balance sheet is not commensurate with the actual risk relationship of the banking organization to the entity. In making this determination, the Federal Reserve may require the banking organization to treat the entity as if it were consolidated onto the balance sheet of the banking organization for risk-based capital purposes and calculate the appropriate risk-based capital ratios accordingly, all as specified by the Federal Reserve.

* * * * *

IV. * * *

C. Optional Transition Provisions Related to the Implementation of Consolidation Requirements under FAS 167

This section IV.C. provides optional transition provisions for a banking organization that is required for financial and regulatory reporting purposes, as a result of its implementation of Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167), to consolidate certain variable interest entities (VIEs) as defined under United States generally accepted accounting principles (GAAP). These transition provisions apply through the end of the fourth quarter following the date of a banking organization's implementation of FAS 167 (implementation date).

1. Exclusion Period

a. *Exclusion of risk-weighted assets for the first and second quarters.* For the first two quarters after the implementation date (exclusion period), including for the two calendar quarter-end regulatory report dates within those quarters, a banking organization may exclude from risk-weighted assets:

i. Subject to the limitations in section IV.C.3, assets held by a VIE, provided that the following conditions are met:

(1) The VIE existed prior to the implementation date,

(2) The banking organization did not consolidate the VIE on its balance sheet for

calendar quarter-end regulatory report dates prior to the implementation date,

(3) The banking organization must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167, and

(4) The banking organization excludes all assets held by VIEs described in paragraphs C.1.a.i. (1) through (3) of this section IV.C.1.a.i.; and

ii. Subject to the limitations in section IV.C.3, assets held by a VIE that is a consolidated ABCP program, provided that the following conditions are met:

(1) The banking organization is the sponsor of the ABCP program,

(2) Prior to the implementation date, the banking organization consolidated the VIE onto its balance sheet under GAAP and excluded the VIE's assets from the banking organization's risk-weighted assets, and

(3) The banking organization chooses to exclude all assets held by ABCP program VIEs described in paragraphs (1) and (2) of this section IV.C.1.a.ii.

b. *Risk-weighted assets during exclusion period.* During the exclusion period, including the two calendar quarter-end regulatory report dates during the exclusion period, a banking organization adopting the optional provisions in section IV.C.1.a must calculate risk-weighted assets for its contractual exposures to the VIEs referenced in section IV.C.1.a on the implementation date and include this calculated amount in its risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

c. *Inclusion of allowance for loan and lease losses in tier 2 capital for the first and second quarters.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a banking organization that excludes VIE assets from risk-weighted assets pursuant to section IV.C.1.a may include in tier 2 capital the full amount of the allowance for loan and lease losses (ALLL) calculated as of the implementation date that is attributable to the assets it excludes pursuant to section IV.C.1.a (inclusion amount). The amount of ALLL includable in tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth in section II.A.2.a of this Appendix.

2. Phase-In Period

a. *Exclusion amount.* For purposes of this section IV.C., *exclusion amount* is defined as the amount of risk-weighted assets excluded in section IV.C.1.a as of the implementation date.

b. *Risk-weighted assets for the third and fourth quarters.* A banking organization that excludes assets of consolidated VIEs from risk-weighted assets pursuant to section IV.C.1.a. may, for the third and fourth quarters after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates within those quarters, exclude from risk-weighted assets 50 percent of the exclusion amount, provided that the banking organization may not include in risk-weighted assets pursuant to this paragraph an

amount less than the aggregate risk-weighted assets calculated pursuant to section IV.C.1.b.

c. *Inclusion of ALLL in tier 2 capital for the third and fourth quarters.* A banking organization that excludes assets of consolidated VIEs from risk-weighted assets pursuant to section IV.C.2.b. may, for the phase-in period, include in tier 2 capital 50 percent of the inclusion amount it included in tier 2 capital during the exclusion period, notwithstanding the limit on including ALLL in tier 2 capital in section II.A.2.a. of this Appendix.

3. Implicit recourse limitation.

Notwithstanding any other provision in this section IV.C., assets held by a VIE to which the banking organization has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

■ 12. In appendix G to part 225,

■ A. In section 1(c), redesignate paragraph (3) as paragraph (4), and add a new paragraph (3);

■ B. Remove section 42(l) and redesignating section 42(m) as section 42(l);

■ C. Add a new part IX and section 81 at the end of appendix G.

The added text will read as follows:

Appendix G to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Internal-Ratings-Based and Advanced Measurement Approaches

* * * * *

1. * * *

(c) * * *

* * * * *

(3) Regulatory capital treatment of unconsolidated entities. The Federal Reserve may determine that the regulatory capital treatment for a bank holding company's exposure or other relationship to an entity not consolidated on the bank holding company's balance sheet is not commensurate with the actual risk relationship of the bank holding company to the entity. In making this determination, the Federal Reserve may require the bank holding company to treat the entity as if it were consolidated onto the balance sheet of the bank holding company for risk-based capital purposes and calculate the appropriate risk-based capital ratios accordingly, all as specified by the Federal Reserve.

* * * * *

Part IX—Transition Provisions

Section 81—Optional Transition Provisions Related to the Implementation of, Consolidation Requirements Under FAS 167

(a) *Scope, applicability, and purpose.* This section 81 provides optional transition provisions for a bank holding company that is required for financial and regulatory reporting purposes, as a result of its implementation of Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167), to consolidate certain variable interest

entities (VIEs) as defined under GAAP. These transition provisions apply through the end of the fourth quarter following the date of a bank holding company's implementation of FAS 167 (implementation date).

(b) *Exclusion period.*

(1) *Exclusion of risk-weighted assets for the first and second quarters.* For the first two quarters after the implementation date (exclusion period), including for the two calendar quarter-end regulatory report dates within those quarters, a bank holding company may exclude from risk-weighted assets:

(i) Subject to the limitations in paragraph (d) of this section 81, assets held by a VIE, provided that the following conditions are met:

(A) The VIE existed prior to the implementation date,

(B) The bank holding company did not consolidate the VIE on its balance sheet for calendar quarter-end regulatory report dates prior to the implementation date,

(C) The bank holding company must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167, and

(D) The bank holding company excludes all assets held by VIEs described in paragraphs (b)(1)(i)(A) through (C) of this section 81; and

(ii) Subject to the limitations in paragraph (d) of this section 81, assets held by a VIE that is a consolidated ABCP program, provided that the following conditions are met:

(A) The bank holding company is the sponsor of the ABCP program,

(B) Prior to the implementation date, the bank holding company consolidated the VIE onto its balance sheet under GAAP and excluded the VIE's assets from the bank holding company's risk-weighted assets, and

(C) The bank holding company chooses to exclude all assets held by ABCP program VIEs described in paragraphs (b)(1)(ii)(A) and (B) of this section 81.

(2) *Risk-weighted assets during exclusion period.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a bank holding company adopting the optional provisions in paragraph (b) of this section must calculate risk-weighted assets for its contractual exposures to the VIEs referenced in paragraph (b)(1) of this section 81 on the implementation date and include this calculated amount in risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

(3) *Inclusion of ALLL in Tier 2 capital for the first and second quarters.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a bank holding company that excludes VIE assets from risk-weighted assets pursuant to paragraph (b)(1) of this section 81 may include in Tier 2 capital the full amount of the ALLL calculated as of the implementation date that is attributable to the assets it excludes pursuant to paragraph (b)(1) of this section 81

(inclusion amount). The amount of ALLL includable in Tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth in section 13(a)(2) and (b) of this Appendix.

(c) *Phase-in period.*

(1) *Exclusion amount.* For purposes of this paragraph (c), exclusion amount is defined as the amount of risk-weighted assets excluded in paragraph (b)(1) of this section as of the implementation date.

(2) *Risk-weighted assets for the third and fourth quarters.* A bank holding company that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (b)(1) of this section may, for the third and fourth quarters after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates within those quarters, exclude from risk-weighted assets 50 percent of the exclusion amount, provided that the bank holding company may not include in risk-weighted assets pursuant to this paragraph an amount less than the aggregate risk-weighted assets calculated pursuant to paragraph (b)(2) of this section 81.

(3) *Inclusion of ALLL in Tier 2 capital for the third and fourth quarters.* A bank holding company that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (c)(2) of this section may, for the phase-in period, include in Tier 2 capital 50 percent of the inclusion amount it included in Tier 2 capital during the exclusion period, notwithstanding the limit on including ALLL in Tier 2 capital in section 13(a)(2) and (b) of this Appendix.

(d) *Implicit recourse limitation.*

Notwithstanding any other provision in this section 81, assets held by a VIE to which the bank holding company has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

Federal Deposit Insurance Corporation 12 CFR Chapter III Authority for Issuance

■ For the reasons stated in the common preamble, the Federal Deposit Insurance Corporation amends Part 325 of Chapter III of Title 12, Code of the Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

■ 13. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790, (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

■ 14. In Appendix A to part 325, revise section I.A.1.iii.(d) to read as follows:

Appendix A to Part 325—Statement of Policy on Risk Based Capital

* * * * *

I. * * *

A. * * *

1. * * *

iii. * * *

(d) Minority interests in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.(6)(ii) of this appendix A), and subsidiaries that are engaged in non-financial activities are not included in the bank's Tier 1 or total capital base if the bank's interest in the company or fund is held under one of the legal authorities listed in section II.B.(6)(ii) of this appendix A.

■ 15. Further amend Appendix A to part 325 in section II.A. by adding new paragraphs 4. and 5. as follows:

Appendix A to Part 325—Statement of Policy on Risk Based Capital

* * * * *

II. * * *

A. * * *

4. The Director of the Division of Supervision and Consumer Protection (DSC) may, on a case-by-case basis, determine that the regulatory capital treatment for an exposure or other relationship to an entity that is not subject to consolidation on the balance sheet is not commensurate with the risk of the exposure and the relationship of the bank to the entity. In making this determination, the Director of DSC may require the bank to treat the entity as if it were consolidated on the balance sheet of the bank for risk-based capital purposes and calculate the appropriate risk-based capital ratios accordingly.

5. Optional Transition Provisions Related to the Implementation of Consolidation Requirements Under FAS 167

Section II.A.5 of this appendix provides optional transition provisions for a State nonmember bank that is required for financial and regulatory reporting purposes, as a result of its implementation of Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167), to consolidate certain variable interest entities (VIEs) as defined under United States generally accepted accounting principles (GAAP). These transition provisions apply through the end of the fourth quarter following the date of a bank's implementation of FAS 167 (implementation date).

i. *Exclusion period.*

(a) *Exclusion of risk-weighted assets for the first and second quarters.* For the first two quarters after the implementation date (exclusion period), including for the two calendar quarter-end regulatory report dates within those quarters, a bank may exclude from risk-weighted assets:

(1) Subject to the limitations in paragraph iii. of this section II.A.5, assets held by a VIE, provided that the following conditions are met:

(i) The VIE existed prior to the implementation date,

(ii) The bank did not consolidate the VIE on its balance sheet for calendar quarter-end regulatory report dates prior to the implementation date,

(iii) The bank must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167, and

(iv) The bank excludes all assets held by VIEs described in paragraphs i.(a)(1)(i) through (iii) of this section II.A.5; and

(2) Subject to the limitations in paragraph iii. of this section II.A.5, assets held by a VIE that is a consolidated asset-backed commercial paper (ABCP) program, provided that the following conditions are met:

(i) The bank is the sponsor of the ABCP program,

(ii) Prior to the implementation date, the bank consolidated the VIE onto its balance sheet under GAAP and excluded the VIE's assets from the bank's risk-weighted assets, and

(iii) The bank chooses to exclude all assets held by ABCP program VIEs described in paragraphs i.(a)(2)(i) and (ii) of this section II.A.5.

(b) *Risk-weighted assets during exclusion period.* During the exclusion period, including the two calendar quarter-end regulatory report dates within the exclusion period, a bank adopting the optional provisions of this paragraph i. of this section II.A.5 must calculate risk-weighted assets for its contractual exposures to the VIEs referenced in paragraph i.(a) of this section II.A.5 on the implementation date and include this calculated amount in its risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

(c) *Inclusion of ALLL in Tier 2 capital for the first and second quarters.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a bank that excludes VIE assets from risk-weighted assets pursuant to paragraph i.(a) of this section II.A.5 may include in Tier 2 capital the full amount of the allowance for loan and lease losses (ALLL) calculated as of the implementation date that is attributable to the assets it excludes pursuant to paragraph i.(a) of this section II.A.5 (inclusion amount). The amount of ALLL includable in Tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth in paragraph i. of section I.A.2.

ii. *Phase-in period.*

(a) *Exclusion amount.* For purposes of this paragraph ii. of this section II.A.5, exclusion amount is defined as the amount of risk-weighted assets excluded in paragraph i.(a) of this section II.A.5 as of the implementation date.

(b) *Risk-weighted assets for the third and fourth quarters.* A bank that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph i.(a) of this section II.A.5 may, for the third and fourth quarters after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates

within those quarters, exclude from risk-weighted assets 50 percent of the exclusion amount, provided that the bank may not include in risk-weighted assets pursuant to this paragraph an amount less than the aggregate risk-weighted assets calculated pursuant to paragraph i.(b) of this section II.A.5.

(c) *Inclusion of ALLL in Tier 2 capital for the third and fourth quarters.* A bank that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph ii.(b) of this section II.A.5 may, for the phase-in period, include in Tier 2 capital 50 percent of the inclusion amount it included in Tier 2 capital during the exclusion period, notwithstanding the limit on including ALLL in Tier 2 capital in paragraph i. of section I.A.2.

iii. *Implicit recourse limitation.*

Notwithstanding any other provision in this section II.A.5, assets held by a VIE to which the bank has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

■ 16. Further amend Appendix A to part 325 by removing section II.B.6.b. and redesignating section II.B.6.c. as section II.B.6.b.

■ 17. In Appendix D to part 325, amend the Table of Contents by adding a new Part IX and Section 81 as follows:

Appendix D to Part 325—Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches

Part I—General Provisions

* * * * *

Part IX—Transition Provisions

Section 81—Optional Transition Provisions Related to the Implementation of Consolidation Requirements Under FAS 167

■ 18. Further amend Appendix D to part 325 in section 1(c) by redesignating paragraph (3) as paragraph (4) and adding new paragraph (3) as follows:

Appendix D to Part 325—Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches

Part I. * * *

*Section 1. * * **

(c) * * *

(3) The FDIC may, on a case-by-case basis, determine that the regulatory capital treatment for an exposure or other relationship to an entity that is not subject to consolidation on the balance sheet is not commensurate with the risk of the exposure and the relationship of the bank to the entity. In making this determination, the FDIC may require the bank to treat the entity as if it were consolidated on the balance sheet of the bank for risk-based capital purposes and calculate the appropriate risk-based capital ratios accordingly.

* * * * *

■ 19. Further amend Appendix D to part 325 by removing section 42(l) and redesignating section 42(m) as section 42(l).

■ 20. Further amend Appendix D to part 325 by adding a new part IX and section 81 to read as follows:

Appendix D to Part 325—Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches

* * * * *

Part IX—Transition Provisions

Section 81—Optional Transition Provisions Related to the Implementation of Consolidation Requirements Under FAS 167

(a) *Scope, applicability, and purpose.* This section 81 provides optional transition provisions for a State nonmember bank that is required for financial and regulatory reporting purposes, as a result of its implementation of Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167), to consolidate certain variable interest entities (VIEs) as defined under GAAP. These transition provisions apply through the end of the fourth quarter following the date of a bank's implementation of FAS 167 (implementation date).

(b) *Exclusion period.*

(1) *Exclusion of risk-weighted assets for the first and second quarters.* For the first two quarters after the implementation date (exclusion period), including for the two calendar quarter-end regulatory report dates within those quarters, a bank may exclude from risk-weighted assets:

(i) Subject to the limitations in paragraph (d) of this section 81, assets held by a VIE, provided that the following conditions are met:

(A) The VIE existed prior to the implementation date,

(B) The bank did not consolidate the VIE on its balance sheet for calendar quarter-end regulatory report dates prior to the implementation date,

(C) The bank must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167, and

(D) The bank excludes all assets held by VIEs described in paragraphs (b)(1)(i)(A) through (C) of this section 81; and

(ii) Subject to the limitations in paragraph (d) of this section 81, assets held by a VIE that is a consolidated ABCP program, provided that the following conditions are met:

(A) The bank is the sponsor of the ABCP program,

(B) Prior to the implementation date, the bank consolidated the VIE onto its balance sheet under GAAP and excluded the VIE's assets from the bank's risk-weighted assets, and

(C) The bank chooses to exclude all assets held by ABCP program VIEs described in paragraphs (b)(1)(ii)(A) and (B) of this section 81.

(2) *Risk-weighted assets during exclusion period.* During the exclusion period,

including for the two calendar quarter-end regulatory report dates within the exclusion period, a bank adopting the optional provisions in paragraph (b) of this section must calculate risk-weighted assets for its contractual exposures to the VIEs referenced in paragraph (b)(1) of this section 81 on the implementation date and include this calculated amount in risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

(3) *Inclusion of ALLL in Tier 2 capital for the first and second quarters.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a bank that excludes VIE assets from risk-weighted assets pursuant to paragraph (b)(1) of this section 81 may include in Tier 2 capital the full amount of the ALLL calculated as of the implementation date that is attributable to the assets it excludes pursuant to paragraph (b)(1) of this section 81 (inclusion amount). The amount of ALLL includable in Tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth in section 13(a)(2) and (b) of this Appendix.

(c) *Phase-in period.*

(1) *Exclusion amount.* For purposes of this paragraph (c), exclusion amount is defined as the amount of risk-weighted assets excluded in paragraph (b)(1) of this section as of the implementation date.

(2) *Risk-weighted assets for the third and fourth quarters.* A bank that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (b)(1) of this section may, for the third and fourth quarters after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates within those quarters, exclude from risk-weighted assets 50 percent of the exclusion amount, provided that the bank may not include in risk-weighted assets pursuant to this paragraph an amount less than the aggregate risk-weighted assets calculated pursuant to paragraph (b)(2) of this section 81.

(3) *Inclusion of ALLL in Tier 2 capital for the third and fourth quarters.* A bank that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (c)(2) of this section may, for the phase-in period, include in Tier 2 capital 50 percent of the inclusion amount it included in Tier 2 capital during the exclusion period, notwithstanding the limit on including ALLL in Tier 2 capital in section 13(a)(2) and (b) of this Appendix.

(d) *Implicit recourse limitation.*

Notwithstanding any other provision in this section 81, assets held by a VIE to which the bank has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

■ For reasons set forth in the common preamble, the Office of Thrift

Supervision amends part 567 of Chapter V of title 12 of the Code of Federal Regulations as follows:

PART 567—CAPITAL

■ 21. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

■ 22. Section 567.0 is amended by adding paragraph (c) to read as follows:

§ 567.0 Scope.

* * * * *

(c) *Optional transition provisions related to the implementation of consolidation requirements under FAS 167—(1) Scope, applicability, and purpose.* The section provides optional transition provisions for a savings association that is required for financial and regulatory reporting purposes, as a result of its implementation of Statement of Financial Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R) (referred to in this section as FAS 167), to consolidate certain variable interest entities (VIEs) as defined under United States generally accepted accounting principles (GAAP). These transition provisions apply through the end of the fourth quarter following the date of a savings association's implementation of FAS 167 (implementation date).

