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Presidential Documents

Title 3—

The President

Memorandum of February 9, 2010

Establishing a Task Force on Childhood Obesity

Memorandum for the Heads of Executive Departments and Agencies

Across our country, childhood obesity has reached epidemic rates and, as a result, our children may live shorter lives than their parents. Obesity has been recognized as a problem for decades, but efforts to address this crisis to date have been insufficient. My Administration is committed to redoubling our efforts to solve the problem of childhood obesity within a generation through a comprehensive approach that builds on effective strategies, engages families and communities, and mobilizes both public and private sector resources.

Nearly one third of children in America are overweight or obese—a rate that has tripled in adolescents and more than doubled in younger children since 1980. One third of all individuals born in the year 2000 or later will eventually suffer from diabetes over the course of their lifetime, while too many others will face chronic obesity-related health problems such as heart disease, high blood pressure, cancer, and asthma. Without effective intervention, many more children will endure serious illnesses that will put a strain on our health-care system. We must act now to improve the health of our Nation's children and avoid spending billions of dollars treating preventable disease.

Therefore, I have set a goal to solve the problem of childhood obesity within a generation so that children born today will reach adulthood at a healthy weight. The First Lady will lead a national public awareness effort to tackle the epidemic of childhood obesity. She will encourage involvement by actors from every sector—the public, nonprofit, and private sectors, as well as parents and youth—to help support and amplify the work of the Federal Government in improving the health of our children. But to meet our goal, we must accelerate implementation of successful strategies that will prevent and combat obesity. Such strategies include updating child nutrition policies in a way that addresses the best available scientific information, ensuring access to healthy, affordable food in schools and communities, as well as increasing physical activity and empowering parents and caregivers with the information and tools they need to make good choices for themselves and their families. To succeed, these efforts must be strategically targeted, and accountability should be clear. They will help our children develop lifelong healthy habits, ensuring they reach their greatest potential toward building a healthier and more prosperous America. To these ends, I hereby direct the following:

Section 1. *Establishment of the Task Force on Childhood Obesity.* There is established a Task Force on Childhood Obesity (Task Force) to develop an interagency action plan to solve the problem of obesity among our Nation's children within a generation. The Assistant to the President for Domestic Policy shall serve as Chair of the Task Force.

(a) *Membership of the Task Force.* In addition to the Chair, the Task Force shall consist of the following members, or any senior official designated by one of the following members who is a part of the member's department, agency, or office, and who is a full time officer or employee of the Federal Government:

(1) the Secretary of the Interior;

(2) the Secretary of Agriculture;

(3) the Secretary of Health and Human Services;

(4) the Secretary of Education;

(5) the Director of the Office of Management and Budget;

(6) the Assistant to the President and Chief of Staff to the First Lady;

(7) the Assistant to the President for Economic Policy; and

(8) the heads of other executive departments, agencies, or offices as the Chair may designate.

At the direction of the Chair, the Task Force may establish subgroups consisting exclusively of Task Force members or their designees under this section, as appropriate.

(b) *Administration of the Task Force.* The Department of Health and Human Services shall provide funding and administrative support for the Task Force to the extent permitted by law and within existing appropriations.

Sec. 2. *Mission and Functions of the Task Force.* The Task Force shall work across executive departments and agencies to develop a coordinated Federal response while also identifying nongovernmental actions that can be taken to solve the problem of childhood obesity within a generation. The functions of the Task Force are advisory only and shall include, but are not limited to, making recommendations to meet the following objectives:

(a) ensuring access to healthy, affordable food;

(b) increasing physical activity in schools and communities;

(c) providing healthier food in schools; and

(d) empowering parents with information and tools to make good choices for themselves and their families.

Sec. 3. *Interagency Action Plan.* Within 90 days of the date of this memorandum, the Task Force shall develop and submit to the President a comprehensive interagency plan that:

(a) details a coordinated strategy by executive departments and agencies to meet the objectives of the Task Force and identifies areas for reform to ensure complementary efforts and avoid duplication, both across the Federal Government and between other public or nongovernmental actors;

(b) includes comprehensive, multi-sectoral strategies from each member executive department, agency, or office and describes the status and scope of its efforts to achieve this goal;

(c) identifies key benchmarks and provides for regular measurement, assessment, and reporting of executive branch efforts to combat childhood obesity;

(d) describes a coordinated action plan for identifying relevant evidence gaps and conducting or facilitating needed research to fill those gaps;

(e) assists in the assessment and development of legislative, budgetary, and policy proposals that can improve the health and well-being of children, their families, and communities; and

(f) describes potential areas of collaboration with other public or nongovernmental actors, taking into consideration the types of implementation or research objectives the Federal Government, other public actors, or nongovernmental actors may be particularly well-situated to accomplish.

Sec. 4. *Outreach.* Consistent with the objectives set out in this memorandum, the Task Force, in accordance with applicable law, and in addition to regular meetings, shall conduct outreach with representatives of private and nonprofit organizations, State, tribal and local authorities, and other interested persons that can assist with the Task Force's development of a detailed set of recommendations to solve the problem of childhood obesity.

Sec. 5. *General Provisions.* (a) The heads of executive departments and agencies shall assist and provide information to the Task Force, consistent

with applicable law, as may be necessary to carry out the functions of the Task Force. Each executive department, agency, and office shall bear its own expense for participating in the Task Force.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 6. *Publication.* The Secretary of Health and Human Services is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
WASHINGTON, February 9, 2010

[FR Doc. 2010–3220
Filed 2–17–10; 8:45 am]
Billing code 4110–60–P

Rules and Regulations

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POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–15 and CP2010–15; Order No. 378]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 24 to the Competitive Product List. This action is consistent with changes in a postal reform law. Republication of the lists of market dominant and competitive products is also consistent with a statutory provision.

DATES: Effective February 18, 2010 and is applicable beginning January 4, 2010.

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

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 31374 (July 1, 2009).

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I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 24 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 24 to the Competitive Product List.[1] The Postal Service asserts that Priority Mail Contract 24 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). The Postal Service states that prices and classification underlying this contract are supported by Governors' Decision No. 09–06 in Docket No. MC2009–25. *Id.* at 1. The Request has been assigned Docket No. MC2010–15.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2010–15.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision, originally filed in Docket No. MC2009–25, authorizing certain Priority Mail contracts, and proposed Mail Classification Schedule language;[2] (2) a redacted version of the contract, and Certification of Governors' Vote;[3] (3) a requested change in the Competitive Product List;[4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] (5) a certification of compliance with 39 U.S.C. 3633(a);[6] and (6) an application for non-public treatment of the materials filed under seal.[7]

In the Statement of Supporting Justification, Susan M. Plonkey, Vice President, Sales, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D. Thus, Ms. Plonkey contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Priority Mail Contract 24 is included with the Request. The contract was entered into on May 28, 2009, and will become effective as a Negotiated Service Agreement January 4, 2010. The contract provides that the Postal Service may not increase rates until after May 27, 2010. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *See id.,* Attachment D.

In its Request, the Postal Service maintains that the supporting financial information, including the analyses that provide prices, terms, conditions, cost data, and financial projections should remain under seal. *Id.,* Attachment F.