(2) *Exclusion period—(i) Exclusion of risk-weighted assets for first and second quarters.* For the first two quarters, after the implementation date (exclusion period), including for the two calendar quarter-end regulatory report dates within those quarters, a savings association may exclude from risk-weighted assets:

(A) Subject to the limitations in paragraph (c)(4) of this section, assets held by a VIE, provided that the following conditions are met:

(1) The VIE existed prior to the implementation date;

(2) The savings association did not consolidate the VIE on its balance sheet for calendar quarter-end regulatory report dates prior to the implementation date;

(3) The savings association must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167; and

(4) The savings association excludes all assets held by VIEs described in paragraphs (c)(2)(i)(A)(1) through (3) of this section.

(B) Subject to the limitations in paragraph (c)(4) of this section, assets held by a VIE that is a consolidated asset-backed commercial paper (ABCP)

program, provided that the following conditions are met:

(1) The savings association is the sponsor of the ABCP program,

(2) Prior to the implementation date, the savings association consolidated the VIE onto its balance sheet under GAAP and excluded the VIE's assets from the savings association's risk-weighted assets; and

(3) The savings association chooses to exclude all assets held by ABCP program VIEs described in paragraphs (c)(2)(i)(B)(i) and (ii) of this section.

(ii) *Risk-weighted assets during exclusion period.* During the exclusion period, including the two calendar quarter-end regulatory report dates within the exclusion period, a savings association adopting the optional provisions of paragraph (c)(2) of this section must calculate risk-weighted assets for its contractual exposures to the VIEs referenced in paragraph (c)(2)(i) on the implementation date and include this calculated amount in its risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

(iii) *Inclusion of Allowance for Loan and Lease Losses (ALLL) in tier 2 capital for the first and second quarters.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a savings association that excludes VIE assets from risk-weighted assets pursuant to paragraph (c)(2)(i) of this section may include in tier 2 capital the full amount of the allowance for loan and lease losses (ALLL) calculated as of the implementation date that is attributable to the assets it excludes pursuant to paragraph (c)(2)(i) of this section (inclusion amount). The amount of ALLL includable in tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth at § 567.5(b)(4).

(3) *Phase-in period—(i) Exclusion amount.* For purposes of this paragraph, exclusion amount is defined as the amount of risk-weighted assets excluded in paragraph (c)(2)(i) of this section as of the implementation date.

(ii) *Risk-weighted assets for the third and fourth quarters.* A savings association that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (c)(2)(i) of this section may, for the third and fourth quarters, after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates within those quarters exclude from risk-weighted assets 50 percent of the exclusion

amount, provided that the savings association may not include in risk-weighted assets pursuant to this paragraph an amount less than the aggregate risk-weighted assets calculated pursuant to paragraph (b)(2)(ii) of this section.

(iii) *Inclusion of ALLL in Tier 2 capital for the third and fourth quarters.* A savings association that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (c)(3)(ii) of this section may, for the phase-in period, include in tier 2 capital 50 percent of the inclusion amount it included in tier 2 capital during the exclusion period, notwithstanding the limit on including ALLL in tier 2 capital in § 567.5(b)(4).

(4) *Implicit recourse limitation.* Notwithstanding any other provision in § 567.0(c), assets held by a VIE to which a savings association has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

■ 23. Section 567.5 (a)(1)(iii) is revised to read as follows:

§ 567.5 Components of capital.

* * * * *

(a) * * *

(1) * * *

(iii) Minority interests in the equity accounts of the subsidiaries that are fully consolidated.

* * * * *

■ 24. Section 567.6 is amended by revising paragraph (a)(3) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

* * * * *

(a) * * *

(3) If a savings association has multiple overlapping exposures (such as a program-wide credit enhancement and a liquidity facility) to an ABCP program that is not consolidated for risk-based capital purposes, the savings association is not required to hold duplicative risk-based capital under this part against the overlapping position. Instead, the savings association should apply to the overlapping position the applicable risk-based capital treatment that results in the highest capital charge.

* * * * *

■ 25. Section 567.11 is amended by redesignating paragraph (c)(3) as paragraph (c)(4), and adding new paragraphs (c)(3) and (d) to read as follows:

§ 567.11 Reservation of authority.

* * * * *

(c) * * *

(3) OTS may find that the capital treatment for an exposure to a transaction not subject to consolidation on the savings association's balance sheet does not appropriately reflect the risks imposed on the savings association. Accordingly, OTS may require the savings association to treat the transaction as if it were consolidated on the savings association's balance sheet. OTS will look to the substance of and risk associated with the transaction as well as other relevant factors in determining whether to require such treatment and in calculating risk based capital as OTS deems appropriate.

* * * * *

(d) In making a determination under this paragraph (c) of this section, the OTS will notify the savings association of the determination and solicit a response from the savings association. After review of the response by the savings association, the OTS shall issue a final supervisory decision regarding the determination made under paragraph (c) of this section.

■ 26. In Appendix C to part 567, amend the Table of Contents by adding a new Part IX and Section 81 as follows:

Appendix C to Part 567—Risk-Based Capital Requirements—Internal-Ratings-Based and Advanced Measurement Approaches

* * * * *

Part IX—Transition Provisions

Section 81—Optional Transition Provisions Related to the Implementation of Consolidation Requirements Under FAS 167

■ 27. Further amend Appendix C to part 567 by redesignating paragraph (c)(3) as paragraph (c)(4) and adding a new paragraph (c)(3) to Part 1, Section 1 as follows:

Appendix C to Part 567—Risk-Based Capital Requirements—Internal-Ratings-Based and Advanced Measurement Approaches

* * * * *

(c) * * *

(3) *Regulatory capital treatment of unconsolidated entities.* OTS may find that the capital treatment for an exposure to a transaction not subject to consolidation on the savings association's balance sheet does not appropriately reflect the risks imposed on the savings association. Accordingly, OTS may require the savings association to treat the transaction as if it were consolidated on the savings association's balance sheet. OTS will look to the substance of and risk associated with the transaction as well as other relevant factors in determining whether to require such treatment and in calculating risk-based capital as OTS deems appropriate.

* * * * *

■ 28. Further amend appendix C to part 567 by removing section 42(l) and redesignating section 42(m) as section 42(l).

■ 29. Further amend Appendix C to part 567 by adding a new part IX and section 81 to read as follows:

Appendix C to Part 567—Risk-Based Capital Requirements: Internal-Ratings-Based and Advanced Measurement Approaches

* * * * *

Part IX—Transition Provisions

Section 81—Optional Transition Provisions Related to the Implementation of Consolidation Requirements Under FAS 167

(a) *Scope, applicability, and purpose.* This section 81 provides optional transition provisions for a savings association that is required for financial and regulatory reporting purposes, as a result of its implementation of Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167), to consolidate certain variable interest entities (VIEs) as defined under GAAP. These transition provisions apply through the end of the fourth quarter following the date of a savings association's implementation of FAS 167 (implementation date).

(b) *Exclusion period.*

(1) *Exclusion of risk-weighted assets for the first and second quarters.* For the first two quarters after the implementation date (exclusion period), including for the two calendar quarter-end regulatory report dates within those quarters, a savings association may exclude from risk-weighted assets:

(i) Subject to the limitations in paragraph (d) of section 81, assets held by a VIE, provided that the following conditions are met:

(A) The VIE existed prior to the implementation date,

(B) The savings association did not consolidate the VIE on its balance sheet for calendar quarter-end regulatory report dates prior to the implementation date,

(C) The savings association must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167, and

(D) The savings association excludes all assets held by VIEs described in paragraphs (b)(1)(i)(A) through (C) of this section 81; and

(ii) Subject to the limitations in paragraph (d) of this section 81, assets held by a VIE that is a consolidated ABCP program, provided that the following conditions are met:

(A) The savings association is the sponsor of the ABCP program,

(B) Prior to the implementation date, the savings association consolidated the VIE onto its balance sheet under GAAP and excluded the VIE's assets from the savings association's risk-weighted assets, and

(C) The savings association chooses to exclude all assets held by ABCP program VIEs described in paragraphs (b)(1)(ii)(A) and (B) of this section 81.

(2) *Risk-weighted assets during exclusion period.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a savings association adopting the optional provisions in paragraph (b) of this section must calculate risk-weighted assets for its contractual exposures to the VIEs referenced in paragraph (b)(1) of this section 81 on the implementation date and include this calculated amount in risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

(3) *Inclusion of ALLL in tier 2 capital for the first and second quarters.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a savings association that excludes VIE assets from risk-weighted assets pursuant to paragraph (b)(1) of this section 81 may include in tier 2 capital the full amount of the ALLL calculated as of the implementation date that is attributable to the assets it excludes pursuant to paragraph (b)(1) of this section 81 (inclusion amount). The amount of ALLL includable in tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth in section 13(A)(2) and 13(b) of this Appendix.

(c) *Phase-in period.*

(1) *Exclusion amount.* For purposes of this paragraph (c), exclusion amount is defined as the amount of risk-weighted assets excluded in paragraph (b)(1) of this section as of the implementation date.

(2) *Risk-weighted assets for the third and fourth quarters.* A savings association that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (b)(1) of this section may, for the third and fourth quarters after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates within those quarters, exclude from risk-weighted assets 50 percent of the exclusion amount, provided that the savings association may not include in risk-weighted assets pursuant to this paragraph an amount less than the aggregate risk-weighted assets calculated pursuant to paragraph (b)(2) of this section 81.

(3) *Inclusion of ALLL in tier 2 capital for the third and fourth quarters.* A savings association that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (c)(2) of this section may, for the phase-in period, include in tier 2 capital 50 percent of the inclusion amount it included in tier 2 capital, during the exclusion period, notwithstanding the limit on including ALLL in tier 2 capital in section 13(a)(2) and 13(b) of this Appendix.

(d) *Implicit recourse limitation.*

Notwithstanding any other provision in this section 81, assets held by a VIE to which the savings association has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

Dated: January 7, 2010.

John C. Dugan,

Comptroller of Currency.

By Order of the Board of Governors of the
Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, at this 17th day
of December 2009.

By order of the Board of Directors.

Robert E. Feldman,

Executive Secretary.

Federal Deposit Insurance Corporation.

Dated: December 18, 2009.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. 2010-825 Filed 1-27-10; 8:45 am]

**BILLING CODE 6720-01-P; 6210-01-P; 6714-01-P;
6720-01-P**



Federal Register

**Thursday,
January 28, 2010**

Part III

Department of Health and Human Services

**Health Resources and Services
Administration**

45 CFR Part 60
**National Practitioner Data Bank for
Adverse Information on Physicians and
Other Health Care Practitioners:
Reporting on Adverse and Negative
Actions; Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

45 CFR Part 60

RIN 0906-AA57

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Reporting on Adverse and Negative Actions

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises existing regulations under sections 401 through 432 of the Health Care Quality Improvement Act of 1986, governing the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, to incorporate statutory requirements under section 1921 of the Social Security Act, as amended by section 5(b) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (MMPPPA), and as amended by the Omnibus Budget Reconciliation Act of 1990 (OBRA).

The MMPPPA, along with certain additional provisions in the OBRA, was designed to protect program beneficiaries from unfit health care practitioners, and otherwise improve the anti-fraud provisions of Medicare and State health care programs. Section 1921, the statutory authority upon which this regulatory action is based, requires each State to adopt a system of reporting to the Secretary of Health and Human Services (the Secretary) certain adverse licensure actions taken against health care practitioners and health care entities licensed or otherwise authorized by a State (or a political subdivision thereof) to provide health care services. It also requires each State to report any negative actions or findings that a State licensing authority, peer review organization, or private accreditation entity has concluded against a health care practitioner or health care entity.

DATES: This rule is effective March 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl Gray, Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration (HRSA), Parklawn Building, 5600 Fishers Lane, Room 8-103, Rockville, MD 20857; telephone number: (301) 443-2300.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Health Care Quality Improvement Act of 1986

The National Practitioner Data Bank (NPDB) was established by the Health Care Quality Improvement Act (HCQIA) of 1986, as amended (42 U.S.C. 11101 *et seq.*). The NPDB contains reports of adverse licensure actions against physicians and dentists (including revocations, suspensions, reprimands, censures, probations, and surrenders for quality of care purposes only); adverse clinical privilege actions against physicians and dentists; adverse professional society membership actions against physicians and dentists; Drug Enforcement Administration (DEA) adverse actions; Department of Health and Human Services (HHS), Office of the Inspector General (OIG) Medicare and Medicaid exclusions; and medical malpractice payments made for the benefit of any health care practitioner. Groups that have access to this information include hospitals, other health care entities that conduct peer review and provide health care services, State Medical or Dental Boards and other health care practitioner State boards. Individual practitioners can self-query. The reporting of information under the NPDB is limited to medical malpractice payers, State Medical and Dental Boards, DEA, HHS OIG, professional societies with formal peer review, and hospitals and other health care entities (such as health maintenance organizations).

B. Section 1921 of the Social Security Act

On March 21, 2006, the Health Resources and Services Administration published a proposed rule in the **Federal Register** (71 FR 14135) designed to implement section 1921 of the Social Security Act (herein referred to as section 1921), as amended by section 5(b) of the MMPPPA, and as amended by the OBRA. Section 1921 expands the scope of the NPDB. Section 1921 requires each State to adopt a system of reporting to the Secretary certain adverse licensure actions taken against health care practitioners and health care entities by any authority of the State responsible for the licensing of such practitioners or entities. It also requires each State to report any negative action or finding that a State licensing authority, a peer review organization, or a private accreditation entity has finalized against a health care practitioner or entity.

Groups that have access to this information include all organizations eligible to query the NPDB under the HCQIA (hospitals, other health care entities that conduct peer review and provide health care services, State Medical or Dental Boards and other health care practitioner State boards), other State licensing authorities, agencies administering Federal health care programs, including private entities administering such programs under contract, State agencies administering or supervising the administration of State health care programs, State Medicaid Fraud Control Units, and certain law enforcement agencies, and utilization and quality control peer review organizations (referred to as QIOs) as defined in Part B of title XI of the Social Security Act and appropriate entities with contracts under section 1154(a)(4)(C) of the Social Security Act. Individual health care practitioners and entities can self-query. The reporting of information under section 1921 is limited to State licensing and certification authorities, peer review organizations, and private accreditation entities. Section 1921 requires the Secretary to provide for the maximum appropriate coordination in the implementation of its reporting requirements with those of section 422 of the HCQIA.

C. Section 1128E of the Social Security Act

The reporting requirements of both section 422 of the HCQIA and section 1921 overlap with the requirements under section 1128E of the Social Security Act (herein referred to as section 1128E), as added by section 221(a) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. Section 1128E directs the Secretary to establish and maintain a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers or practitioners. The statute requires the Secretary to avoid duplicating the reporting requirements established for the NPDB. This data bank is known as the Healthcare Integrity and Protection Data Bank (HIPDB). The HIPDB began collecting reports in November 1999 concerning actions taken on or after August 21, 1996.

D. Distinctions Between the NPDB and the HIPDB

Although section 422 of the HCQIA and sections 1921 and 1128E have overlapping components, they have unique elements, including differences

in types of reportable adverse actions as well as differences in types of individuals or entities with access to the information. For example, private-sector hospitals have access to information reported under the HCQIA and section 1921, but not under section 1128E. The two tables below illustrate the similarities and differences among the HCQIA, section 1921, and section 1128E. Table 1, Description of Statutory Provisions, summarizes the specific provisions of each of the three statutes.

Table 2, Description of Data Banks, compares the HIPDB with the NPDB (as expanded by section 1921).

Section 1921 expands State reporting of licensure actions taken against physicians and dentists to the NPDB. This expansion matches the State reporting requirements to the HIPDB under section 1128E. Currently, the HCQIA limits NPDB reporting by medical and dental licensing authorities only to those adverse actions related to professional competence or professional

conduct, but these authorities must report all actions to the HIPDB. The change will make the reporting of adverse actions by all State licensure and certification authorities nearly identical for both the NPDB and HIPDB. No current NPDB reporting requirements will be changed for hospitals, other health care entities, professional societies, DEA, HHS OIG, or medical malpractice payers.

BILLING CODE 4165-15-P

Table 1: Description of Statutory Provisions

HCQIA (NPDB)	SECTION 1921 (NPDB)	SECTION 1128E (HIPDB)
WHO REPORTS? - Medical malpractice payers - Boards of Medical/Dental Examiners - Hospitals - Other health care entities - Professional societies with formal peer review - DEA - HHS OIG	WHO REPORTS? - State medical, dental and other health care practitioner licensing boards - State health care entity licensing boards - Peer review organizations - Private accreditation organizations	WHO REPORTS? - Federal and State Government Agencies - Health Plans
WHAT INFORMATION IS AVAILABLE? - Medical malpractice payments - Adverse licensure actions (physicians/dentist) -- revocation, suspension, reprimand, probation, surrender, censure - Adverse clinical privileges actions (primarily physicians/dentists) - Adverse professional society membership (primarily physicians/dentists) - Adverse Actions against DEA Certification - Medicare Exclusions	WHAT INFORMATION IS AVAILABLE? - Any adverse licensure actions (practitioners/entities) -- revocation, reprimand, censure, suspension, probation -- any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction -- any other loss of the license - Any negative action or finding by a State licensing authority, peer review organization, or private accreditation organization concluded against a health care practitioner or entity	WHAT INFORMATION IS AVAILABLE? - Licensing and certification actions (practitioners, providers, and suppliers) - revocation, reprimand, suspension (including length), censure, probation; any other loss of license, or right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by voluntary surrender, non-renewability, or otherwise and; any other negative action or finding that is publicly available information - Health care-related civil judgments (practitioners, providers, and suppliers) - Health care-related criminal convictions (practitioners, providers, and suppliers) - Exclusions from Federal or State health care programs (practitioners, providers, and suppliers) - Other adjudicated actions or decisions (practitioners, providers, and suppliers)
WHO CAN QUERY? - Hospitals - Other health care entities with formal peer review - Professional societies with formal peer review - Boards of Medical/Dental Examiners - Other health care practitioners - State licensing boards - Plaintiff's attorney/<i>pro se</i> plaintiffs (limited circumstances) - Health care practitioners (self-query) - Researchers (statistical data only)	WHO CAN QUERY? - Hospitals and other health care entities (HCQIA) - Professional societies with formal peer review - State medical, dental and other health care practitioner/entity licensing boards - Agencies administering Federal health care programs, or their contractors - State agencies administering State health care programs - Quality Improvement Organizations - State Medicaid Fraud Control Units - U.S. Comptroller General - U.S. Attorney General and other law enforcement - Health care practitioners/entities (self-query) - Researchers (statistical data only)	WHO CAN QUERY? - Federal and State Government Agencies - Health Plans - Health care practitioners/providers/ suppliers (self-query) - Researchers (statistical data only)

Table 2: Description of Data Banks

HIPDB (1128E)	Expanded NPDB (HCQIA and 1921)
Who Reports? ▪ Federal and State Government Agencies ▪ Health Plans What Information is Available? ▪ Licensing and certification actions (practitioners, providers, and suppliers) revocation, reprimand, suspension (including length), censure, probation voluntary surrender, any other negative action or finding by a Federal or State licensing or certification agency that is publicly available information ▪ Health care-related civil judgments (practitioners, providers, and suppliers) ▪ Health care-related criminal convictions (practitioners, providers and suppliers) ▪ Exclusions from Federal or State health care programs (practitioners, providers, and suppliers) ▪ Other adjudicated actions or decisions (practitioners, providers, and suppliers) Who Can Query? ▪ Federal and State Government Agencies ▪ Health Plans ▪ Health care practitioners/providers/ suppliers (self-query) ▪ Researchers (statistical data only)	Who Reports? ▪ Medical malpractice payers ▪ State health care practitioner licensing and certification authorities (including medical and dental boards) ▪ Hospitals ▪ Other health care entities with formal peer review (HMOs, group practices, managed care organizations) ▪ Professional societies with formal peer review ▪ State entity licensing and certification authorities ▪ Peer review organizations ▪ Private accreditation organizations ▪ DEA ▪ HHS OIG What Information is Available? ▪ Medical malpractice payments (all health care practitioners) ▪ Any adverse licensure action (all practitioners or entities) -revocation, reprimand, censure, suspension, probation -any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction -any other loss of license ▪ Adverse clinical privileging actions ▪ Adverse professional society membership actions ▪ Any negative action or finding by a State licensing or certification authority ▪ Peer review organization negative actions or findings against a health care practitioner ▪ Private accreditation organization negative actions or findings against a health care or entity ▪ Adverse Actions against DEA Certification ▪ Medicare Exclusions Who Can Query? ▪ Hospitals ▪ Other health care entities, with formal peer review ▪ Professional societies with formal peer review ▪ State health care practitioner licensing and certification authorities (including medical and dental boards) ▪ State entity licensing and certification authorities* ▪ Agencies or contractors administering Federal health care programs* ▪ State agencies administering State health care programs* ▪ State Medicaid Fraud Control Units* ▪ U.S. Comptroller General* ▪ U.S. Attorney General and other law enforcement* ▪ Health care practitioners and entities (self query) ▪ Plaintiff's attorney/<i>pro se</i> plaintiffs (under limited circumstances)** ▪ Quality Improvement Organizations* ▪ Researchers (statistical data only) ▪ DEA ▪ HHS OIG *eligible to receive only those reports authorized by section 1921. ** eligible to receive only those reports authorized by HCQIA

E. Maximum Coordination Between the NPDB and the HIPDB

Section 1921 requires the Secretary to provide for the maximum appropriate coordination in the implementation of its reporting requirements with those of section 422 of the HCQIA. The Secretary is implementing these regulations in a manner to avoid the need for an entity that must report information to both the NPDB and the HIPDB to file two reports. We have made significant efforts to develop these regulations in a manner that minimizes the burden on reporters. Therefore, reporters responsible for reporting the final adverse actions to both the NPDB and HIPDB will be required only to submit one report per action, provided that reporting is made through the Department's Web-based system that will sort the appropriate actions into the HIPDB, the NPDB or both. The required adjustments to the reporting system are made easier because both Data Banks are operated through a consolidated electronic system. For consistency and clarity, we have made minor edits to the regulations. For example, we replaced references to "the Data Bank" with "the NPDB" throughout the regulations, and modified references to types of report subjects who may dispute the accuracy of a report to include health care entities.

II. Summary of the Proposed Rule

The proposed regulations published on March 21, 2006, were developed to revise existing NPDB regulations at 45 CFR part 60 by adding section 1921 requirements for reporting of specific data elements to and procedures for obtaining this information from the NPDB. Certain sections of the existing NPDB regulations are consistent with section 1921 requirements. Specifically, the following provisions apply to NPDB and the section 1921 component of NPDB: (1) The provisions in § 60.6, pertaining to reporting errors, omissions, and revisions to an action previously reported to the NPDB; (2) the confidentiality provisions in the redesignated § 60.15 (formerly § 60.13); and (3) the provisions in the redesignated § 60.16 (formerly § 60.14), regarding procedures for disputing the accuracy of information in the NPDB. The significant section 1921 additions are described below and are listed according to the sections of the regulations that they affect.

• § 60.3 *Definitions.*

In the proposed rule, we set forth definitions for the statutory terms "formal proceeding," "negative action or finding," "peer review organization,"

"private accreditation entity," "Quality Improvement Organization," and "voluntary surrender." Because of the statutory distinctions between peer review organizations and QIOs and differences in the missions of those organizations, we proposed to exclude QIOs from the definition of the term "peer review organization." We also proposed definitions for certain terms established in HIPDB regulations to enhance coordination between the NPDB and the HIPDB in areas where overlapping requirements exist. These terms are "affiliated or associated," "organization name," and "organization type."

• § 60.5 *When information must be reported.*

The proposed regulations sought to amend this section of the existing NPDB regulations by:

1. Revising the introductory text of this section to include references to the newly added §§ 60.9 and 60.10 and redesignated § 60.11;
2. Revising paragraph (b), "Licensure Actions (§ 60.8 and § 60.9)," to refer specifically to the State Board of Medical Examiners and to clarify the requirements made in new § 60.9;
3. Revising the reference to "§ 60.9" in the title and the third sentence of paragraph (d) to read "§ 60.11;" and
4. Adding a new paragraph, "Negative Action or Finding (§ 60.10)," to provide a new category of actions that are to be reported in accordance with section 1921.

• § 60.7 *Reporting medical malpractice payments.*

We revised paragraph (c) of this section to link the potential civil money penalty for each violation of the NPDB's confidentiality provisions to the amount set in 42 CFR 1003.103(c), which establishes the amount of a civil money penalty that may be imposed by the Inspector General for such a violation. Currently this section authorizes a civil money penalty of up to \$11,000 for each violation.

• § 60.8 *Reporting licensure actions taken by Boards of Medical Examiners.*

For consistency with reporting requirements for States in the newly proposed § 60.9, we proposed to revise paragraph (b)(10) of this section to require the reporting of the description of an action taken by a Board to include the duration of a non-permanent action.

• § 60.9 *Reporting licensure actions taken by States. (New)*

We proposed to redesignate the current § 60.9 as § 60.11, and add a new § 60.9 to implement the reporting requirements of section 1921. In proposed § 60.9, we addressed the reporting of licensure actions taken by

State licensing authorities resulting from a formal proceeding. We proposed to include any formal or official proceeding held before the authority, organization or entity taking the action to provide maximum flexibility.

Section 1921 specifically requires the reporting of a health care practitioner who, or entity that, voluntarily surrenders a license. Based on extensive discussions with various State licensing authorities, we have been advised that the voluntary surrender and non-renewal of licensure are used by Federal and State health care programs as a means to exclude questionable health care practitioners and entities from participation. These voluntary surrenders and non-renewal actions, if not reported to the NPDB, would result in allowing health care practitioners or entities to move from State-to-State without detection. We also recognize that many voluntary surrenders are not a result of the types of adverse actions that are intended for inclusion in the NPDB. Therefore, we proposed that voluntary surrenders and licensure non-renewals due to non-payment of licensure fees, changes to inactive status, and retirements be excluded from reporting to the NPDB unless they are taken in combination with a revocation, suspension, reprimand, censure, or probation, in which case they would be reportable.

We proposed defining the phrase "any negative action or finding" by a State licensing authority to mean any action or finding that is publicly available and rendered by a licensing or certification authority. The definition excluded administrative fines or citations, and corrective action plans, unless they are: (1) Connected to the delivery of health care services and (2) taken in conjunction with other licensure or certification actions.

Reportable actions, by statute, must be based on the result of formal proceedings. Thus, events unrelated to such proceedings would be excluded.

We also proposed a list of "mandatory" data elements, as well as other data elements that should be reported to the NPDB "if known."

• § 60.10 *Reporting negative actions or findings taken by peer review organizations or private accreditation entities. (New)*

We proposed to redesignate the current § 60.10 as § 60.12 and add a new § 60.10 to implement the reporting requirements of section 1921. Under this provision, each State is required to adopt a system of reporting to the NPDB any negative action or finding that a peer review organization or private accreditation entity has concluded

against a health care practitioner or health care entity (both as defined in § 60.3), respectively.

With respect to reporting by private accreditation entities, we proposed that private accreditation entities be required to report determinations of less than full accreditation that indicate a substantial risk to the safety of a patient or patients or quality of health care services.

We also proposed peer review organizations be required to report any recommendation to sanction a practitioner.

• § 60.13 *Requesting information from the NPDB. [Redesignated]*

Under the statute, section 1921 data would be released for the purpose of determining the fitness of an individual to provide health care services and to protect the health and safety of individuals receiving health care through programs administered by the requesting entities, as well as to protect the fiscal integrity of these programs. We proposed to redesignate the current § 60.11 as § 60.13 and revise the redesignated § 60.13, paragraph (a), entitled, "Who may request information and what information may be available," to clarify to whom information in the NPDB and section 1921 would be made available. Information reported under §§ 60.7, 60.8 and 60.11 is available only to those entities that have access to the information under the HCQIA (e.g., hospitals and other health care entities, and State licensing boards). Information reported under §§ 60.9 and 60.10 is available to organizations authorized to receive section 1921 information, which includes all organizations eligible to query the NPDB under the HCQIA and new organizations specified in section 1921 (e.g., Federal and State health care programs, law enforcement agencies, and QIOs).

• § 60.14 *Fees applicable to requests for information. [Redesignated]*

We proposed to redesignate the current § 60.12 as § 60.14 and to revise redesignated § 60.14. Section 1921 expands the scope of the NPDB by permitting additional entities to query regarding adverse licensure actions and certain other negative actions or findings. As provided in the annual HHS Appropriations Acts, the Department's authority for charging user fees (in addition to the basic authority) under section 427(b)(4) of the HCQIA applies to all requests for information from the NPDB and is set in amounts sufficient to cover the full costs of operating the NPDB. Additionally, we made technical changes to this section in order to comply with Office of Management and Budget (OMB) Circular A-25 governing the Federal

policy regarding fees assessed for government services.

• § 60.15 *Confidentiality of NPDB. [Redesignated]*

In accordance with 42 CFR 1003.103(c), the Department's OIG has raised the CMP for each violation of the NPDB's confidentiality provisions from up to \$10,000 to up to \$11,000. Therefore, we proposed to revise paragraph (b) to reflect this change.

III. Summary and Response to Public Comments

The proposed rule set forth a 60-day public comment period, ending May 22, 2006. HRSA received 33 public comments from State licensing authorities and their associations; associations representing physicians, dentists and other health care practitioners; associations representing health insurers; hospitals, other health care entities, and their associations; private accreditation organizations; private citizens; and private attorneys. Based on review of the statute and the assessment of public comments received, we believe the final regulations to implement section 1921 fully and adequately balance the Department's concerns with those expressed by the commenting public.

Set forth below is an overview of the various comments and recommendations received and our responses to those concerns. In the preamble of the proposed rule, we requested comments concerning two specific areas. The first area concerned QIOs and peer review organizations. We asked for comments related to our proposed exemption of QIOs from reporting under section 1921, the proposed definition of a peer review organization, potential reportable events by peer review organizations and their relationships with other entities, the public or private status of peer review organizations, and the types of practitioners and entities they review. The second area concerned private accreditation entities and any potential limitations on their abilities to report under section 1921. The comments addressing these specific issues are included in the appropriate sections of the regulations below. Section IV of this preamble sets forth a summary of the specific revisions and clarifications to be made to the final regulations as a result of those comments.

A. Section-by-Section Analysis of Issues

The National Practitioner Data Bank (§ 60.1)

Comment: We received several comments that addressed the

distinctions among the HCQIA, section 1921 and section 1128E. Commenters expressed difficulty understanding the specific reporting requirements, access to the information authorized by section 1921, and the additional changes that would occur under section 1921.

Response: The distinctions among the HCQIA, section 1921, and section 1128E are found in Table 1, Description of Statutory Provisions, in the preamble. Section 1921 will not increase the reporting burden on State licensing authorities because these entities currently report adverse actions to the NPDB and/or the HIPDB. Specifically, the HCQIA requires the reporting of licensure actions based on professional conduct or competence only against physicians and dentists, whereas sections 1921 and 1128E require the reporting of all licensure actions taken against all health care practitioners. Also, sections 1921 and 1128E require the reporting of adverse licensure actions taken against certain health care organizations. Existing NPDB reporting requirements for hospitals, other health care entities, professional societies, and medical malpractice payers are not affected by section 1921.

Entities that are eligible to query the NPDB will continue to query as they always have and will gain access to additional information under section 1921. New queriers, such as government health care programs and law enforcement agencies, that gain access to the NPDB through section 1921 eligibility (i.e., queriers who did not already have NPDB eligibility), will only have access to information reported under section 1921. These new queriers will not have access to the NPDB information reported under the HCQIA. Most of these new section 1921 queriers already have access to HIPDB information. Currently, private-sector hospitals do not have access to HIPDB information, which includes adverse licensure actions taken against health care practitioners other than physicians and dentists, as well as licensure actions taken against physicians and dentists that are not related to professional competence or conduct. Under section 1921, private-sector hospitals will have access to all licensure actions taken against health care practitioners, including physicians and dentists.

Applicability of These Regulations (§ 60.2)

Comment: We received several comments supporting the NPDB's expansion under section 1921, particularly with respect to collecting licensure actions on all health care practitioners. However, we also received

several comments expressing concern over NPDB's expansion under section 1921 to collect actions taken against health care entities. Citing the wording of the statute's first paragraph, which refers to peer review organizations and private accreditation entities reviewing the services provided by health care practitioners, one commenter questioned NPDB's authority to collect peer review and accreditation organization actions taken against health care entities. Other commenters questioned the authority of the NPDB to collect any type of action taken against health care entities because the NPDB was originally authorized to collect actions taken against health care practitioners only. These commenters also questioned the value of collecting reports on health care entities.

Response: In 1987, Congress authorized the Secretary to collect adverse actions taken by licensing agencies against health care practitioners and health care entities in the MMPPPA. In 1990, Congress expanded this requirement through OBRA to include reporting of negative actions and findings by peer review organizations, and private accreditation entities. The statute, as amended, requires the collection of information from formal proceedings "*concluded against a health care practitioner or entity* [emphasis added] by any authority of the State * * * responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners) or entities."

Second, section 1921(a)(1)(D) of the Social Security Act requires the collection of "any negative action or finding by such authority, organization, or entity regarding the practitioner or entity." This language clearly indicates that the action taken by the licensing authority, peer review organization or private accreditation entity may be against a health care practitioner or health care entity.

Finally, private accreditation entities, which are not operated by a unit of State or Federal government, accredit health care facilities, not individuals. Therefore, while their work may include reviewing the services provided by health care practitioners, these entities ultimately make determinations about health care facilities' qualifications and their ability to provide quality health care.

While the statute clearly authorizes the Secretary to collect actions taken against health care practitioners and health care entities, the proposed rule limited reporting of peer review

organization actions or findings to those against health care practitioners only—not health care entities. We made this decision because it is our understanding that peer review organizations are primarily involved with evaluating the quality of patient care practices or services ordered or performed by health care practitioners. Peer review organizations under section 1921 would only be evaluating the performance of health care practitioners and not the specific performance of a health care facility. In addition, it is the health care facility that would be contracting with the peer review organization, so we do not believe the peer review organization would be in a position to recommend a sanction against the facility with which it contracts. Reporting by a peer review organization is limited to the discovery of practices by an individual physician, dentist or other practitioner that are so serious that they warrant a sanction recommendation by the peer review organization to the appropriate health care facility or other authority.

Comment: Several commenters stated that information required to be reported by section 1921 is not reflective of the quality of health care provided by health care practitioners. One commenter expressed concern over the professional and economic impact of having a report in the NPDB.

Response: Section 1921 does not limit reporting to only those actions judged by the reporting entity to be based on the quality of the health care services provided. The statute requires the reporting of specified actions that result from formal proceedings. The NPDB is a national repository of actions taken by mandated reporters. We understand that there may be a professional or economic impact as a result of an action taken against a health care practitioner who, or entity that, is reported to the NPDB. However, the NPDB is primarily an alert or flagging system. The information in the NPDB is intended to be used as a resource to assist authorized queriers in conducting an extensive independent investigation of the qualifications of a health care practitioner or entity. The NPDB is simply a conduit for information on actions taken and reported by authorized entities.

Comment: Two commenters stated that before the section 1921 regulations are implemented, HRSA should fully implement the recommendations from the Government Accountability Office's (GAO) 2000 report on the NPDB titled, "National Practitioner Data Bank: Major Improvements Are Needed to Enhance Data Bank's Reliability."

Response: The implementation of section 1921 is the final action needed

to fully implement the recommendations from the GAO's 2000 report. By the end of 2004, HRSA had satisfactorily addressed the GAO's recommendations with the exception of including the adverse licensure actions taken against nurses and other non-physicians healthcare practitioners.

Definitions (§ 60.3)

Comment: We received two comments requesting clarification of current NPDB definitions. One commenter stated that the definition of the term "physician" should include doctors of podiatric medicine, and the other requested clarification of the term "health care entity" as used in these regulations.

Response: The terms "physician" and "health care entity" are defined under the HCQIA and are clarified in existing NPDB regulations in § 60.3. A doctor of podiatric medicine is not included in the term "physician," which is defined by statute as a doctor of medicine or osteopathy legally authorized to practice medicine or surgery by a State (or who, without authority, holds himself or herself out to be so authorized), but is considered a "health care practitioner." Section 1921 requires the Secretary to provide the maximum appropriate coordination with the HCQIA when implementing this statute. Therefore, we have an obligation to be consistent with existing definitions and are unable to make the requested change.

Throughout these regulations, we use the terms "health care practitioners, physicians, dentists and entities" to describe the full range of subjects of a section 1921 report. Our approach to describing section 1921 report subjects differs slightly from the statutory language of section 1921 "health care practitioners and entities." We adopted this approach because we relied on existing NPDB definitions. These existing definitions, however, do not work seamlessly with each section 1921 provision. The existing NPDB definition of "health care practitioner" specifically excludes physicians and dentists, which are defined separately. We, therefore, refer throughout these regulations to "health care practitioners, physicians, and dentists" to remedy this difference between the HCQIA and section 1921.

We use the current NPDB definition of "health care entity" to define the range of organizations that may be subjects of a report under section 1921. This definition, however, is used in the HCQIA to specify certain organizations that are authorized to report and receive information under the HCQIA. The current definition includes hospitals and other health care entities that provide health care services and

perform formal peer review activities for the purpose of furthering quality health care. The definition, however, also includes professional societies that conduct formal peer review activities for the purpose of furthering quality health care. We do not believe that professional societies fit the definition of subjects of section 1921 reports, and, for the following reasons, we do not intend to collect actions against professional societies under this statute. First, section 1921(a)(1)(A) through (C) requires the reporting of any adverse action taken by a licensing authority, any dismissals or closures of licensing proceedings, or any other loss of a license. To our knowledge, licensing authorities do not license, nor do they take licensure actions against, professional societies. Therefore, we do not expect any licensure reports on professional societies. Second, section 1921(a)(1)(D) requires the reporting of any negative action or finding by a licensing authority, peer review organization or private accreditation entity. Under section 1921, private accreditation entities, by definition, evaluate the quality of health care services provided by a health care entity, measure the health care entity's performance, assign that entity a level of accreditation, conduct periodic reviews of the quality of health care provided by the entity, and report to the NPDB certain final determinations that affect the entity's accreditation status. We are unaware of any professional societies that directly provide health care services and that would contract with a private accreditation entity to perform these defined functions. Current NPDB guidance defines a professional society as a membership association of physicians, dentists, or other health care practitioners that follows a formal peer review process for the purpose of furthering quality health care. Therefore, we do not believe that professional societies could be the subjects of private accreditation entity reports. Because only health care practitioners, physicians, and dentists will be the subjects of peer review organization reports, professional societies will not be the subjects of these section 1921 reports either.