In Order No. 358, the Commission gave notice of the two dockets, requested supplemental information, appointed a public representative, and provided the public with an opportunity to comment.[8] On December 18, 2009, the Postal Service provided its response to the Commission's request for supplemental information.[9] On December 23, 2009, Chairman's Information Request No. 1 was issued for response by the Postal Service by December 28, 2009.[10] The Postal Service filed its response on December 28, 2009.[11]

III. Comments

Comments were filed by the Public Representatives.[12] No comments were submitted by other interested parties. The Public Representatives state that the Postal Service's filing meets the pertinent provisions of title 39 and the relevant Commission rules. *Id.* at 3. The Public Representatives also believe that the Postal Service has provided appropriate justification for maintaining confidentiality in this case. *Id.* However, the Public Representatives assert that the Postal Service should have filed the instant contract with the Commission when it was executed in May of 2009. *Id.* at 4. As a result, the Public Representatives ask the Commission to "direct the Postal Service to file all existing Priority Mail contracts which have not been previously filed." *Id.* at 5. The Public Representatives also request

[1] Request of the United States Postal Service to Add Priority Mail Contract 24 to Competitive Product List and Notice of Filing (Under Seal) of Supporting Data, December 11, 2009 (Request).

[2] Attachment A to the Request, reflecting Governors' Decision No. 09–06, April 27, 2009.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] Attachment F to the Request.

[8] Notice and Order Concerning Priority Mail Contract 24 Negotiated Service Agreement, December 15, 2009 (Order No. 358).

[9] Supplemental Information Provided by the United States Postal Service in Response to Order No. 358, December 18, 2009.

[10] Chairman's Information Request No. 1, December 23, 2009 (CHIR No. 1).

[11] Responses of the United States Postal Service to Chairman's Information Request No. 1, December 28, 2009.

[12] Comments of Public Representatives in Response to PRC Order No. 358, December 23, 2009.

that the Commission encourage the Postal Service to submit all materials referenced in the relevant enabling Governors' Decision. *Id.*

IV. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, responses to CHIR No. 1, and the comments filed by the Public Representatives.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 24 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 24 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products consists of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.,* para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.,* para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 24 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 24 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Priority Mail Contract 24 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Priority Mail Contract 24 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Priority Mail Contract 24 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Commission agrees with the Public Representatives that the instant contract could have been filed with the Commission for approval at an earlier date. The Commission also shares the Public Representatives' concern that other, similar contracts might exist. Accordingly, the Commission directs the Postal Service to file, by January 15, 2010, any outstanding Priority Mail contract that may be categorized as a negotiated service agreement because its prices are not subject to change with the general competitive rate increase scheduled to take effect January 4, 2010.

In conclusion, the Commission approves Priority Mail Contract 24 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

V. Ordering Paragraphs

It is ordered:

1. Priority Mail Contract 24 (MC2010–15 and CP2010–15) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Commission directs the Postal Service to file, by January 15, 2010, any outstanding Priority Mail contract that may be categorized as having competitive rates not of general applicability because its prices are not subject to change with the general competitive rate increase scheduled to take effect January 4, 2010.

3. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date.

4. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

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

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

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

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List
First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

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

Periodicals
- Within County Periodicals
- Outside County Periodicals

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

- Media Mail/Library Mail
- Special Services
  - Ancillary Services
  - International Ancillary Services
  - Address List Services
  - Caller Service
  - Change-of-Address Credit Card Authentication
  - Confirm
  - International Reply Coupon Service
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Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Priority Mail Contract 15 (MC2009–35 and CP2009–54)
Priority Mail Contract 16 (MC2009–36 and CP2009–55)
Priority Mail Contract 17 (MC2009–37 and CP2009–56)
Priority Mail Contract 18 (MC2009–42 and CP2009–63)
Priority Mail Contract 19 (MC2010–1 and CP2010–1)
Priority Mail Contract 20 (MC2010–2 and CP2010–2)
Priority Mail Contract 21 (MC2010–3 and CP2010–3)
Priority Mail Contract 22 (MC2010–4 and CP2010–4)
Priority Mail Contract 23 (MC2010–9 and CP2010–9)
Priority Mail Contract 24 (MC2010–15 and CP2010–15)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Expedited Package Services 2 (CP2009–50)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M–Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]
Part C—Glossary of Terms and Conditions [Reserved]
Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. 2010–3034 Filed 2–17–10; 8:45 am]

BILLING CODE 7710–FW–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 090218199–91223–02]

RIN 0648–AX38

Fisheries in the Western Pacific; Pelagic Fisheries; Vessel Identification Requirements; Correction

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

ACTION: Final rule; correction.

SUMMARY: This action corrects the effective date of final regulations published in the **Federal Register** on January 21, 2010, from February 22, 2010, to April 21, 2010. The rule revises identification requirements for U.S. vessels that fish for pelagic management unit species in the western and central Pacific Ocean. Each vessel is required to display its International Telecommunication Union Radio Call Sign (IRCS) or, if an IRCS has not been assigned, its official number preceded by the characters "USA-". The rule makes Federal vessel identification requirements consistent with international requirements.

DATES: The effective date of the final regulations published in the **Federal**

Register on January 21, 2010, at 75 FR 3416, is April 21, 2010.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS Pacific Islands Region, 808–944–2108.

SUPPLEMENTARY INFORMATION:

Need for Correction

In the document published January 21, 2010 (75 FR 3416), under the **DATES** section, the effective date of the final rule was miscalculated. This document corrects the effective date to read as follows:

DATES: This final rule is effective April 21, 2010.

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

Dated: February 12, 2010.

Samuel D. Rauch III,

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

[FR Doc. 2010–3074 Filed 2–17–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XU37

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by non-American Fisheries Act (AFA) crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2010 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 12, 2010, through 1200 hrs, A.l.t., September 1, 2010.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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.

The A season allowance of the 2010 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA is 1,011 metric tons (mt) for the GOA, as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009) and inseason adjustment (74 FR 68713, December 29, 2009).

In accordance with § 680.22(e)(2)(i), the Regional Administrator, has determined that A season allowance of the 2010 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 1,001 mt for the inshore component in the Western Regulatory Area of the GOA. The remaining 10 mt for the inshore component in the Western Regulatory Area of the GOA will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

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 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 sideboard directed fishing closure of Pacific cod apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 9, 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.

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

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

Dated: February 12, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–3082 Filed 2–12–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 100106010–0074–01]

RIN 0648–AY52

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program; Emergency Rule

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

ACTION: Emergency rule; request for comments.

SUMMARY: NMFS is exempting, through this emergency rule, individual fishing quota (IFQ) issued for the Western Aleutian Islands golden king crab fishery from the West regional designation and individual processing quota (IPQ) issued for this fishery from the West regional designation. Under the Bering Sea/Aleutian Islands Crab Rationalization Program, golden king crab harvested with IFQ with a West regional designation must be delivered

to a processor with West designated IPQ in the West region of the Aleutian Islands. An emergency exists, because Federal regulations require that a portion of crab taken in this fishery be delivered and processed in the West region, but due to a recent unforeseen event, no processing facility is open in the West region. This emergency rule is necessary to relieve a restriction and allow fishermen to deliver crab harvested with West designated IFQ to processors outside the West region and allow processors with West designated IPQ to process that crab outside the West region. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable law.