1. Formal Proceeding

Comment: Three commenters expressed concern over the broad nature of the definition of formal proceeding. These commenters stated that the definition gives too much discretion and not enough guidance to reporting entities; does not differentiate between informal and formal proceedings; will generate large volumes of report

information with little value; and, will be difficult to enforce.

Response: While HRSA crafted the proposed definition of "formal proceeding" to allow the different types of reporters the maximum flexibility in determining the processes they will follow in conducting their proceedings, we agree that the current definition is too broad and should provide more guidance. As a result, we changed the definition of "formal proceeding" to include proceedings that are taken by entities or organizations that maintain defined rules, policies, or procedures for such proceedings. We believe this definition of "formal proceeding" provides reporters with enough information to be able to distinguish between informal and formal proceedings. In determining whether a process is formal, we are only concerned with the *presence* of defined rules, policies or procedures and not whether the rules, policies and procedures have been strictly adhered to. To the extent disputes arise regarding whether a process is formal (for instance during the Secretarial Review process), the NPDB will not generally examine whether the defined rules, policies or procedures have been followed.

Comment: Two commenters asked why the due process requirements for a "formal peer review process" under 42 U.S.C. 11112 do not apply to adverse actions reported under section 1921. We received other comments requesting that we include a due process provision in the "formal proceeding" definition. These commenters stated that the proposed definition does not ensure due process protections for health care practitioners reported under section 1921.

Response: The provision under 42 U.S.C. 11112 cited by several commenters refers to due process standards for professional review activities undertaken at a hospital or other health care entity. Hospital and other health care entity professional review activities must meet these standards if the entities wish to avail themselves of the Federal liability protections described in 42 U.S.C. 11111. These standards do not affect the NPDB reporting requirements. Therefore, it is consistent for these standards not to apply to section 1921 reporting requirements.

While the professional review provisions under 42 U.S.C. 11111 do not apply to section 1921, as several commenters noted, licensing agencies operating under State law must provide due process protections for those they regulate. Therefore, it is the formal

proceedings conducted by private accreditation and peer review organizations that appear to be of greatest concern. To address this concern, we have modified the definitions of "peer review organization" and "private accreditation entity" to include provisions regarding the presence of due process mechanisms. If a peer review organization or private accreditation entity does not make due process available, the entity does not meet the respective definition. As stated earlier, the NPDB is concerned only with the presence of due process mechanisms, *i.e.*, defined rules, policies or procedures and not whether the rules, policies and procedures have been strictly adhered to.

Comment: One commenter requested that HRSA modify the definition of formal proceeding to include proceedings "taken at the request of" a State licensing or certification authority, peer review organization or private accreditation entity.

Response: Section 1921 does not include the authority to collect actions taken or findings made by organizations or bodies other than those specified in the statute.

2. Negative Action or Finding

We received 20 comments concerning the definition of negative action or finding by a State licensing authority, peer review organization, or private accreditation entity. We organized these comments according to the reporting requirements of the three sections of the definition: private accreditation organization, peer review organization, and State licensing authority.

Comment: The majority of comments concerning negative actions or findings reported by private accreditation entities (*i.e.*, receipt of less than full accreditation from a private accreditation entity that indicates a substantial risk to patient safety and health care quality) suggested the elimination or limitation of the reporting requirement for private accreditation entities. Several commenters stated that the adoption of the proposed rule would have an adverse effect on health care quality because it would deter facilities from participating in accreditation programs, which are primarily voluntary. Two commenters compared the role of private accreditation organizations to that of QIOs and supported their exemption from reporting based on the same rationale used to exempt QIOs. Others, citing the dynamic nature of the accreditation process in which preliminary or conditional decisions can change quickly, recommended

narrowing the scope of reportable actions to include only final outcome determinations, such as a withdrawal or termination of accreditation status or a denial of accreditation status. One commenter requested that the actions be further limited to those actions due to an immediate threat or harm to patients, rather than the proposed "substantial risk to the safety of a patient or patients or quality of health care services." In addition, this commenter suggested the exclusion of actions based solely on administrative determinations.

Response: Unlike QIOs, which were not specifically named as reporters in section 1921, the statute clearly requires private accreditation entities to report. HRSA, however, agrees that the collaborative and continuous nature of the accreditation process could prove difficult for private accreditation organizations by creating a potential for the submission of multiple reports on a health care entity that is not fully compliant with the particular private accreditation organization standards for reasons other than a threat to patient safety. Therefore, we modified this part of the negative action or finding definition to require the reporting of final determinations of denial or termination of an accreditation status that indicates a risk to the safety of a patient(s) or quality of health care services. We believe limiting private accreditation organization reporting to these final actions would streamline the reporting process, would not have a negative impact on voluntary accreditation efforts, and would meet section 1921 reporting requirements.

By limiting reporting to those negative actions or findings that indicate a risk to patient safety or quality of health care services, we believe we have precluded the reporting of negative actions or findings based solely on administrative reasons. We disagree with the comment to modify the definition to reporting based on immediate threat or harm to a patient. This language is likely to result in uneven interpretation and reporting by accreditation entities and would severely limit reporting.

We also changed the definition to require reporting of those final determinations that are based on "a risk" to patient safety as opposed to "a substantial risk" to ensure more uniform understanding and reporting of these actions as well as more consistent enforcement of the reporting requirement.

Comment: With respect to negative actions or findings reported by private accreditation entities, one commenter expressed concern that reporting by private accreditation entities to the

NPDB would undermine physician self-governance by reporting physician infractions unrelated to medical competence.

Response: Under section 1921, private accreditation entities would only report final actions related to the accreditation of health care entities. Physicians, dentists, and other health care practitioners would not be subjects of these reports.

Comment: Nine organizations raised concerns about the requirement for peer review organizations to report any negative actions or findings to the NPDB under section 1921. Several commenters stated that requiring the peer review committee to report sanctions would have a chilling effect on the peer review process in a hospital. The commenters stated that the peer review conducted by a hospital or professional society peer review committee is a confidential process and that these committees should be exempt from reporting under section 1921. Another commenter stated that professional societies are not peer review organizations. One commenter stated that peer review organization reporting would not have an effect on the hospital peer review process.

Response: Section 1921 requires the reporting of "any negative action or finding" by a peer review organization. Therefore, it would be inappropriate to exclude the reporting of "any negative action or finding" by peer review organizations. For purposes of section 1921 reporting, the term "peer review organization" does not include the internal peer review committees of hospitals, professional societies, or other health care entities as defined in the current NPDB regulations. Peer review organizations are separate from the internal peer review committees of hospitals and professional societies. According to the definition, a peer review organization is an "organization" whose primary purpose is to evaluate the quality of patient care and services against objective criteria that define acceptable and adequate practice through an evaluation by a sufficient number of health care practitioners to ensure adequate peer review. This requires that the peer review organization be a stand-alone organization separate from a hospital or other health care entity.

Comment: Several commenters recommended limiting peer review organization reporting to recommended sanctions that indicate a substantial risk to patient safety or quality of care. Other commenters noted that State laws require peer review organizations to report more serious findings to State licensing agencies, making it likely that

the NPDB would already capture this information in a subsequent licensure action. One commenter stated that peer review organizations that contract with health care facilities do not recommend sanctions; they recommend improvements.

Response: We agree that peer review organizations identify and recommend opportunities for practitioner improvement and generally do not recommend sanctions. The health care entities themselves (e.g., their peer review committees or boards) would use this information to make the decision to sanction a health care practitioner. Further, we believe that a sanction recommended by a peer review organization would occur in extremely rare instances, likely when there is an immediate threat to patient health or safety. Consequently, we believe that we do not need to modify the negative action or finding definition as suggested by the commenter.

Comment: Several commenters requested that reportable actions be limited to final actions that are afforded due process. They stated that, since peer review organizations make recommendations for action and the recommendations may be acted upon by another agency or organization, peer review organizations should not be required to report.

Response: We agree that peer review organizations may make recommendations for another entity to take an action and do not take or enforce actions themselves. Therefore, they do not take final actions. The presence of a due process mechanism, however, is a hallmark of peer review organizations and private accreditation entities and can provide greater validity to the information reported. As stated earlier, we addressed this concern by modifying the definition of "peer review organization" to include provisions requiring the presence of due process mechanisms.

Comment: One commenter requested clarification of the term "sanction" as it relates to reporting sanctions recommended by peer review organizations.

Response: In the context of section 1921, a sanction is a recommendation by a peer review organization concerning a health care practitioner, physician or dentist that, if adopted by the hospital or health care entity, would negatively affect the status of that individual. For example, if a peer review organization make a recommendation that, if adopted, would adversely affect the clinical privileges of a physician, the recommended sanction would be reportable to the NPDB.

Comment: We received a wide range of comments concerning negative actions or findings taken by licensing and certification authorities (*i.e.*, any negative action or finding that is publicly available, excluding administrative fines or citations, and corrective action plans unless they are: (1) Connected to the delivery of health care services, and (2) taken in conjunction with other licensure or certification actions). Several commenters stated the definition was too broad and would generate a large volume of reports with little value. They recommended that the definition be limited to actions or findings based on patient safety and quality of care issues, or based on professional competence or conduct. Conversely, other commenters thought the definition was too restrictive, gave licensing bodies too much latitude in deciding what to report, and would exclude important information regarding a practitioner's fitness to practice. One of these commenters stated that licensing boards have a unique role in consumer protection and that HRSA should modify the definition to include any action taken by a licensing authority that finds a violation of a statute or regulation and is a matter of public record. Another commenter requested that we modify the definition so that administrative fines or citations and corrective action plans are reportable if they are either related to the delivery of health care services or taken with another reportable action.

Response: Section 1921 states that State licensing agencies must report "any negative action or finding" without any limitation other than the action or finding must result from a formal proceeding. We agree with commenters that further limiting reporting to negative actions or findings based on competence or conduct, or quality of care issues, would create a subjective standard that unnecessarily exempts important information and may lead to uneven interpretation and reporting by licensing agencies.

After consideration of comments suggesting that the proposed definition is too restrictive and describing the unique consumer protection role played by State boards, we modified the definition regarding the reporting of administrative fines or citations, and corrective action plans. This modification includes the collection of those actions or findings if they are either (1) related to the delivery of health care services or (2) taken with another reportable action. The definition in the proposed rule mandated that both requirements be

met. While we do not wish to collect administrative fines and citations, or corrective action plans that are imposed for reasons unrelated to health care delivery (such as a fine for failing to notify a board of an address change in a timely fashion), we believe that if such an action is related to the delivery of health care services by a health care practitioner, physician, dentist, or health care entity, it should be reported. Such an action or finding should not have to meet the additional requirement of being taken in conjunction with another action. This modification to the definition creates a slight difference with the HIPDB definition; however, we believe that this change is important to ensure that meaningful actions are not excluded from reporting.

We disagree that the definition gives licensing authorities too much latitude in deciding which actions to report, as they are currently required to report any negative action or finding that is publicly available, with the previously stated exceptions for administrative fines or citations, and corrective action plans. These fines, citations and corrective action plans are limited to those related to health care delivery to ensure that they are meaningful to queriers. It is for this same reason we disagree with the proposal to require reporting of all violations of statute or regulation that are a matter of public record. In addition, we are obligated to try to maintain consistency with HIPDB reporting requirements, and this proposed definition would create a substantial difference between section 1921 and HIPDB State licensure reporting requirements.

In addition to this change in the definition, HRSA is making a minor grammatical change to the definition. In the proposed definition, we misplaced a comma. That comma should have appeared after "administrative fines or citations," rather than between those two terms. In the final rule, we moved the comma to its intended place.

Comment: One commenter stated that HRSA should limit reporting of licensure actions to final actions.

Response: We disagree with this comment. HRSA's interaction with State licensure authorities revealed that, within the operation of State licensure authorities, there are instances when temporary actions, *i.e.*, summary or emergency limitation or restriction on license, are necessary to prevent imminent danger to the public. Temporary actions are treated differently than other actions in that procedural rights of the practitioner are provided following the action, rather than preceding it. Further, HRSA opines

that the reporting of temporary actions is in keeping with the purpose of the NPDB, which is to protect the public from the threat of incompetent practitioners continuing to practice without disclosure or discovery of previous damaging or incompetent performance. In addition, the statute does not limit licensure actions to those that are final actions. Currently, licensure actions reported to the NPDB are not limited to final actions.

Comment: One commenter expressed concern about whether the negative action or finding definition would require licensing authorities to report the referral of a practitioner for impairment monitoring or participation in a diversion program. The commenter stated that HRSA should either withdraw the definition or clarify that such referrals are "corrective actions," and agreed with another commenter that corrective actions should only be reported when taken with another reportable action.

Response: Current policy guidance for reporting NPDB and HIPDB licensing and certification actions specifically excludes reporting of agreements that impose monitoring of a practitioner for a specific period of time, unless such monitoring constitutes a restriction of the practitioner's license or is considered to be a reprimand. Since we do not believe that the referral of a practitioner for impairment monitoring or participation in a diversion program are adverse actions under the statute and therefore not reportable, we will continue this policy under section 1921. It is up to each licensing authority to determine whether the actions they take are "corrective actions," which, based on the definition change mentioned previously, are reportable if they are publicly available and are either related to the delivery of health care services or taken in conjunctions with another reportable action.

Comment: One commenter recommended expanding the definition to include negative actions "taken at the request of" a licensing or certification authority.

Response: Section 1921 does not include the authority to collect actions taken or findings made by organizations or bodies other than those specified in the statute.

Comment: Two commenters requested that HRSA specify what types of negative actions or findings, particularly what types of administrative penalties, should be reported under the definition of negative action or finding.

Response: The type of reportable negative action or finding by a State licensing authority includes any action

or finding that is publicly available and rendered by a licensing or certification authority. Administrative fines or citations, and corrective action plans, are excluded unless they are: (1) Connected to the delivery of health care services or (2) taken in conjunction with other licensure or certification actions.

Reportable actions, by statute, must be based on the result of formal proceedings and events unrelated to such proceedings would be excluded. The types of negative actions or findings likely will vary from State-to-State.

Comment: With respect to all negative actions or findings reported under section 1921, one commenter requested that the Secretary limit all reportable negative actions and findings to those that last longer than 30 days. Such a restriction exists for clinical privileges actions reported to the NPDB under the HCQIA.

Response: Under the HCQIA, only adverse actions against clinical privileges are limited to actions that last more than 30 days. This limitation does not apply to the other reportable actions under the NPDB. Consequently, section 1921 does not limit the reporting of negative actions or findings to any particular time period. To place a 30-day restriction is not consistent with the statute and current NPDB and HIPDB reporting requirements for licensure and other actions.

3. Organization Name

Comment: One commenter requested that HRSA clarify the nature of the employment organization relative to information that must be reported in § 60.9. The commenter asked whether HRSA intended to collect the name of the employer at the time of the act or omission that led to the reported action.

Response: This information is collected currently by both the NPDB and the HIPDB, and the intent is to collect the name of the employer of the physician, dentist, or other health care practitioner at the time of the act or omission that led to the reported action.

4. Peer Review Organization

Comment: In response to our request for comments concerning peer review organizations, including the exemption of QIOs from reporting under section 1921, four commenters responded that QIOs should be exempt from the reporting requirements of section 1921(a)(1) based on the rationale provided in the NPRM. One commenter stated that if QIOs are, in fact, peer review organizations, they should not be exempted from reporting. The commenter, however, agreed that the rationale to exempt QIOs from reporting

was reasonable. One commenter responded that QIOs should not be exempted from reporting, stating that if private accreditation organizations are required to report, then QIOs should be required to report as well.

Response: Section 1921 does not specifically include QIOs in the peer review organization definition. Section 1921(a)(1) refers to reporting of proceedings by “any peer review organization.” Yet, section 1921(b)(4), when discussing who may have access to information, refers to “utilization and quality control peer review organizations described in Part B of Title XI * * *” (currently referred to as QIOs). This indicates that the earlier reference to “any peer review organization” does not refer to “utilization and quality control peer review organizations” as described in Part B of title XI.

With respect to linking QIO reporting to private accreditation entity reporting, we disagree with this contention. Section 1921 specifically requires that private accreditation entities report to the NPDB. The statute does not specifically require QIO reporting. In addition, the reporting of QIO sanction recommendations to the NPDB will significantly interfere with the critical mission of the QIO program, which focuses on maintaining collaborative relationships with providers and practitioners to improve the quality of health care services delivered to Medicare beneficiaries. Private accreditation entities do not have this specific mission.

Based on these reasons and in light of the support for the QIO exclusion from this definition in the proposed rule, we have decided to maintain this exclusion in the final rule.

Comment: Two commenters stated that the definition of “peer review organization” should be amended to include language assuring that peer review organizations reporting to the NPDB are those that provide due process to their physician participants and that a physician has had ample opportunity to appeal the peer review organization’s findings. Additional provisions such as these would provide at least minimal assurance of the quality of information considered and the fairness of the fact-finding process.

Response: We concur with these comments and have added language regarding the presence of due process to the definition. As stated earlier, while the professional review provisions under 42 U.S.C. 11111 do not apply to section 1921, as several commenters noted, licensing agencies operating under State law must provide due

process protections for those they regulate. Therefore, it is the formal proceedings conducted by peer review organizations and private accreditation that are of the greatest concern.

To address this concern, we have modified the definitions of “peer review organization” and “private accreditation entity” to include provisions regarding the presence of due process mechanisms. If a peer review organization or private accreditation entity does not make due process available to practitioners and entities, respectively, the entity does not meet the definition.

For purposes of reporting, the NPDB is only concerned with the presence of a due process mechanism and not whether due process has been strictly adhered to. To the extent disputes arise regarding whether due process has been provided (for instance during the Secretarial Review process), the NPDB will not generally examine whether the due process rules of any particular entity have been followed or the extent to which particular practitioners had access to such mechanisms.

Comment: We received comments requesting that patient safety organizations (PSOs), as defined by the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), and programs that are operated by payers (e.g., pay-for-performance or value-based purchasing programs), be excluded from the definition of peer review organizations. One commenter stated that the proposed rule was inconsistent with the Patient Safety Act and would hamper patient safety organization activities.