DATES: Effective February 18, 2010, through August 17, 2010. Comments must be received by March 22, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AY52, by any one of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Porta*http://www.regulations.gov*.

Fax: (907) 586–7557, Attn: Ellen Sebastian

Mail: P.O. Box 21668, Juneau, AK 99802.

Instructions: No comments will be posted for public viewing until after the comment period has closed. 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 (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Regulatory Impact Review (RIR) prepared for this action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov/regs/summary.htm*.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION: The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act as amended by the Consolidated Appropriations Act of 2004 (Public Law 108–199, section 801). A final rule implementing the Crab Rationalization Program (Program) was published on March 2, 2005 (70 FR 10174). Regulations implementing the FMP, and all amendments to the Program, are at 50 CFR part 680. General regulations related to fishery management are at 50 CFR part 600.

Crab Rationalization Program

NMFS established the Program as a catch share program for nine crab fisheries in the BSAI, and assigned quota share (QS) to persons based on their historic participation in one or more of these nine BSAI crab fisheries during a specific time period. Under the Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner (CPO) QS was assigned to LLP holders that harvested and processed their catch at sea; captains and crew onboard catcher/processor vessels were issued catcher/processor crew (CPC) QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch (TAC), called individual fishing quota (IFQ). Under the program, QS holders can form cooperatives to pool the harvest of the IFQ on a few vessels.

NMFS also issued processor quota share (PQS) under the Program. Each year, PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. QS derived from deliveries made by catcher vessel owners (i.e., CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent of the IFQ is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a specific processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

The Program seeks to ensure that communities that were historically active as processing ports continue to receive socioeconomic benefits from crab deliveries. To accomplish this, the Program imposes regional delivery requirements, and, for the Western Aleutian Islands golden king crab fishery, allocates 10 percent of the TAC to the Adak community. The specific geographic regions are based on historic geographic delivery and processing patterns.

Western Aleutian Islands Golden King Crab Fishery

The only fishery affected by this emergency action is the Western Aleutian Islands golden king crab fishery, a relatively small but lengthy fishery prosecuted in extremely remote waters. The 2009/2010 Western Aleutian Islands golden king crab TAC is 2.835 million pounds, with 283,500 pounds for the Adak Community Allocation. The fleet consists of two catcher vessels and a single catcher/processor. Two IPQ holders hold nearly 99 percent of all of the West designated IPQ. The season starts on August 15 and ends on May 15.

For the Western Aleutian Islands golden king crab fishery, 50 percent of the Class A IFQ and a corresponding amount of IPQ are designated for the West region, west of 174° W. long., and the other 50 percent of the Class A IFQ and IPQ are not subject to a regional designation. Class B, CVC, CPO, CPC IFQ, and the Adak Community Allocation are also not subject to regional delivery requirements. For the 2009/2010 fishery, NMFS issued West designated IFQ and corresponding IPQ for approximately 600,000 pounds of Western Aleutian Islands golden king crab (approximately 24 percent of the TAC).

Crab harvested with West designated Class A IFQ must be delivered to a processor located in the West region with West designated IPQ. The purpose of this delivery requirement was to support processing facilities in the remote West region. Since implementation of the Program, the only shore-based processing plant in this region has been located in the community of Adak.

In April 2009, the Adak shore-based processing plant closed and in September 2009, the plant's owners filed for Chapter 11 bankruptcy. Closure

of the Adak plant precludes the ability for catcher vessels to deliver crab harvested with their West designated IFQ. West designated IPQ holders lack a facility at which to process crab with their West designated IPQ. Subsequent difficulties with plant ownership and complicated bankruptcy proceedings effectively ensure that the Adak plant cannot open in the near-term.

In October 2009, fishery participants petitioned the Council for approval of an emergency rule to suspend the West region delivery requirement for the 2009/2010 fishing season due to the closure of the Adak plant. The Council delayed taking action until its December meeting and tasked staff to develop a discussion paper that analyzes the circumstances in this fishery for determining whether an emergency exists. Delaying action by one meeting also provided more time for circumstances with the Adak plant bankruptcy to change and for industry members to look at whether other solutions to resolve this situation, such as a floating processor, would be viable in the West region. Processor representatives provided testimony to the Council at the December 2009 Council meeting that operating a floating processor in the West region for this season would not be profitable, due to the length of the golden king crab fishery, the expected price per pound for golden king crab, and operating costs.

Emergency Action

This emergency rule exempts West designated IFQ and West designated IPQ for the Western Aleutian Islands golden king crab fishery from the West regional designation in regulations at 50 CFR 680.40(c)(4) and § 680.40(e)(2), respectively, for the period that this rule is effective (see **DATES**). Removing the West regional designation from this IFQ and IPQ would remove the requirement that these shares be used in the West region. With this exemption, Western Aleutian Islands golden king crab harvested with West designated IFQ could be delivered to a processor with IPQ in any location and processors could process crab using West designated IPQ in any location.

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act provides authority for rule making to address an emergency. Under that section, a Council may recommend emergency rule making, if it finds an emergency exists.

At its December 2009 meeting, the Council voted 10 to 1 to request that NMFS promulgate an emergency rule to relieve the existing regional delivery and processing requirement in the Western Aleutian Islands golden king crab fishery. The Council considered this issue over two meetings to provide the public with notice and the opportunity to comment and to see if industry members could resolve this situation either through re-opening the Adak plant or providing an alternate processing facility, such as a floating processor, in the West region and thus ameliorate the need for an emergency rule. The Council received testimony in support of emergency action from West region IFQ and IPQ holders and representatives from the community of Adak; no testimony in opposition was presented to the Council.

The Council determined that an emergency exists because, due to a recent unforeseen event, no processing facility is currently, or likely to, open in the West region for the 2009/2010 fishing year, yet federal regulations require that a portion of crab be processed in the West region. Exempting the West designated IFQ and IPQ from the West regional designation would relieve these shares from delivery restrictions and thus would enable fishermen to deliver harvests made with West designated IFQ outside the West region. Without the ability to deliver and process the crab, a substantial portion of the fishery will likely remain unharvested, causing economic harm to fishery participants. The emergency rule would provide relief for the 2009/2010 crab fishing year and enable the fishery to occur while the Council develops an FMP amendment to permanently address this situation. The Council is scheduled to review a draft analysis at its February 2010 meeting that assesses alternatives to amend the FMP, should unforeseen events prevent deliveries in the West region in future years.

In making this recommendation, the Council considered the NMFS policy guidelines for the development and approval of regulations to address emergencies. Emergency rule making is intended for circumstances that are extremely urgent, where substantial harm to or disruption of the fishery would be caused in the time it would take to follow standard rulemaking procedures (62 FR 44421). An emergency is a situation that: results from recent, unforeseen events or recently discovered circumstances; presents serious conservation or management problems in the fishery; and can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rule making process.