Response: We do not feel that the rule is inconsistent with the Patient Safety Act nor will it hamper PSO activities. We do not believe that a specific exclusion from the definition of peer review organizations for patient safety organizations is necessary since we do not expect PSOs to take any reportable actions under this regulation. The only actions that a peer review organization must report to the NPDB are recommendations to sanction a health care practitioner, physician or dentist. By contrast, PSOs, defined in section 921(4) of the Public Health Service Act (42 U.S.C. 299b–21(4)), in order to properly carry out their mandatory patient safety activities in accordance with the Patient Safety Act, are to use data and reports they develop to “encourage a culture of safety,” which is understood to mean using the data they receive and develop into reports to create an environment in which errors and close calls will be readily reported by providers and thoroughly discussed

without fear of penalty or an increased risk of liability. Accordingly, it would be inconsistent with PSO commitments made to the Secretary pursuant to section 924(a) and 921(5) of the Public Health Service Act to make sanction recommendations regarding providers and therefore there would be no crossover with this regulation mandating peer review organization reporting responsibilities with the separate and distinct objectives and responsibilities of PSOs, as set forth in the Patient Safety Act.

We also do not feel that an exception is appropriate for programs that are operated by payers. QIOs were excluded from the definition of peer review organization because of the statutory distinctions between peer review organizations and QIOs in section 1921 and differences in the missions of those organizations. There is no similar statutory distinction between peer review organizations and programs that are operated by payers in section 1921 and we do not feel that the mission of programs operated by payers justify such an exclusion as with QIOs.

5. Private Accreditation Entity

Comment: We received two comments requesting clarification of this definition. One of these commenters asked HRSA to confirm that organizations that accredit educational programs do not meet the requirements of the “private accreditation entity.” The other commenter requested that organizations that accredit mammography screening facilities be exempted because a Federal accreditation program currently exists to regulate this type of accrediting organization.

Response: The definition of the term “private accreditation entity” includes only those organizations that meet the requirements of the definition. Private accreditation entities are only required to report actions concerning health care entities. If a private accreditation entity accredits organizations other than those that meet the definition of the term “health care entity,” such as purely educational programs, then any actions taken against those organizations would not be reportable.

Reporting information to another government agency instead of the NPDB does not fulfill an entity’s obligations under section 1921. Section 1921 does not provide an exclusion from reporting to the NPDB for organizations that may report to other government agencies.

Comment: One commenter stated that at least a dozen organizations would meet the definition of a private accreditation entity and requested that

HRSA ensure these organizations comply equally with section 1921 reporting requirements.

Response: HRSA agrees with the commenter and expects entities that are required to report to the NPDB will do so in accordance with section 1921 requirements. In addition, HRSA will monitor compliance with these reporting requirements as it does currently with NPDB and HIPDB reporting requirements.

6. Voluntary Surrender

Comment: We received several comments concerning the voluntary surrender of a license and a notice of an investigation. These commenters raised concerns regarding the nexus between a notice of investigation and a subsequent voluntary license surrender to imply either wrongdoing or negligence. One commenter recommended that “notification of investigation” be stricken from the definition of voluntary surrender.

Response: The NPDB is primarily a flagging system intended to facilitate a comprehensive review of the credentials of a health care practitioner, physician, dentist or entity. An NPDB reported action serves to alert users that a careful review of the past actions of a health care practitioner, physician, dentist or entity may be prudent. NPDB information is intended to be used in combination with information from other sources, which is consistent with the prevailing credential verification and professional review standards within the healthcare delivery industry.

We disagree with the comment requesting that voluntary surrenders after notification of an investigation be excluded from the voluntary surrender definition. In an effort to ease the reporting burden and to make the information contained in both the HIPDB and NPDB as useful as possible for queriers, HRSA has attempted to make the reporting requirements under the HIPDB and NPDB as uniform as possible. The definition of voluntary surrender is based on the definition currently used in the HIPDB. In addition, reporting voluntary surrenders after notification of investigation eliminates a loophole in which a health care practitioner, physician, or dentist surrenders his or her license to avoid possible disciplinary proceedings and a subsequent report to the Data Banks. If these voluntary surrenders are not reported to the NPDB, health care practitioners, with potentially questionable histories, would be able to move from state-to-state without detection. Therefore, HRSA has

maintained the “notification of investigation” language in the final rule.

It is important to note that the definition of the term “voluntary surrender” applies only to State licensing actions reported under section 1921 and does not apply to actions reported under the HCQIA. To avoid confusion among entities that report surrenders under the HCQIA, such as hospitals reporting surrenders of clinical privileges, we have modified this term as it appears in § 60.3 of the regulations, from “voluntary surrender” to “voluntary surrender of license.”

Comment: We received several comments supporting the exclusion of non-disciplinary voluntary surrenders from the proposed rule. One commenter requested that the reporting requirement for exclusion of late license renewals be more plainly stated.

Response: A State licensing authority’s determination that a health care practitioner, physician, or dentist or entity has voluntarily surrendered his, her or its license because of non-payment or belated payment of renewal fees would not be reportable unless the surrender occurred after a notification of investigation, was done in exchange for a decision by the licensing authority to cease an investigation, or otherwise satisfies the requirements of the voluntary surrender definition. We attempted to maintain consistency with the HIPDB definition of “voluntary surrender” and the HIPDB exclusion of non-renewals for non-payment of fees. While there are some slight differences in language between the two regulations, we view these two definitions as containing the same requirements.

Comment: One commenter requested clarification that a voluntary surrender of a license will not preclude a State licensing authority from continuing or initiating a disciplinary action.

Response: A State’s reporting obligations under section 1921 have no impact on the State’s authority to continue or curtail disciplinary action, which is dependent upon the State’s rules.

Comment: We received several comments recommending that HRSA clarify the differences between “involuntary surrenders” and “voluntary surrenders.” One commenter suggested that HRSA establish a clear distinction between truly voluntary license surrenders, involuntary license surrenders and license revocations, with separate definitions and reporting categories for each. The commenter urged HRSA to make mandatory reporting of information on all voluntary or involuntary surrenders and

non-renewals of licenses, including those occasioned by non-payment of licensure fees, a change to inactive status, or due to retirement.

Response: We disagree with these comments. Section 1921 and section 1128E both require reporting of any loss of license, including a loss for the reason of a voluntary surrender. During the public comment period for the section 1128E proposed rule, we received public comments concerning this same definition of voluntary surrender. Commenters, particularly licensing authorities, expressed concern regarding the volume of reports that would have to be submitted if all surrenders of license—including those due to retirement or non-payment of fees—were reportable and the value of these non-disciplinary related surrenders to queriers. At that time, it was determined that voluntary surrenders for reasons such as retirement and non-payment of licensure renewal fees would provide little value to Data Bank users and that such actions would not be collected. Distinctions between voluntary and involuntary surrenders have not been an issue for those reporting such actions to the HIPDB, and we do not think such distinctions are warranted at this time. To ensure consistency between section 1921 and HIPDB reporting requirements, we will maintain this definition of voluntary surrender for both Data Banks.

Comment: One commenter expressed concern about a potential conflict between the reporting of a negative action or finding that under State law is publicly available information and a “voluntary surrender after a notification of investigation or a formal official request” to surrender the license. The commenter believed that many reportable voluntary surrenders may be based on non-public investigative information and, therefore, not reportable. The commenter requested clarification of the definition of a reportable voluntary surrender to include surrenders regardless of whether they are based upon a notification of investigation, or request, or agreement that is publicly available.

Response: We believe there is no conflict between reporting a negative action or finding that is publicly available and a voluntary surrender that is based on information that is not publicly available. Voluntary surrenders are reportable even if the underlying reasons for the surrender are not public information. However, voluntary surrenders relating to retirement, non-payment of licensure renewal fees, and change to inactive status, if there is not

an investigation in progress, are not reportable.

We did not receive any comments on the definitions of the terms “affiliated or associated,” “organization type,” or “Quality Improvement Organization.”

How Information Must Be Reported (§ 60.4)

Comment: We received several comments supporting the integration of the electronic reporting and querying system for the NPDB and the HIPDB, which enables reporting entities to submit a single adverse action to both Data Banks, as appropriate. One commenter, however, questioned the need for two systems if all of the information is automatically sent to both with a single query or report submission.

Response: The NPDB and the HIPDB are separate and distinct repositories, with different types of reportable actions contained in each, as well as different sets of authorized queriers. However, this distinction notwithstanding, the NPDB and the HIPDB form one integrated system. Within this integrated system, an action reportable to both the NPDB, including section 1921 and the HIPDB, will only need to be reported once. The system will subsequently store the report according to the appropriate statutory authority. Additionally, an eligible querier that is registered to have access to information under both Data Banks can query for information through a single request.

When Information Must Be Reported (§ 60.5)

Comment: One commenter stated the 15-day timeframe to report to a State is not a reasonable amount of time for reporting information. We also received comments expressing concern over the need to report to individual States rather than directly to the NPDB.

Response: We feel that the 15-day timeframe is a reasonable amount of time for reporting information. Currently, health care entities have 15 days to report actions to the Data Banks. This procedure has been in place since the implementation of the NPDB and we have not received notice of any concerns from users. Consequently, we feel it is appropriate to use this timeframe with section 1921. Further, since the development of electronic reporting technology, entities now submit reports directly to the NPDB using the Data Bank’s electronic reporting system. The Data Banks’ electronic reporting system enables reporting entities to satisfy reporting obligations to State licensing authorities

by automatically providing a copy of the report for submission via mail or fax to the appropriate State Board.

Comment: One commenter requested clarification of the penalties for failure to report to the NPDB.

Response: Current regulations specify the penalties for failing to report information to the NPDB under the HCQIA. For State licensing authorities that fail to report licensing actions, § 60.8 (c) states that “[i]f, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to submit a report as required by this section, the Secretary will designate another qualified entity for the reporting of information under § 60.9” (redesignated as § 60.11). There are no additional penalties specified under section 1921 for failure to report.

Reporting Errors, Omissions, and Revisions (§ 60.6)

Comment: One commenter questioned how HRSA would handle reports on hospital subjects that changed ownership or discontinued operation or services. The commenter suggested that HRSA should specify how a report would be updated when the information is no longer meaningful given a change in hospital circumstances.

Response: The Data Banks provide several methods to update identifying information. If the subject of a report determines that reported information concerning the subject is no longer accurate, the subject should first contact the reporting entity to request that the entity submit a correction report with the updated information. Also, the subject may provide more current information, such as a name change, to the Data Banks. In addition, the subject may submit a subject statement for the report. This statement could note the change in ownership or other change in status since the report was filed. However, reporting entities are responsible for ensuring the accuracy of the information contained in any report they submit.

Reporting Licensure Actions Taken by Boards of Medical Examiners (§ 60.8)

Comment: Two commenters requested that §§ 60.8 and 60.9 of the NPDB regulations be revised to include other health care practitioners in addition to physicians and dentists. These commenters requested that adverse clinical privileges actions taken against other health care practitioners be made mandatory instead of voluntary. One commenter stated that the current regulations do not adequately protect consumers and health care facilities

from health care practitioners who have had actions taken against their licenses or clinical privileges.

Response: As indicated in the proposed rule, the current regulations governing the NPDB, which are not expanded or modified by section 1921, are not subject to review and comment. Consequently, neither the reporting requirements for licensure actions taken by Boards of Medical Examiners under § 60.8 nor the reporting requirements for clinical privileges under § 60.9 (redesignated as § 60.11) are not expanded or modified by section 1921 and, therefore, are not subject to review and comment. The reporting requirement of the new § 60.9 (as added by section 1921) requires the reporting of adverse licensure actions taken against health care practitioners, physicians, dentists, and entities (health care facilities). This revision to the NPDB enhances consumer protection and patient safety.

Reporting Licensure Actions Taken by States (§ 60.9)

Comment: Two commenters requested information about the types of licensure actions to be reported to the NPDB and the HIPDB. One commenter asked whether data elements used for reporting to the NPDB and the HIPDB will have the same definitions and whether the NPDB and HIPDB will use the same violation and action codes for reporting. Another asked for examples of the new types of licensure actions to be collected by the NPDB and also requested that nominal or ministerial acts or omissions not be reported.

Response: State licensing authorities will use the same reporting formats, data element definitions, and code lists they currently use for reporting licensure actions to the HIPDB for reporting section 1921 licensure actions. Examples of NPDB licensure actions that will be reportable under section 1921 that are not currently reportable under the HCQIA include formal or official actions, such as revocations, suspensions and reprimands that are not based solely on professional competence or conduct. Under section 1921, the NPDB also will collect publicly available negative actions or findings, including fines or citations for reasons related to the delivery of health care services or taken with another action. HRSA will provide additional examples of reportable actions in forthcoming policy guidance.

In keeping with our commitment to maintain consistency between NPDB and HIPDB reporting formats, we are changing the status of the data element "Amount of Monetary Penalty" from "if

known" to "mandatory" when the reported action consists of a monetary penalty. This field is mandatory on the HIPDB reporting format for monetary penalties reported by State licensing agencies and was inadvertently listed as "if known" in the proposed rule.

We disagree with the suggestion to exclude actions that are based on "nominal or ministerial acts or omissions." Implementing this suggestion would likely lead to uneven interpretation among States and create a discrepancy between section 1921 and HIPDB definitions. We have limited the reporting of certain types of negative actions or findings, such as administrative fines or citations, and corrective action plans, to those either based on the delivery of health care services or taken with another action. We believe these limitations would ensure that meaningful actions are reported, which appears to be the commenter's goal, while maintaining as much consistency as possible with the HIPDB.

Comment: Concerning information reported on all subjects, one commenter expressed uncertainty over the purpose of collecting the narrative description of acts or omissions. The commenter noted that, for purposes of flagging individuals for additional scrutiny, a narrative is not needed, and that it was not practical for use in research.

Response: As specified in both the HCQIA and 1128E, "a description of the acts or omissions or other reasons for the action" is information that must be reported to the NPDB and the HIPDB. In instances in which the statute clearly defines a requirement, HRSA does not have the authority to make any modifications. In order to maintain consistency between the NPDB and section 1921, we have retained the narrative description on the reporting format for section 1921. In addition, we believe a narrative description adds value to a flagging system. The narrative description is critical to understanding the reasons for and importance of a particular action for subsequent reviewers of the report as well as the subject of the report, who has a right to challenge the accuracy of the report.

Comment: One commenter urged HRSA to include, within the scope of the proposed regulations, a requirement for mandatory reporting of prescribing psychologists, including a specific NPDB data reporting category.

Response: To the extent that prescribing psychologists meet the definition of a "health care practitioner," they are subject to reports under section 1921.

Comment: One commenter questioned whether a State licensing authority can take an action against a practitioner's license when the action is based on another State licensing authority determination.

Response: Section 1921 does not supersede the ability of a State to take an action against a practitioner or entity. States may take actions for any reason permitted in their own laws and regulations.

Reporting Negative Actions or Findings Taken by Peer Review Organizations or Private Accreditation Entities (§ 60.10)

Comment: One commenter requested that the Secretary limit accreditation report content to the information collected during the accreditation process so that accreditation entities can avoid costly software changes. Another commenter noted that certain accreditation entities post accreditation status on their Web sites, making additional reporting unnecessary.

Response: HRSA disagrees with these comments. We continue to believe the data elements selected for inclusion under section 1921 are essential for users to properly identify entities that are subjects of reports in the Data Bank and to understand the nature of the actions taken against them. We believe the required information should be available from information contained in existing records compiled during the review process. The NPDB makes available an electronic reporting format that can be completed online at the Data Banks' secure Web-based reporting site. A reporting entity that makes information available in other public formats has not met its statutory reporting obligations under section 1921.

Comment: Several commenters expressed concern about the reporting process. One commenter stated that it is unclear what specifically must be reported since the proposed rule includes discretionary and mandatory data elements (§ 60.9).

Response: The mandatory data elements are listed in § 60.9(b). The electronic system will not accept a report that does not include these data elements. Data elements to be reported "if known" are listed in § 60.9(c). The inclusion of these data elements enhances the matching process between a query and a reported subject and provides additional information to aid users' understanding of the reported incident.

Comment: One commenter requested that the Secretary modify the regulations to require private accreditation entities to report their

negative actions or findings to all State agencies responsible for licensing hospitals and health care entities.

Response: Adopting such a reporting requirement for private accreditation entities is unnecessary and would be overly burdensome. Queriers, including State licensing authorities, will have access to negative actions and findings reported by accreditation entities through the NPDB, which is a national repository.

Comment: Two commenters expressed concern about the reporting of a narrative description of the act or omission upon which the reported action was based. The commenters requested that HRSA provide detailed guidance on the type of information to be included in this narrative description.

Response: A narrative description of the act(s) or omission(s) should contain sufficient specificity to allow a knowledgeable Data Bank querier to clearly understand what led to the reported action or finding and the seriousness of the act(s) or omission(s). Narrative information also should be supported by written documentation, such as official findings, orders or minutes. HRSA has provided examples of acceptable narrative descriptions on the NPDB Web site (npdb-hipdb@hrsa.gov), along with guidance on how to write an acceptable narrative description and will continue to provide information as needed.

Comment: One commenter expressed concern that the proposed § 60.10 does not include the requirement that the reported action must be the result of formal proceedings (as defined in § 60.3) and requested that this omission be corrected in the final rule.

Response: The requirement that an action must be the result of a formal proceeding was omitted in error and has been included in the final rule.

Comment: One commenter asked whether a hospital would be required to report its own accreditation recommendations.

Response: Section 1921 does not require hospitals or other health care entities to self-report accreditation recommendations. In general, only the entity that takes a reportable action or finding must report the action or finding to the NPDB. The subject of the reportable action does not report the action.

Requesting Information From the NPDB (§ 60.13) [Redesignated]

Comment: Several commenters questioned whether a hospital is authorized to query on nurses and other health care practitioners who are

employed by the hospital. They believed the proposed rule only authorizes hospitals to query on individuals on the medical staff or those who hold clinical privileges. Another commenter questioned whether hospitals had access to section 1921 information at all.

Response: Section 1921 information is available to hospitals. Section 1921(b)(6) of the Social Security Act states that this information is available to “hospitals and other health care entities * * * with respect to physicians or other licensed health care practitioners that have entered into, or may be entering into, an employment or affiliation relationship with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities * * *” The other licensed health care practitioners include individuals in professions such as nursing and physical therapy.

Comment: Several commenters expressed concern that private accreditation entities are not authorized to query and receive section 1921 information, which would support their evaluations of a health care entity’s performance. Other commenters supported public access to NPDB information.

Response: The Secretary is not authorized to provide private accreditation entities, other organizations, or the general public access to NPDB information.

Comment: We received several comments questioning the range of law enforcement agencies permitted to query the NPDB under the proposed rule. In particular, commenters questioned the inclusion in the proposed rule of certain law enforcement agencies, such as the Nuclear Regulatory Commission and the U.S. Chief of Postal Inspector, not specifically included in the statute. One commenter noted that law enforcement access to section 1921 information would deter participation in quality and risk management procedures. We also received comments requesting that subjects of reports be informed when law enforcement agencies receive a copy of their report, and that law enforcement agencies should be required to state the purpose of their query and not use the NPDB to circumvent standard criminal investigative procedures.

Response: Section 1921(b) of the Social Security Act authorizes the Secretary to release information collected under the statute to “the Attorney General and such other law enforcement officials as the Secretary deems appropriate.” The list provided in the proposed rule of agencies authorized

to receive section 1921 information under these provisions is not considered to be exhaustive. Each of the listed agencies, however, meets the qualifications described in the statute. For example, the U.S. Chief of Postal Inspector and State law enforcement agencies play a major role in investigating health care fraud and abuse in government health care programs. The Nuclear Regulatory Commission enforces regulations governing the medical use of nuclear materials and also licenses physicians, clinical laboratories and hospitals to possess and use nuclear byproduct materials. These agencies will not have access to professional review actions or medical malpractice information in the NPDB, but only section 1921 reports, so we do not believe their access should have any impact on quality and risk management activities.