NMFS finds that an emergency exists because

- The bankruptcy and closure of the Adak plant is a recent and unforeseen event. Additionally, the absence of other processing alternatives entering the West region in light of the Adak plant closure is a recent and unforeseen event.
- Regulations that prevent a substantial portion of the Western Aleutian Islands golden king crab TAC from being harvested and processed present a serious management problem.
- This problem can be addressed through an emergency rule that would exempt shares from regulatory requirement, thus allowing crab to be delivered and processed outside the West region.
- Allowing the full harvest of the IFQ in the 2009/2010 crab fishing year provides immediate benefits that outweigh the value of the deliberative notice-and-comment rule making process.

The circumstances that justified the constraint on deliveries have changed, and, at least temporarily, the constraint no longer achieves the goals that led to its incorporation in the Program. Therefore, lifting the constraint should relieve an unnecessary and unanticipated burden on the region's economic activity, enhance resource management and conservation, and, thus, increase the value the Nation receives from the Western Aleutian Islands golden king crab resource.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this emergency rule is consistent with the national standards and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. The rule may be extended for a period of not more than 186 days as described under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation Management Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest.

Waiver of the notice-and-comment rulemaking period will serve the public by allowing the restriction to be relieved in the current fishing season to enable full harvest of the total allowable catch. This fishery began on August 15, 2009, and the fleet is harvesting golden king crab with undesignated IFQ. This

emergency rule would allow the harvest of approximately 600,000 pounds of West designated IFQ prior to the closure of the fishery on May 15, 2010. Notice-and-comment rulemaking would preclude a solution for the 2009/2010 crab fishing year, resulting in approximately 600,000 pounds of forgone golden king crab harvest. The cost of this lost harvest outweighs the benefit of using the more protracted, normal process that would be ineffective for addressing the immediate issue.

Because this rule relieves a restriction by exempting IFQ and IPQ from the West region designation, it is not subject to the 30–day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d) (1).

This emergency rule has been determined to be not significant for purposes of Executive Order 12866. The regulatory impact review prepared for this action is available from NMFS (see **ADDRESSES**).

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law.

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

Dated: February 12, 2010.

Samuel D. Rauch III,

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

[FR Doc. 2010–3111 Filed 2–17–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 32
Thursday, February 18, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0811; Directorate Identifier 2008–NE–41–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (RRC) AE 3007A Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for RRC AE 3007A series turbofan engines. This proposed AD would require removing or performing initial and repetitive eddy current inspections (ECIs) or surface wave ultrasonic testing (SWUT) inspections on high-pressure turbine (HPT) stage 2 wheels for cracks. This proposed AD also reduces the approved life limits of certain HPT stage 2 wheels. This proposed AD results from reports of cracked HPT stage 2 wheels. We are proposing this AD to prevent uncontained failure of the HPT stage 2 wheel and damage to the airplane.

DATES: We must receive any comments on this proposed AD by March 22, 2010.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

You can get the service information identified in this proposed AD from Rolls-Royce Corporation, P.O. Box 420, Speed Code U15, Indianapolis, IN 46206–0420, e-mail: *indy.pubs.services@rolls-royce.com.*

FOR FURTHER INFORMATION CONTACT: Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; e-mail: *kyri.zaroyiannis@faa.gov;* telephone (847) 294–7836; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2009–0811; Directorate Identifier 2008–NE–41–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

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

Discussion

On September 8, 2008, we issued emergency AD 2008–19–51 that applied to RRC AE 3007A series turbofan engines. That AD required performing initial and repetitive eddy current inspections (ECIs) on HPT stage 2 wheels that have accumulated 6,500 or more cycles-since-new (CSN). That AD resulted from reports of HPT stage 2 wheels that had cracks in the bores of the wheels. This condition, if not corrected, could result in a possible uncontained failure of the HPT stage 2 wheel, which could cause damage to the airplane.

Actions Since AD 2008–19–51 Was Issued

After we issued emergency AD 2008–19–51, we determined that the cracks in the HPT stage 2 wheel bores are caused by a thermally-induced high stress in the disk bore, which was not identified at the time of the original certification. We performed a new risk assessment for cracking in the bore of the HPT stage 2 wheel using the FAA methodology guidelines in FAA Advisory Circular 39–8 and the results of the inspections from AD 2008–19–51. The risk assessment takes into account physical characteristics about the cracks that were not available when we issued AD 2008–19–51. The new risk assessment, in combination with a sufficient number of early inspections, showed that the risk profile was not rapidly increasing, which was a concern when we issued AD 2008–19–51. Using this new information, we determined we could change the compliance requirements for the ECI while still maintaining a level of safety consistent with the intent of the original AD 2008–19–51. We changed the new compliance schedule to an interval of 150 cycles-in-service (CIS) between wheel populations. The intervals for the wheel populations were based on CSN, and they varied because of the distribution of the affected wheels throughout the fleet at that time. A distribution based on CSN resulted in a compliance schedule that inspected the fleet from the highest time, highest risk

wheels to the lowest time, lowest risk wheels. It allowed us to control the overall risk consistent with the intent of AD 2008–19–51.

We also determined that a requirement to perform the ECI by a certain CIS is by itself sufficient to maintain the level of safety consistent with the intent of the original AD 2008–19–51. Because of that determination, we no longer prohibit installing any engine that had an HPT stage 2 wheel with more than 6,500 CSN unless the wheel was inspected. Instead, we modified that requirement to apply only to HPT stage 2 wheels removed from service as a result of complying with AD 2008–26–06 or emergency AD 2008–19–51.

Finally, we specified the part numbers (P/Ns) for the affected HPT stage 2 wheels to ensure proper identification.

On December 12, 2008, we issued AD 2008–26–06 as an immediately adopted rule to mandate a short-term program (90 days) to ensure the continued airworthiness of the product. That AD published in the **Federal Register** on December 24, 2008 (73 FR 78927).

Actions Since AD 2008–26–06 Was Issued

A few months after we issued AD 2008–26–06 we received reports of additional cracks in the HPT stage 2 wheels. A revised risk assessment that included these additional reports indicated that we needed to require a higher inspection rate. For this reason, we issued Emergency AD 2009–08–51 on April 10, 2009. That AD also provides instructions for an optional SWUT inspection. We then published a final rule; request for comments (74 FR 22091, May 12, 2009) to make the emergency actions applicable to all persons.

We are now proceeding through the normal rule making process to ensure full public comment on our proposed actions. In this proposed AD, we are still requiring the same removal from service or ECI or SWUT inspections, but we are expanding the scope of the compliance schedule to more engines by including wheels with lower CSN. We are also including a requirement for repetitive inspections. In addition, we have identified by serial number a group of HPT stage 2 wheels that were repaired while in-service; because of this repair those wheels can only be inspected by the ECI method. We have also determined that the engine cycle life limit (ECLL) of the HPT stage 2 wheels, P/N 23075345 and 23084520, covered by this proposed AD should be reduced to 23,000 CSN and that the ECLL of all other part number HPT stage 2 wheels covered by this proposed AD should be reduced to 20,000 CSN on the effective date of this AD.

The occurrence of cracked HPT stage 2 wheels has been shown by statistical analysis of field data to have a causal link to a manufacturing process that led to incomplete shot peening on the drive arm fillets (shaft inner diameter fillet) of the wheel. Improvements to the fixed manufacturing process have addressed this incomplete peening condition. Therefore, HPT stage 2 wheels that have been determined to have been fully shot peened in the drive arm fillet are excluded from the inspection requirements of this proposed AD.

Relevant Service Information

We have reviewed and approved the technical contents of:

- RRC Alert Service Bulletin AE 3007A–A–72–367, Revision 2, dated June 22, 2009, that describes procedures for ECI of the HPT stage 2 wheel on AE 3007A series engines.
- RRC Service Bulletin AE 3007A–72–368, Revision 2, dated April 28, 2009, that describes the procedures for SWUT inspection of the HPT stage 2 wheel on AE 3007A series turbofan engines.
- RRC Service Bulletin AE 3007A–72–369, Revision 2, dated November 5, 2009, that describes the procedures for SWUT inspection of the HPT stage 2 wheel on AE 3007A series turbofan engines.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require:

- Removing from service any engine with certain P/N HPT stage 2 wheels that have a CSN specified in Table 1 of this AD by the compliance time specified in Table 1 of this AD; or
- Performing an ECI or SWUT inspection on certain P/N HPT stage 2 wheels that have a CSN specified in Table 1 of this AD by the compliance time specified in Table 1 of this AD; and
- Performing repetitive ECI or SWUT inspections of the HPT stage 2 wheels within 3,000 cycles-since-last inspection.

You must use the service information described previously to perform the actions required by this AD.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Costs of Compliance

We estimate that this proposed AD would affect 1402 engines installed on airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per engine to perform both the proposed ECI and proposed SWUT. The average labor rate is $85 per work-hour. No parts are required for the inspection. We estimate the prorated life lost per stage 2 wheel is about $13,177. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $18,712,494. This estimate is exclusive of any warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Corporation (Formerly Allison Engine Company): Docket No. FAA–2009–0811; Directorate Identifier 2008–NE–41–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by March 22, 2010.

Affected ADs

(b) This AD supersedes AD 2009–08–51.

Applicability

(c) This AD applies to Rolls-Royce Corporation (RRC) AE 3007A series turbofan engines with high-pressure turbine (HPT) stage 2 wheels, part numbers (P/Ns) 23069438, 23069592, 23074462, 23074644, 23075345, or 23084520 installed. These engines are installed on, but not limited to, Empresa Brasileira de Aeronautica S. A. (EMBRAER) EMB–135 and EMB–145 airplanes.

Unsafe Condition

(d) This AD results from reports of cracked HPT stage 2 wheels. We are issuing this AD to prevent uncontained failure of the HPT stage 2 wheel and damage to the airplane.

Compliance

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

HPT Stage 2 Wheels Exempted From the Inspection Requirements of This AD

(f) The following engines are exempt from the inspection requirements of this AD:

(1) All engines with an HPT stage 2 wheel, P/N 23084520.

(2) All engines with an HPT stage 2 wheel, P/N 23075345, that has a serial number (S/N) specified in Table 1 of this AD, and

(3) All engines with an HPT stage 2 wheel, P/N 23074462, that has a S/N specified in Table 2 of this AD.

TABLE 1—HPT STAGE 2 WHEEL, P/N 23075345 BY S/N EXCLUDED FROM INSPECTION REQUIREMENTS (G) THROUGH (I) OF THIS AD

MM507646	MM508211	MM508319
MM508144	MM508221	MM508320
MM508153	MM508241	MM508322
MM508176	MM508248	MM508337
MM508186	MM508251	MM508338
MM508188	MM508264	MM508382
MM508205	MM508305	MM508387
MM508208	MM508311	

TABLE 2—HPT STAGE 2 WHEEL, P/N 23074462 BY S/N EXCLUDED FROM INSPECTION REQUIREMENTS (G) THROUGH (I) OF THIS AD

MM504890	MM505025	MM505054
MM504963	MM505034	MM505055
MM504990	MM505041	MM505056
MM504995	MM505045	MM505061
MM505007	MM505046	All "MM" prefix S/Ns higher than MM505061.
MM505017	MM505048	All S/Ns with "MW" prefix.

Initial Eddy Current Inspection (ECI) or Surface Wave Ultrasonic Testing (SWUT) Inspection

(g) For engines with an HPT stage 2 wheel, P/Ns 23069438, 23069592, 23074462, 23074644, or 23075345, remove the engine from service or perform an initial inspection of the wheel by the cycle limit specified in Table 3 of this AD. Use one of the following methods for the inspection:

(1) For HPT stage 2 wheels that have S/Ns listed in Table 4 of this AD, use paragraphs 2.A. through 2.C.(4) of RRC Alert Service Bulletin (ASB) AE 3007A–A–72–367, Revision 2 dated June 22, 2009, to inspect the wheel.

(2) For HPT stage 2 wheels that have S/Ns not listed in Table 4 of this AD, use paragraphs 2.A. through 2.C.(4) of RRC ASB AE 3007A–A–72–367, Revision 2, dated June 22, 2009, or use paragraphs 2.A. through 2.N. of RRC Service Bulletin (SB) AE 3007A–72–368, Revision 2, dated April 28, 2009; or use 2.A. through 2.V.(4) of RRC SB AE 3007A–72–369, Revision 2, dated November 5, 2009, to perform the inspections.

TABLE 3—COMPLIANCE TIMES FOR ENGINE REMOVAL OR ECI OR SWUT INSPECTION OF THE HPT STAGE 2 WHEELS BY CYCLES-SINCE-NEW (CSN)

For HPT stage 2 wheels with the following CSN on the effective date of this AD:	Remove engine from service or inspect wheel within the following cycles-in-service (CIS) after the effective date of this AD:
(3) 17,500 or more CSN.	Remove engine from service or inspect before next flight.
(4) 10,000 to 17,499 CSN.	15 CIS.
(5) 9,999 or fewer CSN.	Before accumulating 10,015 CSN.

TABLE 4—S/NS OF HPT STAGE 2 WHEELS TO BE INSPECTED BY SB AE 3007A–72–367 (ECI METHOD ONLY)

HPT Stage 2 Wheels Requiring ECI Method Only	
MM119400	MM183796
MM119480	MM183808
MM119508	MM183831
MM155847	MM228730
MM155907	MM228951
MM155908	MM503748
MM183236	MM504004
MM183362	MM57188
MM183754	MM57440
MM183762	MM57480

Installation Prohibition

(h) After the effective date of this AD, don't return to service, any HPT stage 2 wheel that was installed in any RRC AE 3007A series engine that has been removed as a result of the inspection requirements of this AD, unless the HPT stage 2 wheel was inspected as specified in RRC ASB AE 3007A–A–72–367, Revision 2, dated June 22, 2009; or RRC SB AE 3007A–72–368, Revision 2, dated April 28, 2009; or RRC SB AE 3007A–72–369, Revision 2, dated November 5, 2009.