Currently, all NPDB and HIPDB queriers are required to provide a reason for their information request on a particular subject. Also, the system records the name of each querying entity that has requested and received a copy of a report, information that is available to the subject of that report upon request, with the exception of queries submitted by law enforcement agencies to the HIPDB. Consistent with what was done with the HIPDB, HRSA will be seeking an exemption to protect from release law enforcement queries for section 1921 information. This is necessary in order to protect the confidentiality and integrity of investigations by law enforcement.

Confidentiality of National Practitioner Data Bank Information (§ 60.15)

Comment: One commenter expressed concern that NPDB information may be misused or misinterpreted. The commenter stated that punishment for improper access to or use of NPDB information should be greater than the penalties for failing to report mandatory actions. Other commenters expressed concern that information may be stored in the wrong Data Bank and requested assurances that Data Bank information is secure.

Response: Information reported to the NPDB is considered confidential and access to and use of the information is restricted. As stated in § 60.15, “persons who, and entities which, receive information from the NPDB either directly or from another party must use it solely with respect to the purpose for which it was provided.” Both improper use of and access to the NPDB may result in a CMP of up to \$11,000 for each violation.

The NPDB and the HIPDB are required by statute to coordinate reporting and querying. Reported information is and will continue to be contained only in the legally authorized Data Bank(s) as determined by report content. Additionally, when the Data Banks receive a query on a subject, the system searches for and releases information stored in the NPDB and the HIPDB based on the querying entity's statutory authority to access that information. Eligible entities that register with the Data Banks must certify their authority as a reporter and querier under each of the relevant statutes governing the Data Banks. Authorized users interact with the Data Banks over a secure Web-based server that uses the latest technology, along with various implementation measures, to provide a secure environment for querying, reporting, and data storage. Some of these security features include firewall protection and encryption of transmitted data to prevent unauthorized access, as well as the use of unique passwords for data entry and retrieval. The system security plan is reviewed and updated annually to address changes in guidance or industry standards needed to continue providing secrecy and privacy for the system. In addition, every three years the NPDB–HIPDB is required under the Federal Information System Management Act (FISMA) to conduct and renew the system's Certification and Accreditation (C&A). The C&A process involves convening a panel of information technology professionals who conduct a security risk assessment, security test and evaluation, technical vulnerability assessment, and a Continuity of Operation Plan (COOP) exercise.

How To Dispute the Accuracy of National Practitioner Data Bank Information (§ 60.16)

Comment: Several commenters raised concerns that the proposed regulations did not include provisions for practitioners to rebut information in NPDB reports. Other commenters expressed concern over subjects' due process rights and requested that the Secretary provide health care practitioners meaningful opportunities to dispute the accuracy of claims reported to the NPDB and require the removal of inaccurate reports. One of the commenters stated that a subject who discovered incorrect or inaccurate information in the NPDB should have a right to require the NPDB or the reporting entity to correct the error.

Response: The NPDB currently has in place multiple levels of safeguards to

protect and ensure the accuracy of a report. Subjects may dispute the accuracy of information provided in reports to the NPDB. These safeguards will not change under section 1921.

Comment: One commenter stated that additional protections for health care practitioners other than physicians and dentists should be in place, such that an opportunity to dispute the accuracy of their information reported to the NPDB should be guaranteed before the information is submitted to the NPDB.

Response: The NPDB's safeguards to protect and ensure the accuracy of reports apply equally to all types of practitioners. All subjects of a report are treated equally and fairly by the Data Banks once a report is submitted. We do not have the statutory authority to review the merits of adverse actions taken by reporting entities. We can only review (1) if the report is legally required or permitted to be filed, and (2) if the report accurately depicts the action taken and the reporter's basis for the action. Although we understand the comment, the statute is clear that the Data Bank's responsibility is to receive and disclose information expeditiously and in accordance with statute.

B. Other Issues Raised

1. Implementation Schedule

Comment: We received two comments regarding the requirement to report all actions occurring since the enactment of section 1921. These commenters expressed concern about the extra burden State licensing agencies would face by having to report information dating back fifteen years and questioned the accuracy and availability of such information across States. One commenter questioned whether subjects of reports dating back to 1992 would have access to information to enable them to dispute reported actions, if necessary. One commenter requested that HRSA only require the reporting of actions taken on or after the publication date of the regulations.

Response: In § 60.5, the NPDB regulations state that information must be submitted beginning with actions occurring on or after January 1, 1992. However, while we recognize the commenters' concerns, we strongly encourage each reporter to submit actions occurring on or after January 1, 1992. To assist in reducing the burden on State licensing agencies, we will offer State agencies two options for submitting legacy HIPDB reports (August 21, 1996, forward) to the NPDB. One option is, with the States' permission, for HRSA to provide copies to the NPDB of all actions previously

reported to the HIPDB that fall under the section 1921 requirements. The second option is for the State agencies to resubmit all legacy HIPDB reports (August 21, 1996, forward) to the NPDB under section 1921. We also recognize the report subjects' concerns regarding their ability to dispute reports of actions taken more than a decade ago. However, the dispute resolution process (Secretarial review) is available to determine whether an action is reportable under applicable law and regulations. The process also determines whether the report accurately describes the reporter's action and reasons for the action as stated in the reporter's decision documents or in a public record, such as board orders.

2. Immunity Provisions of the HCQIA

Comment: One commenter recommended extending the immunity from liability protections (under 42 U.S.C. 11111) to all individuals reporting information concerning a health care practitioner, physician, dentist or entity under section 1921.

Response: Part A of Title IV (42 U.S.C. 11111) provides that the professional review bodies of hospitals and other health care entities, and persons serving on or otherwise assisting such bodies, are offered, in certain circumstances, immunity from private damages in civil suits under Federal or State law. It does not apply to reporting licensure actions or medical malpractice payments under the HCQIA, nor does it apply to section 1921 reporting. HRSA is unable to extend this immunity without a statutory amendment.

3. Paperwork Reduction Act Statement

Comment: One commenter expressed concern that section 1921 would create an increased burden on State licensing and certification agencies.

Response: Section 1921 does not create a new reporting burden for State licensing authorities. State licensure reporting requirements under section 1921 are essentially identical to those already being reported under the HIPDB. Because of the Data Banks' integrated reporting and querying system, State licensing agencies will only need to submit a licensing action once. The system will subsequently store the report according to statutory requirements in the NPDB, the HIPDB or both.

Comment: One commenter stated that peer review organizations do not have substantial resources and that the section 1921 reporting requirement would be burdensome.

Response: Information required to be reported by peer review organizations

should be minimal. We have received comments noting that peer review organizations generally recommend areas of improvement and do not recommend sanctions (the only type of reportable event for these organizations). Therefore, we believe their reporting requirements will not be overly burdensome.

Comment: One commenter stated that the proposed rule did not account for additional staff time responding to a greater volume of telephone calls resulting from increased access to reported State licensure discipline information.

Response: The licensing actions to be reported to the NPDB under section 1921 have already been or are required to be reported to the HIPDB. It is for this reason that we do not believe the volume of telephone calls resulting from these reports would constitute an added burden to State licensing boards.

Comment: One commenter recommended that HRSA amend the proposed rule to allow State licensing agencies and private accreditation entities that contract with and report to other Federal agencies to determine among themselves which agency will report to the NPDB, to further reduce reporting burden. This commenter expressed concern that section 1921 would alter its existing reporting relationship with another Federal agency.

Response: Statutes governing the NPDB and the HIPDB specifically state who must report and what must be reported to each Data Bank. A State licensing authority that takes a reportable action must report the action to the NPDB and/or the HIPDB. The statute will not alter existing reporting relationships between agencies or between agencies and their contractors.

IV. Summary of Revisions in the Final Rule

Based on our review and response to the array of public comments, and on the discretionary authority given to the Department under the statute, we have made the revisions to the proposed regulations outlined below. We believe these revisions will allow the NPDB to collect and disseminate information under section 1921 in an effective and efficient manner.

Section 60.2

- We are modifying the proposed change to the first sentence in § 60.2 to read “State licensing or certification authorities, peer review organizations, and private accreditation entities that take negative actions or findings against

health care practitioners, physicians, dentists, or entities.”

Section 60.3

- We are revising the definition of the term “formal proceeding” to read as follows: *Formal Proceeding* means a proceeding held before a State licensing or certification authority, peer review organization, or private accreditation entity that maintains defined rules, policies, or procedures for such a proceeding.

- We are modifying language in the definition of the term “negative action or finding” to limit the scope of actions or findings reported by private accreditation organizations. The sentence “Receipt of less than full accreditation from a private accreditation entity that indicates a substantial risk to the safety of a patient(s) or quality of health care services and includes, but is not limited to, denial of accreditation or non-accreditation;” is replaced by “A final determination of denial or termination of an accreditation status from a private accreditation entity that indicates a risk to the safety of a patient(s) or quality of health care services.”

- To ensure clarity of the range of reportable subjects, we are modifying the definition of the term “negative action or finding” to replace the sentence “Any recommendation by a peer review organization to sanction a practitioner.” to read: “Any recommendation by a peer review organization to sanction a health care practitioner, physician, or dentist.”

- We are revising the following sentence in the definition of the term “negative action or finding:” “This definition excludes administrative fines, or citations and corrective action plans, unless they are: (1) Connected to the delivery of health care services, and (2) taken in conjunction with other licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender.” In this sentence, we are replacing the “and” in between “connected to the delivery of health care services” and “taken in conjunction with other licensure * * *” with an “or.” Also in this sentence, we are deleting the “,” in “administrative fines, or citations” and adding a “,” after “citations” and before “and corrective action plans.”

- After the first sentence in the definition of the term “peer review organization,” we are adding a requirement that to qualify as a peer review organization for purposes of this rule, an organization must have due process mechanisms. This sentence reads: “The organization has due

process mechanisms available to health care practitioners, physicians, and dentists.” We also are changing the term “health care practitioners” in the first sentence to read “health care practitioners, physicians, or dentists.”

- We are adding a fourth element in the proposed definition of “private accreditation entity” to include an entity that “Has due process mechanisms available to health care entities.” We are also deleting the “and” at the end of the statement “Measures a health care entity’s performance based on a set of standards and assigns a level of accreditation;” and deleting the period at the end of the statement “Conducts ongoing assessments and periodic reviews of the quality of health care provided by a health care entity” and replacing it with “and.”

- For clarification purposes, we are changing the term “Voluntary surrender” to “Voluntary surrender of license.” Also, in the first and second sentences of the definition, we are changing the phrase “a health care practitioner or entity” to read “a health care practitioner, physician, dentist, or entity.”

Section 60.9

- In § 60.9(a), we are changing the phrase “a health care practitioner or entity (both as defined in § 60.3)” to read “a health care practitioner, physician, dentist, or entity (as defined in § 60.3).”

- In § 60.9(a)(2) through § 60.9(a)(4), we are changing the phrase “practitioner or entity” to read “health care practitioner, physician, dentist, or entity.”

- In § 60.9(a)(3) we are replacing the word “nonpayment” with “non-payment.”

- We are changing the phrase “health care practitioner” in §§ 60.9(b)(1), 60.9(b)(2), 60.9(c)(1), and § 60.9(c)(2) to read “health care practitioner, physician, or dentist.”

- We are deleting § 60.9(c)(4)(ii), the requirement to report the amount of any monetary penalty resulting from the reported action “if known,” and adding that requirement to § 60.9(b)(4)(iii). This change makes the reporting of this data element mandatory instead of discretionary.

Section 60.10

- We are adding a third sentence to § 60.10(a) to state that the actions taken must be as a result of formal proceedings (as defined in § 60.3).

- In section § 60.10(a), we are changing the phrase “health care practitioner or health care entity” to read “health care practitioner, physician, dentist, or entity.”

Section 60.13

- To clarify the range of subjects that may be queried on, we are changing the phrase “individual health care practitioner or entity” in the first sentence of paragraph (a)(2) of § 60.13 to read: “individual health care practitioner, physician, dentist, or entity.”

- We are changing the phrase “licensing health care practitioners and entities” in § 60.13(a)(2)(ii) to read “licensing health care practitioners, physicians, dentists, and entities.”

- In 60.13(a)(2)(iv), we capitalized the phrase “Medicaid Fraud Control Units.”

Section 60.14

- In § 60.14(a), we are changing the sentence “The amount of such fees will be sufficient to recover the full costs of operating the NPDB” to read “The amount of such fees will be sufficient to cover the full costs of operating the NPDB.” We are changing the word “recover” to read “cover” for clarification.

V. Regulatory Impact Statement*A. Regulatory Analysis*

OMB has reviewed this final rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601–612), and the Small Business Regulatory Enforcement Act of 1996, Public Law 104–121, which amended the RFA, and has determined that it does not meet the criteria for an economically significant regulatory action. In accordance with the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, we have determined that this rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of \$110 million or more, and that a full analysis under the Act is not required.

1. Executive Order 12866

HRSA has examined the economic implications of this final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of \$100 million, adversely

affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. Regulations are also considered a significant regulatory action if it raises novel legal or policy issues.

The Office of Information and Regulatory Affairs (OIRA) has designated this final rule a significant regulatory action under the Executive Order since it raises novel legal and policy issues under section 3(f)(4) of the Executive Order. OIRA concludes, however, that this rule does not meet the significance threshold of \$100 million effect on the economy in any one year under section 3(f)(1).

Consistent with section 1921, these regulations identify certain data elements for reporting that are mandatory and specify other discretionary data elements for reporting. Many of the mandatory and discretionary data elements set forth in this final rule are already collected and maintained on a routine basis for a variety of purposes by reporting entities, and should not result in additional costs or in new and significant burdens. After consulting with State representatives, we understand that States routinely collect and maintain much of this information. Many licensing boards routinely collect and report much of this information to national organizations such as the National Council of State Boards of Nursing, Federation of Chiropractic Licensing Boards, American Association of State Social Work Boards, Federation of State Medical Boards and the Association of State and Provincial Psychology Boards. In addition, State Survey and Certification agencies are required to report adverse information to CMS regarding certain health care entities. Moreover, this information is reported to the HIPDB under section 1128E. Actions that are reported under section 1128E will only need to be reported once; the NPDB–HIPDB system will automatically route these reports to both Data Banks. Further, private accreditation entities maintain information on Internet Web sites regarding health care entities that have undergone the accreditation survey process and their ensuing accreditation status. We are unaware of any peer review organizations that make available specific information relating to their reviews on their organization’s Web sites.

Since we recognize that some classes of reporters may not collect or maintain the full array of data elements contemplated for inclusion into the NPDB (e.g., other name(s) used or a DEA registration number), we are classifying

certain data elements to be reported “if known.” We do not intend to impose new or added burdens on reporters and are proposing to give reporters the option of omitting certain data elements that they do not maintain or to which they do not have access.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require HRSA to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Further, in accordance with the RFA, if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule. Therefore, we have defined small entities as peer review organizations, private accreditation entities and local health care practitioner and entity licensing boards; individuals and States are not included in this definition of small entities. We have determined that both the burden and costs associated with reporting to the NPDB will be minimal. According to leading private accreditation entities, (e.g., the Joint Commission, National Committee for Quality Assurance, Utilization Review Accreditation Commission and Commission on Accreditation of Rehabilitation Facilities), accreditation entities take approximately 11 negative findings or actions per year against health care entities. Based on a review of public comments, we estimate the potential volume of reporting by peer review organizations to be minimal. Most commenters that addressed the volume of such reports, while not providing specific estimates, stated that peer review organizations would rarely make the types of recommendations that would be reportable under these regulations. On this basis, we have determined that the data collection process will not have a significant impact on local government agencies, peer review organizations, private accreditation entities, and that this rule will not have a major effect on the economy or on Federal or State expenditures.

We estimate that the costs to entities that must report to the NPDB under section 1921 and those that opt to query under section 1921 will not approach the threshold of a major rule. In the burden estimate table which follows, the total cost of the section 1921 to users

is less than \$300,000 annually. This cost estimate does not include the cost of queries which the entity may file. The major reason for the low cost is that the majority of categories of reporters and potential queriers are already interacting with the NPDB and/or the HIPDB. These users are already familiar with the operation and procedures of the Data Banks. For instance, the State licensing authorities are currently reporting to the NPDB and/or the HIPDB. Reports required under section 1921 will be the same as those currently being made to the HIPDB, and filing one report, in almost all cases, will meet the reporting obligation for the NPDB, HIPDB and section 1921 of the enhanced NPDB. Hospitals and other health care entities are currently querying the NPDB regarding physicians and dentists, for these entities there would only be a small increase in administrative costs if they began to query on other hospital personnel such as nurses. Thus, the Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities.

3. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires that agencies assess anticipated costs and benefits for any rulemaking that may result in an annual expenditure of \$110 million or more by State, local, or tribal governments, or the private sector. In accordance with the UMRA, we have determined that the only costs are those related to the ability to transmit the information electronically (e.g., Internet service) and additional staff hours

needed to transmit information (which we believe will not be significant). We estimate an initial start-up cost of approximately \$500 per private accreditation entity. For this reason, we have determined that this rule does not impose any mandates on State, local or tribal government or the private sector that will result in an annual expenditure of \$110 million or more, and that a full analysis under the UMRA is not necessary.

4. Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has Federalism implications. In reviewing this final rule under the threshold criteria of Executive Order 13132, we have determined that this rule will not significantly affect the rights, roles, and responsibilities of State or local governments because the actions that are to be reported under section 1921 are already being reported to the HIPDB under 1128E.

B. Paperwork Reduction Act of 1995

The NPDB regulations contain information collection requirements that have been approved by OMB under the Paperwork Reduction Act of 1995 (PRA) and assigned control number 0915-0126.

This final rule also contains information collection requirements. As required by the PRA [44 U.S.C. 3507(d)], we have submitted a copy of this final rule to OMB for its review of these information collection requirements.

Collection of Information: National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners.

Description: Information collected under §§ 60.9 and 60.10 of this final rule would be used by authorized parties, specified in the final rule, to determine the fitness of individuals to provide health care services, to protect the health and safety of individuals receiving health care through programs administered by the requesting agencies, and to protect the fiscal integrity of these programs. Information collected under §§ 60.6 and 60.16 would be used to correct reports submitted to the NPDB. Information collected under § 60.13 would be used to disseminate reports to individuals and entities eligible to query the NPDB.

Description of Respondents: State government authorities responsible for licensing health care practitioners, physicians, dentists, and health care entities, peer review organizations, and private accreditation entities reviewing the services of a health care practitioner, physician, dentist, or entity.