Repetitive Inspection

(i) Thereafter, within 3,000 cycles-since-last inspection, remove the engine from service until an ECI or SWUT inspection is performed on the HPT stage 2 wheel. Use paragraphs 2.A. through 2.C.(4) of RRC ASB AE 3007A–A–72–367, Revision 2, dated June 22, 2009, or use paragraphs 2.A. through 2.N. of RRC SB AE 3007A–72–368, Revision 2, dated April 28, 2009; or use 2.A. through 2.V.(4) of RRC SB AE 3007A–72–369, Revision 2, dated November 5, 2009, to inspect the wheel.

New, Reduced Engine Cycle Life Limit and Removal From Service

(j) For HPT stage 2 wheels, P/N 23084520, do the following:

(1) For wheels that have 22,985 CSN or more on the effective date of this AD, remove

the wheel from service within 15 CIS after the effective date of this AD.

(2) Thereafter, remove HPT stage 2 wheels, P/N 23084520, before exceeding the new, reduced engine cycle life limit (ECLL) of 23,000 CSN.

(k) For HPT stage 2 wheels, P/N 23075345 and 23074644, do the following:

(1) For wheels that have 19,985 CSN or more on the effective date of this AD, remove the wheel from service within 15 CIS after the effective date of this AD unless paragraph (k)(3) of this AD applies.

(2) Thereafter, remove HPT stage 2 wheels, P/N 23075345 and 23074644, before exceeding the new, reduced ECLL of 20,000 CSN.

(3) For HPT stage 2 wheels, P/N 23075345, that have a S/N listed in Table 5 of this AD and that have 22,985 CSN or more on the effective date of this AD, remove the wheel from service within 15 CIS after the effective date of this AD.

(4) Thereafter, for HPT stage 2 wheels, P/N 23075345, that have a S/N listed in Table 5 of this AD, remove the wheel from service before exceeding the new, reduced ECLL of 23,000 CSN.

TABLE 5—S/NS OF HPT STAGE 2 WHEEL, P/N 23075345, ELIGIBLE TO REMAIN IN SERVICE UNTIL 23,000 CSN

MM507646	MM508205	MM508251	MM508322
MM508144	MM508208	MM508264	MM508337
MM508153	MM508211	MM508305	MM508338
MM508176	MM508221	MM508311	MM508382
MM508186	MM508241	MM508319	MM508387
MM508188	MM508248	MM508320	

(l) For wheels, P/N 23069438, in engines that have not complied with RRC SB AE 3007A–72–176, Revision 5, dated September 2, 2008, or SB AE 3007A–72–215, Revision 2, dated September 28, 2009, remove the wheel before exceeding the new, reduced ECLL of 10,000 CSN.

(m) For wheels, P/N 23069438, in engines that have complied with RRC SB AE 3007A–72–176, Revision 5, dated September 2, 2008 or SB AE 3007A–72–215, Revision 2, dated September 28, 2009, do the following:

(1) For wheels that have 19,985 CSN or more on the effective date of this AD, remove the wheel from service within 15 CIS after the effective date of this AD.

(2) Thereafter, remove the wheel from service before exceeding the new, reduced ECLL of 20,000 CSN.

Alternative Methods of Compliance

(n) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(o) Under 14 CFR 39.23, we are limiting the special flight permits for this AD by restricting the flight to essential flight crew only.

Related Information

(p) Contact Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; e-mail: *kyri.zaroyiannis@faa.gov*; telephone (847) 294–7836; fax (847) 294–7834, for more information about this AD.

Issued in Burlington, Massachusetts, on February 11, 2010.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–3145 Filed 2–17–10; 8:45 am]

BILLING CODE 4910–13–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

RIN 3046–AA87

Definition of "Reasonable Factors Other Than Age" Under the Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission ("EEOC" or "Commission") is issuing this notice of proposed rulemaking ("NPRM") to address the meaning of "reasonable factors other than age" (RFOA) under the Age Discrimination in Employment Act ("ADEA").

DATES: Comments must be received on or before April 19, 2010. The Commission will consider any comments received on or before the closing date and thereafter adopt final regulations. Comments received after the closing date will be considered to the extent practicable.

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

- By mail to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, U.S. Equal Employment Opportunity Commission, 131 "M" Street, NE., Washington, DC 20507.
- By facsimile ("FAX") machine to (202) 663–4114. (There is no toll free FAX number). Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll free numbers).
- By the Federal eRulemaking Portal: *http://www.regulations.gov.* After accessing this Web site, follow its instructions for submitting comments.

Instructions: All comment submissions must include the agency name and docket number or the Regulatory Information Number (RIN) for this rulemaking. Comments need be submitted in only one of the above-listed formats, not all three. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information you provide. Copies of the received comments also will be available for inspection in the EEOC Library, FOIA Reading Room, by advanced appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays, from April 19, 2010 until the Commission publishes the rule in final form. Persons who schedule an appointment in the EEOC Library, FOIA Reading Room, and need assistance to view the comments will be provided with appropriate aids upon request, such as readers or print magnifiers. To schedule an appointment to inspect the comments at the EEOC Library, FOIA Reading Room, contact the EEOC Library by calling (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll free numbers).

FOR FURTHER INFORMATION CONTACT: Dianna B. Johnston, Assistant Legal Counsel, or Lyn J. McDermott, Senior Attorney-Advisor, at (202) 663–4638 (voice) or (202) 663–7026 (TTY). (These are not toll free numbers). This notice also is available in the following formats: Large print, Braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Information Center at

1–800–669–3362 (voice) or 1–800–800–3302 (TTY).

SUPPLEMENTARY INFORMATION: On March 31, 2008, the EEOC published a Notice of Proposed Rulemaking ("NPRM") proposing to amend its regulations to reflect the Supreme Court's decision in *Smith* v. *City of Jackson*.[1] 73 FR 16807, Mar. 31, 2008. The NPRM proposed to revise 29 CFR 1625.7(d) to state that an employment practice that has an adverse impact on individuals within the protected age group on the basis of older age is discriminatory unless the practice is justified by a "reasonable factor other than age." The proposed revision also stated that the individual challenging the allegedly unlawful employment practice bears the burden of isolating and identifying the specific employment practice responsible for the adverse impact. The Commission also proposed to revise 29 CFR 1625.7(e) to state that, when the RFOA exception is raised, the employer has the burden of showing that a reasonable factor other than age exists factually.

In addition to requesting public comment on the proposed rule, the Commission asked whether regulations should provide more information on the meaning of "reasonable factors other than age" and, if so, what the regulations should say. Eight commenters supported efforts to provide more information on the issue, one commenter thought the EEOC should not provide additional information, and one commenter did not address the question. After consideration of the public comments, and in light of recent Supreme Court decisions, the Commission believes it appropriate to issue a new NPRM to address the scope of the RFOA defense. Accordingly, before finalizing its regulations concerning disparate impact under the ADEA, the Commission is publishing this new NPRM proposing to amend its regulations to define "reasonable factors other than age."

Recent Supreme Court Decisions

In *Smith* v. *City of Jackson,*[2] the United States Supreme Court held that the ADEA authorizes recovery for disparate impact claims of discrimination and that the "reasonable factors other than age" test, rather than the business-necessity test, is the appropriate standard for determining the lawfulness of a practice that disproportionately affects older individuals.

The *Smith* plaintiffs, senior police and public safety officers, alleged that the defendant City's pay plan had a disparate impact on older workers because it gave proportionately larger pay increases to newer officers than to more senior officers. Older officers, who tended to hold senior positions, on average received raises that represented a smaller percentage of their salaries than did the raises given to younger officers. The City explained that, after a survey of salaries in comparable communities, it raised the junior officers' salaries to make them competitive with those for comparable positions in the region.[3]

The Supreme Court ruled that plaintiffs may challenge facially neutral employment practices under the ADEA but that the "scope of disparate-impact liability under the ADEA is narrower than under Title VII" of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*[4] The Court relied in large part on the parallel prohibitory language and the common purposes of the ADEA and Title VII.[5] The Court noted that, in passing the ADEA, Congress was concerned that application of facially neutral employment standards, such as a high school diploma requirement, may "unfairly" limit the employment opportunities of older individuals.[6] The Court observed that there is a "remarkable similarity between the congressional goals" of Title VII and "those present in the Wirtz Report."[7]

At the same time, however, the Court identified two key textual differences that affect the relative scope of disparate impact liability under the two statutes. First, the ADEA contains the RFOA provision, which has no parallel in Title VII and precludes liability for actions "otherwise prohibited" by the statute "where the differentiation is based on reasonable factors other than age."[8] The RFOA provision "plays its principal role" in disparate impact cases, where it "preclud[es] liability if the adverse impact was attributable to a nonage factor that was 'reasonable'."[9] Comparing the RFOA provision with the Equal Pay Act provision that precludes recovery when a pay differential is based on "any other factor other than sex,"[10] the Court found it "instructive" that "Congress provided that employers could use only *reasonable* factors in defending a suit under the ADEA."[11]

Second, in reaction to the decision in *Wards Cove Packing Co.* v. *Atonio,*[12] which "narrowly construed the employer's exposure to liability on a disparate-impact theory," Congress amended Title VII but not the ADEA.[13] Accordingly, "*Wards Cove*'s pre-1991 interpretation of Title VII's identical language remains applicable to the ADEA."[14]

Applying its analysis, the Court rejected the *Smith* plaintiffs' disparate impact claims on the merits. Focusing on the plan's purpose, design, and implementation, the Court found that the City's pay plan was based on

[1] 544 U.S. 228 (2005).

[2] 544 U.S. 228 (2005).

[3] *Id.* at 241–42.

[4] *Id.* at 233–40. Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin. In *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971), the Supreme Court first recognized the disparate impact theory of discrimination under Title VII. The Court held that Title VII prohibits not only intentional discrimination but also employment practices that, because they have a disparate impact on a group protected by Title VII, are "fair in form but discriminatory in operation." 401 U.S. at 431.

[5] 544 U.S. at 233–40.

[6] *Id.* at 235 n.5 (quoting Report of the Sec'y of Labor, The Older American Worker: Age Discrimination in Employment 3 (1965), *reprinted in* U.S. EEOC, Leg. History of the ADEA 21 (1981) ("Wirtz Report")). Section 715 of the Civil Rights Act of 1964 directed the Secretary of Labor "to make a full and complete study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination on the economy and individuals affected." 78 Stat. 265. Secretary W. Willard Wirtz presented his findings and recommendations in the Wirtz Report.

[7] 544 U.S. at 235 n.5.

[8] *Id.* at 240. The Court found that the presence of the RFOA provision supported its conclusion that disparate impact claims are cognizable under the ADEA. *Id.* at 238–40.

[9] *Id.* at 239.

[10] 29 U.S.C. 206(d)(1).

[11] 544 U.S. at 239 n.11 (emphasis in the original).

[12] 490 U.S. 642 (1989). The *Wards Cove* Court ruled that, in a Title VII disparate-impact case, the plaintiff must isolate and identify the specific employment practice that has a disparate impact. Although the defendant had the burden of articulating a business justification for the challenged practice, the burden of persuasion remained at all times with the plaintiff. According to the Court, "at the justification stage, * * * the dispositive issue is whether a challenged practice serves, in a significant way, the legitimate employment goals of the employer." *Id.* at 659. If the challenged practice was justified by business necessity, the plaintiff could still prevail by showing that the employer refused to adopt an equally effective, less discriminatory alternative. *Id.* at 660–61.

[13] 544 U.S. at 240 (citing the Civil Rights Act of 1991, sec. 2, 105 Stat. 1071).

[14] *Id.* at 240. The "identical" language is in section 703(a)(2) of Title VII (42 U.S.C. 2000e–2(a)(2)) and section 4(a)(2) of the ADEA (29 U.S.C. 623(a)(2)), which make it unlawful for employers "to limit, segregate, or classify" individuals in a manner that would "deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's [protected status]."

The language of the two statutes significantly differs, however, with regard to the applicable defense. Unlike the ADEA, which provides a defense when the practice is based on a reasonable factor other than age (29 U.S.C. 623(f)(1)), Title VII provides a defense only when the practice is job related and consistent with business necessity (42 U.S.C. 2000e–2(k)(1)(A)).

reasonable factors other than age.[15] The Court noted that the City grouped officers by seniority in five ranks and set wage ranges based on salaries in comparable communities. Most of the officers were in the three lowest ranks, where age did not affect officers' pay. In the two highest ranks, where all of the officers were over 40, raises were higher in terms of dollar amounts; they were lower only in terms of percentage of salary. The Court concluded that the plan, as designed and administered, "was a decision based on a 'reasonable factor other than age' that responded to the City's legitimate goal of retaining police officers."[16]

Finally, the Court noted that, although "there may have been other reasonable ways for the City to achieve its goals, the one selected was not unreasonable." "Unlike the business necessity test, which asks whether there are other ways for the employer to achieve its goals that do not result in a disparate impact on a protected class, the reasonableness inquiry includes no such requirement."[17]

Smith did not specify which party bore the burden of persuasion on the RFOA defense, and most of the lower courts that addressed the issue after *Smith* held that the plaintiff bore the burden of proving that the employer's action was unreasonable.[18] Subsequently, in *Meacham* v. *Knolls Atomic Power Lab.,*[19] the Supreme Court held that an employer defending an ADEA disparate-impact claim bears both the burden of production and the burden of persuasion on the reasonable factors other than age defense.