Estimated Annual Reporting: We estimate that the public reporting burden for the final rule is 10,429.48 hours. Each State is required to adopt a system of reporting to the Secretary certain adverse licensure actions taken against health care practitioners, physicians, dentists, and health care entities, and any other negative actions or findings by a State licensing authority, peer review organization, or private accreditation entity. The estimated annual reporting and querying burden is as follows:

Section No.	Number of respondents	Frequency of response	Number of responses	Hours per response	Burden hours	Hourly cost	Total cost
Errors and Omissions 60.6 (a) ¹	23	1	23	15 min	5.75	\$25	\$144
Revisions to Actions 60.6 (b) ¹	7	1	7	30 min	3.5	25	88
Licensure Actions 60.9 ²	0	0	0	0	0	0	0
Adverse Action 60.10 Private Accreditation Entities ³	11	1	11	45 min	8.25	25	206
Adverse Action 60.10 Peer Review Organizations ³	25	2	50	45 min	37.50	25	938
Queries: Agencies administering Federal health care programs 60.13 (a)(2)(i) ⁴	10	26	260	5 min	21.66	25	542
Queries: State Licensing Authorities 60.13(a)(2)(ii) ⁴	0	0	0	0	0	0	0
Queries: State Agencies 60.13 (a)(2)(iii) ⁴	51	20	1020	5 min	85	25	2,125
Queries: State Medicaid 60.13 (a)(2)(iv) ⁴	51	20	1020	5 min	85	25	2,125
Queries: Law Enforcement 60.13 (a)(2)(v) ⁴	262	1	262	5 min	21.83	25	546
Queries: QIOs 60.13 (a)(2)(vi) ⁴	51	5	255	5 min	21.25	25	531
Queries: Hospitals and other health care entities 60.13 (a)(2)(vii) ⁴	10,930	11	120,230	5 min	10,019.16	25	250,479
Self-Query 60.11(a)(2) ⁵	0	0	0	0	0	0	0
Entity Registration 60.3 ⁶	50	1	50	60 min	50	25	1,250
Entity Update 60.3 ⁶	25	1	25	5 min	2.08	25	52
Initial Request for Dispute of Report 60.16(b) ⁷	18	1	18	15 min	4.5	45	203

Section No.	Number of respondents	Frequency of response	Number of responses	Hours per response	Burden hours	Hourly cost	Total cost
Practitioner Requests for Secretarial Review 60.16(b) ⁷ .	3	1	3	8 hours	24	200	4,800
Subject Statements 60.16(b) ⁷	40	1	40	60 min	40	100	4,000
Total	11,557		123,183		10,429.48		268,029

¹ Although OMB has previously approved the burden under the HCQIA for the reporting of errors and omissions to information previously reported to the NPDB, section 1921 will expand the scope of the NPDB to include all health care practitioners and health care entities. However, licensure actions reported to the NPDB regarding health care practitioners, physicians, dentists, and health care entities are already reported to the HIPDB and, thus, were previously calculated in the burden estimates for the HIPDB. Therefore, the burden for correcting or revising NPDB licensure actions is not included in this regulation. Section 60.6 requires individuals and entities that report information to the NPDB to ensure the accuracy of the information. If there are any errors or omissions to the reports previously submitted to the NPDB, the individual or entity that submitted the report to the NPDB is responsible for making the necessary correction or revision to the original report. If there is any revision to the action, the individual or entity that submitted the original report to the NPDB is responsible for reporting the revision. Based upon corrections and revisions made under the HCQIA, we estimate that a total of 23 respondents will need to correct their reports each year and that a total of 7 respondents will need to revise actions originally reported each year. Based on experience with the NPDB, a correction is expected to take 15 minutes to complete and submit. A revision is expected to take somewhat longer (30 minutes) because it involves completing a portion of a new report form rather than just correcting the individual items that are in error. The costs associated with preparing corrections and revisions are estimated at \$25 per hour.

² Since § 60.9 requires each State to adopt a system of reporting to the NPDB disciplinary licensure actions, the various licensing boards within each State will be required to report such actions directly to the State licensing authorities. These same licensing boards already are responsible for reporting such actions to the HIPDB. Therefore, we calculate the annual reporting burden for State licensing boards under the HIPDB and not this regulation. As a result, the reporting burden for State licensing boards is not included in this regulation. We estimate that, under the HIPDB regulations, 40,400 reports will be submitted to both the NPDB and the HIPDB each year, for an average of 187 reports per State licensing authority and 22 reports per State licensing board. The costs associated with preparing licensure reports are estimated at \$25 per hour. The cost estimates for this burden are associated with the HIPDB.

³ Section 1921 requires each State to adopt a system of reporting to the NPDB any negative action or finding concluded against health care practitioners, physicians, dentists, and health care entities by a State licensing authority, peer review organization, or private accreditation entity. The negative actions or findings taken by State licensing authorities are already required to be reported to the HIPDB and were included in the HIPDB regulations. This regulation, therefore, includes the burden estimates only for those negative actions or findings taken by peer review organizations and private accreditation entities. We anticipate that there may be 25 peer review organizations that meet the definition proposed in this NPRM. Comments on the proposed rule indicate that peer review organizations will not often take the type of action or finding required to be reported in this regulation. Therefore, we estimate that on average these organizations would, at most, report a finding 2 times a year to the NPDB. We estimate that, under § 60.10, there will be approximately 11 private accreditation entities reporting on an average 2 times each during the year to the NPDB for a total of 50 reports. We have identified 11 organizations that meet the definition of a private accreditation entity. We believe that these entities will report an average of 11 actions per year. This estimation is based on changes in the final rule that limits reportable actions to final terminations and denials of accreditation. Based on experience with the NPDB, we estimate that it will take a peer review organization or a private accreditation entity 45 minutes to complete and submit an initial report. The costs associated with preparing reports are estimated at \$25 per hour.

⁴ Although OMB has previously approved the burden under the HCQIA for querying the NPDB, section 1921 authorizes additional entities, such as State Medicaid Fraud Control Units, Quality Improvement Organizations, and certain law enforcement officials to query the NPDB for disciplinary licensure actions, and other negative actions or findings concluded against health care practitioners, physicians, dentists, and health care entities. Based on current NPDB querying patterns, we estimate an approximate total of 123,183 new (section 1921—only) queries per year on health care practitioners, physicians, dentists, and health care entities. The costs associated with preparing these queries are estimated at \$25 per hour. This estimate excludes queries by State licensing authorities. State licensing boards that license health care practitioners already have access to NPDB information. Additionally, State licensing authorities that license health care practitioners and entities currently have access to the HIPDB, which not only contains the new types of licensing reports collected under section 1921, but also contains a range of other types of adverse actions. Because of the low volume of queries currently submitted by these authorities, we do not anticipate an increase in queries as a result of section 1921 implementation. All queries under section 1921 are voluntary.

⁵ Currently, self queries by health care practitioners are automatically submitted to both the NPDB and the HIPDB, and we anticipate the same policy will be in effect for health care entities when section 1921 is implemented. Therefore, self queries submitted to the NPDB by health care practitioners, physicians, dentists, and health care entities already are included in HIPDB burden estimates and are not included in this regulation. Since the burden and costs for preparation of self queries is contained in HIPDB no additional cost estimates are required by the implementation of section 1921. All self-querying is voluntary.

⁶ To access the NPDB, entities are required to certify that they meet section 1921 reporting and/or querying requirements. Consequently, an eligible entity must complete and submit an *Entity Registration Form* to the NPDB. Data collected on this form provides the NPDB with essential information concerning the entity (e.g., name, address, and entity type). Eligible entities (e.g., State licensing agencies, hospitals, or managed care organizations) that have access to the HCQIA, section 1921 and section 1128E information will only be required to register once. We estimate that an additional 50 entities will register with the NPDB each year for the next 3 years for a total of 150 entities. We estimate that it will take an entity 60 minutes to complete and submit the *Entity Registration Form* to the NPDB. The costs associated with preparing the registration and entity verification documents are estimated at \$25 per hour.

If there are any changes in the entity's name, address, telephone number, entity type designation, or query and/or report point of contact, the entity representative must update the information on the *Entity Registration Update Form* and submit it to the NPDB. Of these 150 new registrants, we estimate that approximately 25 entities will need to update their organization's information each year. The costs associated with preparing the registration and entity verification documents are estimated at \$25 per hour.

⁷ OMB has previously approved the burden under the HCQIA for disputing the factual accuracy of information in a report and requesting Secretarial review of the disputed report. Based on experience with the NPDB, we estimate that an additional 18 reports will be entered into the "disputed status." We estimate that it will take a health care practitioner, physician, dentist, or health care entity 15 minutes to notify the NPDB to enter the report into "disputed status." The costs associated with preparing an initial dispute request is estimated at approximately \$45 per hour. Of the 18 disputed reports, we estimate that only 3 will be forwarded to the Secretary for review. We estimate that it will take a health care practitioner, physician, dentist, or entity 8 hours to describe, in writing, which facts are in dispute and to gather supporting documentation related to the dispute. Based on experience with the NPDB and HIPDB, we estimate the costs associated with preparing a request for Secretarial review at approximately \$200 per hour. In addition, a health care practitioner, physician, or dentist who, or a health care entity that, is the subject of a report may submit a 2,000-character statement at any time after the NPDB has received the report. We estimate that an additional 40 practitioners and entities will submit statements to the NPDB. Based on previous experience, we estimate that each statement will take approximately 60 minutes to prepare. The cost estimate for preparation of statements is \$100 per hour.

⁸ The costs presented in this table have been estimated based on whole hours. The cost estimates are for response preparation and do not cover the costs per query (user fee), which will be assessed for each name submitted to the NPDB. The per hour cost estimates have been developed by using operational reports of organizations utilizing the NPDB and HIPDB.

List of Subjects in 45 CFR Part 60

Claims, Fraud, Health, Health maintenance organizations (HMOs), Health professions, Hospitals, Insurance companies, Malpractice, Reporting and recordkeeping requirements.

Dated: September 9, 2009.

Mary K. Wakefield,

Administrator, Health Resources and Services Administration.

Dated: September 14, 2009.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

■ For the reasons set forth in the preamble, the Health Resources and Services Administration amends 45 CFR part 60 as set forth below:

PART 60—NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS

■ 1. The authority citation for 45 CFR part 60 is revised to read as follows:

Authority: 42 U.S.C. 11101–11152; 42 U.S.C. 1396r–2.

Subpart A—General Provisions

■ 2. Section 60.1 is revised to read as follows:

§ 60.1 The National Practitioner Data Bank.

The Health Care Quality Improvement Act of 1986, as amended (HCQIA), title IV of Public Law 99–660 (42 U.S.C. 11101 *et seq.*), authorizes the Secretary to establish (either directly or by contract) a National Practitioner Data Bank (NPDB) to collect and release certain information relating to the professional competence and conduct of physicians, dentists and other health care practitioners. Section 1921 of the Social Security Act (42 U.S.C. 1396r–2) (section 1921) requires each State to adopt a system of reporting to the Secretary adverse licensure actions taken against health care practitioners and entities. Section 1921 also requires States to report any negative action or finding which a State licensing authority, peer review organization, or private accreditation entity has concluded against a health care practitioner or entity. This information will be collected and released to authorized parties by the NPDB. The regulations in this part set forth the reporting and disclosure requirements for the NPDB.

§ 60.2 [Amended]

■ 3. Section 60.2 is amended by adding the phrase “State licensing authorities;” after the phrase “Boards of Medical

Examiners;” in the first sentence and by adding “State licensing or certification authorities, peer review organizations, and private accreditation entities that take negative actions or findings against health care practitioners, physicians, dentists, or entities;” after the phrase “professional review actions;” in the first sentence; and by removing the phrase “National Practitioner Data Bank,” wherever it appears, and adding the term “NPDB” in its place.

■ 4. Section 60.3 is amended by removing the reference to “§ 60.9” in the third sentence of the definition of “Board of Medical Examiners” and adding “§ 60.11” in its place, and by adding the following definitions: “Affiliated or associated,” “Formal proceeding,” “Negative action or finding,” “Organization name,” “Organization type,” “Peer review organization,” “Private accreditation entity,” “Quality Improvement Organization,” and “Voluntary surrender of license” in alphabetical order to read as follows:

§ 60.3 Definitions.

* * * * *

Affiliated or associated refers to health care entities with which a subject of a final adverse action has a business or professional relationship. This includes, but is not limited to, organizations, associations, corporations, or partnerships. This also includes a professional corporation or other business entity composed of a single individual.

* * * * *

Formal proceeding means a proceeding held before a State licensing or certification authority, peer review organization, or private accreditation entity that maintains defined rules, policies, or procedures for such a proceeding.

* * * * *

Negative action or finding by a State licensing authority, peer review organization, or private accreditation entity means:

(a) A final determination of denial or termination of an accreditation status from a private accreditation entity that indicates a risk to the safety of a patient(s) or quality of health care services;

(b) Any recommendation by a peer review organization to sanction a health care practitioner, physician, or dentist; or

(c) Any negative action or finding that under the State’s law is publicly available information and is rendered by a licensing or certification authority, including, but not limited to, limitations

on the scope of practice, liquidations, injunctions and forfeitures. This definition excludes administrative fines or citations, and corrective action plans, unless they are:

(1) Connected to the delivery of health care services, or

(2) Taken in conjunction with other licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender.

Organization name means the subject’s business or employer at the time the underlying acts occurred. If more than one business or employer is applicable, the one most closely related to the underlying acts should be reported as the “organization name,” with the others being reported as “affiliated or associated health care entities.”

Organization type means a description of the nature of that business or employer.

Peer review organization means an organization with the primary purpose of evaluating the quality of patient care practices or services ordered or performed by health care practitioners, physicians, or dentists measured against objective criteria which define acceptable and adequate practice through an evaluation by a sufficient number of health practitioners in such an area to ensure adequate peer review. The organization has due process mechanisms available to health care practitioners, physicians, and dentists. This definition excludes utilization and quality control peer review organizations described in Part B of Title XI of the *Social Security Act* (referred to as QIOs) and other organizations funded by the Centers for Medicare and Medicaid Services (CMS) to support the QIO program.

* * * * *

Private accreditation entity means an entity or organization that:

(a) Evaluates and seeks to improve the quality of health care provided by a health care entity;

(b) Measures a health care entity’s performance based on a set of standards and assigns a level of accreditation;

(c) Conducts ongoing assessments and periodic reviews of the quality of health care provided by a health care entity; and

(d) Has due process mechanisms available to health care entities.

* * * * *

Quality Improvement Organization means a utilization and quality control peer review organization (as defined in part B of title XI of the *Social Security Act*) that:

(a)(1) Is composed of a substantial number of the licensed doctors of

medicine and osteopathy engaged in the practice of medicine or surgery in the area and who are representative of the practicing physicians in the area, designated by the Secretary under section 1153, with respect to which the entity shall perform services under this part, or

(2) Has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate peer review of the services provided by the various medical specialties and subspecialties can be assured;

(b) Is able, in the judgment of the Secretary, to perform review functions required under section 1154 in a manner consistent with the efficient and effective administration of this part and to perform reviews of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice; and

(c) Has at least one individual who is a representative of consumers on its governing body.

* * * * *

Voluntary surrender of license means a surrender made after a notification of investigation or a formal official request by a State licensing authority for a health care practitioner, physician, dentist, or entity to surrender a license. The definition also includes those instances where a health care practitioner, physician, dentist, or entity voluntarily surrenders a license in exchange for a decision by the licensing authority to cease an investigation or similar proceeding, or in return for not conducting an investigation or proceeding, or in lieu of a disciplinary action.

■ 5. Subpart B is revised as set forth below:

Subpart B—Reporting of Information

60.4 How information must be reported.

60.5 When information must be reported.

60.6 Reporting errors, omissions, and revisions.

60.7 Reporting medical malpractice payments.

60.8 Reporting licensure actions taken by Boards of Medical Examiners.

60.9 Reporting licensure actions taken by States.

60.10 Reporting negative actions or findings taken by peer review organizations or private accreditation entities.

60.11 Reporting adverse actions on clinical privileges.

Subpart B—Reporting of Information

§ 60.4 How information must be reported.

Information must be reported to the NPDB or to a Board of Medical Examiners as required under §§ 60.7, 60.8, and 60.11 in such form and manner as the Secretary may prescribe.

§ 60.5 When information must be reported.

Information required under §§ 60.7, 60.8, and 60.11 must be submitted to the NPDB within 30 days following the action to be reported, beginning with actions occurring on or after September 1, 1990, and information required under §§ 60.9 and 60.10 must be submitted to the NPDB within 30 days following the action to be reported, beginning with actions occurring on or after January 1, 1992, as follows:

(a) *Malpractice Payments (§ 60.7).* Persons or entities must submit information to the NPDB within 30 days from the date that a payment, as described in § 60.7, is made. If required under § 60.7, this information must be submitted simultaneously to the appropriate State licensing board.

(b) *Licensure Actions (§ 60.8 and § 60.9).* The Board of Medical Examiners or other licensing or certifying authority of a State must submit information within 30 days from the date the licensure action was taken.

(c) *Negative Action or Finding (§ 60.10).* Peer review organizations, or private accreditation entities must report any negative actions or findings to the State within 15 days from the date the action was taken or the finding was made. Each State, through the adopted system of reporting, must submit to the NPDB the information received from the peer review organization or private accreditation entity within 15 days from the date on which it received this information.

(d) *Adverse Actions (§ 60.11).* A health care entity must report an adverse action to the Board within 15 days from the date the adverse action was taken. The Board must submit the information received from a health care entity within 15 days from the date on which it received this information. If required under § 60.11, this information must be submitted by the Board simultaneously to the appropriate State licensing board in the State in which the health care entity is located, if the Board is not such licensing Board.

§ 60.6 Reporting errors, omissions, and revisions.

(a) Persons and entities are responsible for the accuracy of information which they report to the NPDB. If errors or omissions are found

after information has been reported, the person or entity which reported it must send an addition or correction to the NPDB or, in the case of reports made under § 60.11, to the Board of Medical Examiners, as soon as possible.

(b) An individual or entity which reports information on licensure, negative actions or findings or clinical privileges under §§ 60.8, 60.9, 60.10, or 60.11 must also report any revision of the action originally reported. Revisions include reversal of a professional review action or reinstatement of a license. Revisions are subject to the same time constraints and procedures of §§ 60.5, 60.8, 60.9, 60.10, and 60.11, as applicable to the original action which was reported.

(Approved by the Office of Management and Budget under control number 0915–0126)

§ 60.7 Reporting medical malpractice payments.

(a) *Who must report.* Each entity, including an insurance company, which makes a payment under an insurance policy, self-insurance, or otherwise, for the benefit of a physician, dentist or other health care practitioner in settlement of or in satisfaction in whole or in part of a claim or a judgment against such physician, dentist, or other health care practitioner for medical malpractice, must report information as set forth in paragraph (b) of this section to the NPDB and to the appropriate State licensing board(s) in the State in which the act or omission upon which the medical malpractice claim was based. For purposes of this section, the waiver of an outstanding debt is not construed as a “payment” and is not required to be reported.

(b) *What information must be reported.* Entities described in paragraph (a) of this section must report the following information:

(1) With respect to the physician, dentist or other health care practitioner for whose benefit the payment is made—

(i) Name,
(ii) Work address,
(iii) Home address, if known,
(iv) Social Security Number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note),
(v) Date of birth,
(vi) Name of each professional school attended and year of graduation,
(vii) For each professional license: the license number, the field of licensure, and the name of the State or Territory in which the license is held,

(viii) Drug Enforcement

Administration registration number, if known,

(ix) Name of each hospital with which he or she is affiliated, if known;

(2) With respect to the reporting entity—

(i) Name and address of the entity making the payment,

(ii) Name, title, and telephone number of the responsible official submitting the report on behalf of the entity, and

(iii) Relationship of the reporting entity to the physician, dentist, or other health care practitioner for whose benefit the payment is made;

(3) With respect to the judgment or settlement resulting in the payment—

(i) Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body and the case number,

(ii) Date or dates on which the act(s) or omission(s) which gave rise to the action or claim occurred,

(iii) Date of judgment or settlement,

(iv) Amount paid, date of payment, and whether payment is for a judgment or a settlement,

(v) Description and amount of judgment or settlement and any conditions attached thereto, including terms of payment,

(vi) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based,

(vii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary, and

(viii) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(c) *Sanctions.* Any entity that fails to report information on a payment required to be reported under this section is subject to a civil money penalty not to exceed the amount specified at 42 CFR 1003.103(c).

(d) *Interpretation of information.* A payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

(Approved by the Office of Management and Budget under control number 0915-0126)

§ 60.8 Reporting licensure actions taken by Boards of Medical Examiners.

(a) *What actions must be reported.* Each Board of Medical Examiners must report to the NPDB any action based on reasons relating to a physician's or dentist's professional competence or professional conduct:

(1) Which revokes or suspends (or otherwise restricts) a physician's or dentist's license,

(2) Which censures, reprimands, or places on probation a physician or dentist, or

(3) Under which a physician's or dentist's license is surrendered.

(b) *Information that must be reported.*

The Board must report the following information for each action:

(1) The physician's or dentist's name,

(2) The physician's or dentist's work address,

(3) The physician's or dentist's home address, if known,

(4) The physician's or dentist's Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note),

(5) The physician's or dentist's date of birth,

(6) Name of each professional school attended by the physician or dentist and year of graduation,

(7) For each professional license, the physician's or dentist's license number, the field of licensure and the name of the State or Territory in which the license is held,

(8) The physician's or dentist's Drug Enforcement Administration registration number, if known,

(9) A description of the acts or omissions or other reasons for the action taken,

(10) A description of the Board action, the date the action was taken, its effective date and duration,

(11) Classification of the action in accordance with a reporting code adopted by the Secretary, and

(12) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(c) *Sanctions.* If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to submit a report as required by this section, the Secretary will designate another qualified entity for the reporting of information under § 60.11.

§ 60.9 Reporting licensure actions taken by States.

(a) *What actions must be reported.* Each State is required to adopt a system of reporting to the NPDB actions, as listed below, which are taken against a health care practitioner, physician, dentist, or entity (as defined in § 60.3). The actions taken must be as a result of formal proceedings (as defined in § 60.3). The actions which must be reported are:

(1) Any adverse action taken by the licensing authority of the State as a result of a formal proceeding, including revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation;

(2) Any dismissal or closure of the formal proceeding by reason of the health care practitioner, physician, dentist, or entity surrendering the license, or the practitioner leaving the State or jurisdiction;

(3) Any other loss of the license of the health care practitioner, physician, dentist, or entity, whether by operation of law, voluntary surrender (excluding those due to non-payment of licensure renewal fees, retirement, or change to inactive status), or otherwise; and

(4) Any negative action or finding by such authority, organization, or entity regarding the health care practitioner, physician, dentist, or entity.

(b) *What information must be reported.* Each State must report the following information (not otherwise reported under § 60.8):

(1) If the subject is a *health care practitioner, physician, or dentist*, personal identifiers, including:

(i) Name;

(ii) Social Security Number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note);

(iii) Home address or address of record;

(iv) Sex; and

(v) Date of birth.

(2) If the subject is a *health care practitioner, physician, or dentist*, employment or professional identifiers, including:

(i) Organization name and type;

(ii) Occupation and specialty, if applicable;

(iii) National Provider Identifier (NPI), when issued by the Centers for Medicare & Medicaid Services (CMS);

(iv) Name of each professional school attended and year of graduation; and

(v) With respect to the professional license (including professional certification and registration) on which the reported action was taken, the license number, the field of licensure, and the name of the State or Territory in which the license is held.

(3) If the subject is a *health care entity*, identifiers, including:

(i) Name;

(ii) Business address;

(iii) Federal Employer Identification Number (FEIN), or Social Security Number when used by the subject as a Taxpayer Identification Number (TIN);

(iv) The NPI, when issued by CMS;

(v) Type of organization; and

(vi) With respect to the license (including certification and registration)

on which the reported action was taken, the license and the name of the State or Territory in which the license is held.

(4) For all *subjects*:

(i) A narrative description of the acts or omissions and injuries upon which the reported action was based;

(ii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary;

(iii) Classification of the action taken in accordance with a reporting code adopted by the Secretary, and the amount of any monetary penalty resulting from the reported action;

(iv) The date the action was taken, its effective date and duration;

(v) Name of the agency taking the action;

(vi) Name and address of the reporting entity; and

(vii) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(c) *What information may be reported, if known*: Entities described in paragraph (a) of this section may voluntarily report, if known, the following information:

(1) If the subject is a *health care practitioner, physician, or dentist*, personal identifiers, including:

(i) Other name(s) used;

(ii) Other address;

(iii) FEIN, when used by the individual as a TIN; and

(iv) If deceased, date of death.

(2) If the subject is a *health care practitioner, physician, or dentist*, employment or professional identifiers, including:

(i) Other State professional license number(s), field(s) of licensure, and the name(s) of the State or Territory in which the license is held;

(ii) Other numbers assigned by Federal or State agencies, including, but not limited to Drug Enforcement Administration (DEA) registration number(s), Unique Physician Identification Number(s) (UPIN), and Medicaid and Medicare provider number(s);

(iii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(iv) Nature of the subject's relationship to each associated or affiliated health care entity.

(3) If the subject is a *health care entity*, identifiers, including:

(i) Other name(s) used;

(ii) Other address(es) used;

(iii) Other FEIN(s) or Social Security Number(s) used;

(iv) Other NPI(s) used;

(v) Other State license number(s) and the name(s) of the State or Territory in which the license is held;

(vi) Other numbers assigned by Federal or State agencies, including, but not limited to Drug Enforcement Administration (DEA) registration number(s), Clinical Laboratory Improvement Act (CLIA) number(s), Food and Drug Administration (FDA) number(s), and Medicaid and Medicare provider number(s);

(vii) Names and titles of principal officers and owners;

(viii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(ix) Nature of the subject's relationship to each associated or affiliated health care entity.

(4) For all *subjects*:

(i) Whether the subject will be automatically reinstated.

(ii) [Reserved]

(d) *Access to documents*. Each State must provide the Secretary (or an entity designated by the Secretary) with access to the documents underlying the actions described in paragraphs (a)(1) through (4) of this section, as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations for the purpose of carrying out section 1921 of the Social Security Act.

§ 60.10 Reporting negative actions or findings taken by peer review organizations or private accreditation entities.

(a) *What actions must be reported*. Each State is required to adopt a system of reporting to the NPDB any negative actions or findings (as defined in § 60.3) which are taken against a health care practitioner, physician, dentist, or entity by a peer review organization or private accreditation entity. The health care practitioner, physician, dentist, or entity must be licensed or otherwise authorized by the State to provide health care services. The actions taken must be as a result of formal proceedings (as defined in § 60.3).

(b) *What information must be reported*. Each State must report the information as required in § 60.9(b).

(c) *What information should be reported, if known*: Each State should report, if known, the information as described in § 60.9(c).

(d) *Access to documents*. Each State must provide the Secretary (or an entity designated by the Secretary) with access to the documents underlying the actions described in this section as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations for the purpose of carrying out section 1921 of the Social Security Act.

§ 60.11 Reporting adverse actions on clinical privileges.

(a) *Reporting to the Board of Medical Examiners*—(1) *Actions that must be reported and to whom the report must be made*. Each health care entity must report to the Board of Medical Examiners in the State in which the health care entity is located the following actions:

(i) Any professional review action that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days;

(ii) Acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist—

(A) While the physician or dentist is under investigation by the health care entity relating to possible incompetence or improper professional conduct, or

(B) In return for not conducting such an investigation or proceeding; or

(iii) In the case of a health care entity which is a professional society, when it takes a professional review action concerning a physician or dentist.

(2) *Voluntary reporting on other health care practitioners*. A health care entity may report to the Board of Medical Examiners information as described in paragraph (a)(3) of this section concerning actions described in paragraph (a)(1) in this section with respect to other health care practitioners.

(3) *What information must be reported*. The health care entity must report the following information concerning actions described in paragraph (a)(1) of this section with respect to a physician or dentist:

(i) Name,

(ii) Work address,

(iii) Home address, if known,

(iv) Social Security Number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note),

(v) Date of birth,

(vi) Name of each professional school attended and year of graduation,

(vii) For each professional license: the license number, the field of licensure, and the name of the State or Territory in which the license is held,

(viii) Drug Enforcement Administration registration number, if known,

(ix) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender,

(x) Action taken, date the action was taken, and effective date of the action, and

(xi) Other information as required by the Secretary from time to time after publication in the **Federal Register** and

after an opportunity for public comment.

(b) *Reporting by the Board of Medical Examiners to the National Practitioner Data Bank.* Each Board must report, in accordance with §§ 60.4 and 60.5, the information reported to it by a health care entity and any known instances of a health care entity's failure to report information as required under paragraph (a)(1) of this section. In addition, each Board must simultaneously report this information to the appropriate State licensing board in the State in which the health care entity is located, if the Board is not such licensing board.

(c) *Sanctions—(1) Health care entities.* If the Secretary has reason to believe that a health care entity has substantially failed to report information in accordance with this section, the Secretary will conduct an investigation. If the investigation shows that the health care entity has not complied with this section, the Secretary will provide the entity with a written notice describing the noncompliance, giving the health care entity an opportunity to correct the noncompliance, and stating that the entity may request, within 30 days after receipt of such notice, a hearing with respect to the noncompliance. The request for a hearing must contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC, metropolitan area. The Secretary will deny a hearing if:

- (i) The request for a hearing is untimely,
- (ii) The health care entity does not provide a statement of material factual issues in dispute, or
- (iii) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the health care entity setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing the entity is found to be in noncompliance, the Secretary will publish the name of the health care entity in the **Federal Register**. In such case, the immunity protections provided under section 411(a) of the Act will not apply to the health care entity for professional review activities that occur during the 3-year period beginning 30 days after the date of publication of the entity's name in the **Federal Register**.

(2) *Board of Medical Examiners.* If, after notice of noncompliance and providing opportunity to correct

noncompliance, the Secretary determines that a Board has failed to report information in accordance with paragraph (b) of this section, the Secretary will designate another qualified entity for the reporting of this information.

(Approved by the Office of Management and Budget under control number 0915–0126)

■ 6. Subpart C is revised as set forth below:

Subpart C—Disclosure of Information by the National Practitioner Data Bank

- 60.12 Information which hospitals must request from the National Practitioner Data Bank.
- 60.13 Requesting information from the National Practitioner Data Bank.
- 60.14 Fees applicable to requests for information.
- 60.15 Confidentiality of National Practitioner Data Bank information.
- 60.16 How to dispute the accuracy of National Practitioner Data Bank information.

Subpart C—Disclosure of Information by the National Practitioner Data Bank

§ 60.12 Information which hospitals must request from the National Practitioner Data Bank.

(a) *When information must be requested.* Each hospital, either directly or through an authorized agent, must request information from the NPDB concerning a physician, dentist or other health care practitioner as follows:

(1) At the time a physician, dentist or other health care practitioner applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital; and

(2) Every 2 years concerning any physician, dentist, or other health care practitioner who is on its medical staff (courtesy or otherwise), or has clinical privileges at the hospital.

(b) *Failure to request information.* Any hospital which does not request the information as required in paragraph (a) of this section is presumed to have knowledge of any information reported to the NPDB concerning this physician, dentist or other health care practitioner.

(c) *Reliance on the obtained information.* Each hospital may rely upon the information provided by the NPDB to the hospital. A hospital shall not be held liable for this reliance unless the hospital has knowledge that the information provided was false. (Approved by the Office of Management and Budget under control number 0915–0126)

§ 60.13 Requesting information from the National Practitioner Data Bank.

(a) *Who may request information and what information may be available.*

Information in the NPDB will be available, upon request, to the persons or entities, or their authorized agents, as described below:

(1) Information reported under §§ 60.7, 60.8, and 60.11 is available to:

(i) A hospital that requests information concerning a physician, dentist or other health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital;

(ii) A physician, dentist, or other health care practitioner who requests information concerning himself or herself;

(iii) A State Medical Board of Examiners or other State authority that licenses physicians, dentists, or other health care practitioners;

(iv) A health care entity which has entered or may be entering into an employment or affiliation relationship with a physician, dentist, or other health care practitioner, or to which the physician, dentist, or other health care practitioner has applied for clinical privileges or appointment to the medical staff;

(v) An attorney, or individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim. This information will be disclosed only upon the submission of evidence that the hospital failed to request information from the NPDB, as required by § 60.12(a), and may be used solely with respect to litigation resulting from the action or claim against the hospital;

(vi) A health care entity with respect to professional review activity; and

(vii) A person or entity requesting statistical information, in a form which does not permit the identification of any individual or entity.

(2) Information reported under §§ 60.9 and 60.10 is available to the agencies, authorities, and officials listed below that request information on licensure disciplinary actions and any other negative actions or findings concerning an individual health care practitioner, physician, dentist, or entity. These agencies, authorities, and officials may obtain data for the purposes of determining the fitness of individuals to provide health care services, protecting the health and safety of individuals receiving health care through programs

administered by the requesting agency, and protecting the fiscal integrity of these programs.

(i) Agencies administering Federal health care programs, including private entities administering such programs under contract;

(ii) Authorities of States (or political subdivisions thereof) which are responsible for licensing health care practitioners, physicians, dentists, and entities;

(iii) State agencies administering or supervising the administration of State health care programs (as defined in 42 U.S.C. 1128(h));

(iv) State Medicaid Fraud Control Units (as defined in 42 U.S.C. 1903(q));

(v) Law enforcement officials and agencies such as:

(A) United States Attorney General;

(B) United States Chief Postal

Inspector;

(C) United States Inspectors General;

(D) United States Attorneys;

(E) United States Comptroller General;

(F) United States Drug Enforcement

Administration;

(G) United States Nuclear Regulatory Commission;

(H) Federal Bureau of Investigation; and

(I) State law enforcement agencies, which include, but are not limited to, State Attorneys General.

(vi) Utilization and quality control peer review organizations described in part B of title XI and appropriate entities with contracts under section 1154(a)(4)(C) of the Social Security Act with respect to eligible organizations reviewed under the contracts;

(vii) Hospitals and other health care entities (as defined in section 431 of the HCQIA), with respect to physicians or other licensed health care practitioners who have entered (or may be entering) into employment or affiliation relationships with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities;

(viii) A physician, dentist, or other health care practitioner who, and an entity which, requests information concerning himself, herself, or itself; and

(ix) A person or entity requesting statistical information, in a form which does not permit the identification of any individual or entity. (For example, researchers may use statistical information to identify the total number of nurses with adverse licensure actions in a specific State. Similarly, researchers may use statistical information to identify the total number of health care entities denied accreditation.)

(b) *Procedures for obtaining National Practitioner Data Bank information.*

Persons and entities may obtain information from the NPDB by submitting a request in such form and manner as the Secretary may prescribe. These requests are subject to fees as described in § 60.14.

§ 60.14 Fees applicable to requests for information.

(a) *Policy on fees.* The fees described in this section apply to all requests for information from the NPDB. The amount of such fees will be sufficient to cover the full costs of operating the NPDB. The actual fees will be announced by the Secretary in periodic notices in the **Federal Register**.

However, for purposes of verification and dispute resolution at the time the report is accepted, the NPDB will provide a copy—at the time a report has been submitted, automatically, without a request and free of charge—of the record to the health care practitioner or entity who is the subject of the report and to the reporter.

(b) *Criteria for determining the fee.*

The amount of each fee will be determined based on the following criteria:

(1) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

(2) Physical overhead, consulting, and other indirect costs including materials and supplies, utilities, insurance, travel and rent and depreciation on land, buildings and equipment;

(3) Agency management and supervisory costs;

(4) Costs of enforcement, research, and establishment of regulations and guidance;

(5) Use of electronic data processing equipment to collect and maintain information—the actual cost of the service, including computer search time, runs and printouts; and

(6) Any other direct or indirect costs related to the provision of services.

(c) *Assessing and collecting fees.* The Secretary will announce through notice in the **Federal Register** from time to time the methods of payment of NPDB fees. In determining these methods, the Secretary will consider efficiency, effectiveness, and convenience for the NPDB users and the Department. Methods may include: Credit card, electronic fund transfer, and other methods of electronic payment.

§ 60.15 Confidentiality of National Practitioner Data Bank information.

(a) *Limitations on disclosure.*

Information reported to the NPDB is considered confidential and shall not be disclosed outside the Department of

Health and Human Services, except as specified in §§ 60.12, 60.13, and 60.16. Persons who, and entities which, receive information from the NPDB either directly or from another party must use it solely with respect to the purpose for which it was provided. Nothing in this paragraph shall prevent the disclosure of information by a party which is authorized under applicable State law to make such disclosure.

(b) *Penalty for violations.* Any person who violates paragraph (a) shall be subject to a civil money penalty of up to \$11,000 for each violation. This penalty will be imposed pursuant to procedures at 42 CFR part 1003.

§ 60.16 How to dispute the accuracy of National Practitioner Data Bank information.

(a) *Who may dispute National Practitioner Data Bank information.*

Any physician, dentist, or other health care practitioner or health care entity may dispute the accuracy of information in the NPDB concerning himself, herself or itself. The Secretary will routinely mail a copy of any report filed in the NPDB to the subject individual or entity.

(b) *Procedures for filing a dispute.*

The subject of the report may dispute the accuracy of the report within 60 days from the date on which the Secretary mails the report to the subject individual or entity. The procedures for disputing a report are:

(1) Informing the Secretary and the reporting entity, in writing, of the disagreement, and the basis for it,

(2) Requesting simultaneously that the disputed information be entered into a “disputed” status and be reported to inquirers as being in a “disputed” status, and

(3) Attempting to enter into discussion with the reporting entity to resolve the dispute.

(c) *Procedures for revising disputed information.*

(1) If the reporting entity revises the information originally submitted to the NPDB, the Secretary will notify all entities to whom reports have been sent that the original information has been revised.

(2) If the reporting entity does not revise the reported information, the Secretary will, upon request, review the written information submitted by both parties (the subject individual or entity and the reporting entity). After review, the Secretary will either—

(i) If the Secretary concludes that the information is accurate, include a brief statement by the physician, dentist or other health care practitioner or health care entity describing the disagreement concerning the information, and an

explanation of the basis for the decision that it is accurate, or

(ii) If the Secretary concludes that the information is incorrect, send corrected information to previous inquirers.

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H.R. 4462/P.L. 111-126

To accelerate the income tax benefits for charitable cash contributions for the relief of victims of the earthquake in Haiti. (Jan. 22, 2010; 124 Stat. 3)

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