Knolls Atomic Power Laboratories ("KAPL"), the employer in *Meacham,* instituted an involuntary reduction in force ("IRIF") in 1996 to reduce its workforce by 31 employees. To identify employees for the IRIF, KAPL asked managers to rate their employees on three factors—performance, flexibility, and the criticality of their skills—and to add points for years of service. Managers then ranked employees according to their scores and identified the lowest ranked employees for layoff. Thirty of the 31 employees selected for layoff were older than 40, even though only approximately 58% of the workforce was older than 40. The plaintiffs' statistical expert testified that the manner in which managers subjectively scored employees for flexibility and criticality accounted for the statistically significant disparities.[20]

Relying on the text and structure of the ADEA, the Supreme Court ruled that the RFOA provision creates an affirmative defense. The provision is in section 623(f)(1), which lists exemptions for employer practices "otherwise prohibited" by sections 623(a), (b), (c), or (e). As the court observed, it is a "longstanding convention" that the party claiming the benefits of an exemption bears the burden of proof.[21]

The Court noted that the bona fide occupational qualification provision, which also is in section 623(f)(1), creates an affirmative defense. The Court also noted that it has interpreted the Equal Pay Act exemption for pay differentials based on "any other factor other than sex" as an affirmative defense. In addition, in the Older Workers Benefit Protection Act, Congress added the phrase "otherwise prohibited" to section 623(f)(2) of the ADEA to clarify that the section establishes an affirmative defense. This confirms that the phrase "refers to an excuse or justification" and signals an affirmative defense on which the employer bears the burden of proof.[22]

The Court rejected KAPL's argument that, to prove that an adverse action occurred because of age, plaintiffs must show that the challenged employment practice was not based on a reasonable factor other than age.[23] The Court also rejected the Second Circuit's conclusion that plaintiffs have the RFOA burden of persuasion because plaintiffs bore the business necessity burden of persuasion under *Wards Cove* and the RFOA defense "replaces" the business necessity test. That "the business necessity test should have no place in ADEA disparate-impact cases" does not preclude a finding "that the RFOA exemption is an affirmative defense."[24]

Finally, the Court noted that, "the more plainly reasonable" the non-age factor, the smaller the difference between the burdens of production and persuasion. "It will be mainly in cases where the reasonableness of the non-age factor is obscure for some reason, that the employer will have more evidence to reveal and more convincing to do in going from production to persuasion."[25]

Revisions to Agency Regulations

The Commission proposes to revise current paragraph 1625.7(b) to clarify the scope of the RFOA defense. Consistent with *Smith* and *Meacham,* the proposed revision explains that whether a particular employment practice is based on reasonable factors other than age turns on the facts and circumstances of each particular situation and whether the employer acted prudently in light of those facts. This standard is lower than Title VII's business-necessity test[26] but higher than the Equal Pay Act's "any other factor" test.[27] It represents a balanced approach that preserves an employer's right to make reasonable business decisions while protecting older workers from facially neutral employment criteria that arbitrarily limit their employment opportunities.

Proposed paragraph 1625.7(b) notes that whether a differentiation is based on reasonable factors other than age must be decided on the basis of all the particular facts and circumstances surrounding each individual situation.

Reasonable

In General

The statutory requirement that the non-age factor be reasonable is a key element of the RFOA defense.[28] In *Smith,* the Court found it "instructive" that the ADEA provides a defense only when the factor is reasonable, unlike the Equal Pay Act, which the Court said permits an employer to justify a pay differential by proving that it is based on any factor other than sex.[29] The test

[15] The Court also ruled that the plaintiffs failed to satisfy *Wards Cove*'s requirement that they identify a "specific test, requirement, or practice within the pay plan that has an adverse impact on older workers." 544 U.S. at 241.

[16] *Id.* at 242.

[17] *Id.* at 243.

[18] *See, e.g., Pippin* v. *Burlington Res. Oil & Gas Co.,* 440 F.3d 1186, 1200 (10th Cir. 2006); *Meacham* v. *Knolls Atomic Power Lab.,* 461 F.3d 134, 141–43 (2d Cir. 2006), *vacated and remanded,* 128 S. Ct. 2395 (2008).

[19] 128 S. Ct. 2395 (2008).

[20] *Id.* at 2398–99. The Second Circuit initially affirmed a jury verdict for the plaintiffs on their disparate impact claim. *Id.* at 2399 (citing *Meacham* v. *Knolls Atomic Power Lab.,* 381 F.3d 56, 74–47 (2d Cir. 2004)). Following the *Smith* decision, the Supreme Court vacated the judgment and remanded the case to the appellate court. On remand, a divided panel of the Second Circuit ruled that plaintiffs bear the burden of persuasion on the RFOA defense and held that the plaintiffs had not met that burden. *Id.* (citing *Meacham* v. *Knolls Atomic Power Lab.,* 461 F.3d 134, 140–41, 144 (2d Cir. 2006)).

[21] *Id.* at 2400.

[22] *Id.* at 2402.

[23] *Id.* at 2403.

[24] *Id.* at 2404.

[25] *Id.* at 2406.

[26] 42 U.S.C. 2000e–2(k)(1)(A)(i) (noting that a particular employment practice that has a disparate impact based on race, color, religion, sex, or national origin is unlawful unless the employer "demonstrate[s] that the challenged practice is job related for the position in question and consistent with business necessity").

[27] 29 U.S.C. 206(d)(1)(iv) (noting that a sex-based wage differential is not unlawful when payment is made pursuant to "a differential based on any other factor other than sex").

[28] *See Meacham,* 128 S. Ct. at 2403 ("The focus of the defense is that the factor relied upon was a 'reasonable' one for the employer to be using.").

[29] *Smith,* 544 U.S. at 239 n.11 (citing 29 U.S.C. 206(d)(1) (Equal Pay Act recovery barred where pay differential is "based on any other factor other than

for whether an age-based employment practice is lawful is not "rational basis"; instead, the statute requires that the practice be "reasonable." In defining what factors are reasonable, we look to tort law,[30] which contains the most extensive legal definition of reasonableness.

Proposed paragraph 1625.7(b)(1) explains that a reasonable factor is one that is objectively reasonable when viewed from the position of a reasonable employer under like circumstances.[31] It is one that would be used in a like manner by a prudent [32] employer mindful of its responsibilities under the ADEA. In light of *Smith* and *Meacham,* a prudent employer knows or should know that the ADEA was designed in part to avoid the application of neutral employment standards that disproportionately affect the employment opportunities of older individuals.[33] Accordingly, a reasonable factor is one that an employer exercising reasonable care to avoid limiting the employment opportunities of older persons would use.[34]

Consistent with *Smith,* proposed paragraph 1625.7(b)(1) provides that the RFOA defense requires evidence that the challenged practice was reasonably designed to further or achieve a legitimate business purpose and was reasonably administered to achieve that purpose.[35] In *Smith,* for example, the method chosen by the employer to compete for new personnel was one used by most employers in like circumstances—raising the salaries of the least senior employees to attract new applicants. That an employer uses a common business practice is not dispositive of reasonableness, but it weighs in the employer's favor.[36]

In addition to the employment practice's design, the way in which it is administered affects its reasonableness. For example, for purposes of the RFOA defense, it may be reasonable to consider factors such as job performance and skill sets when deciding whom to discharge during a reduction in force.[37] It also may be reasonable to consider the extent to which an employee possesses a critical skill (*i.e.,* one that is key to the employer's operations), or is flexible (i.e., has skills that can be used in various assignments or has the ability to acquire new skills).[38] Use of such factors is reasonable under the ADEA if the employer has made reasonable efforts to administer its employment practice accurately and fairly and has assessed the age-based impact of the practice and taken steps to ameliorate unnecessary and avoidable harm. Steps such as training its managers to avoid age-based stereotyping, identifying specific knowledge or skills the employer wants to retain (*e.g.,* familiarity with the company's filing system or ability to integrate different computer networks), and providing guidance on how to measure flexibility (*e.g.,* whether an employee performs a variety of tasks or willingly accepts new assignments) are evidence of reasonableness.

The determination of reasonableness also requires consideration of what the employer knew or should have known about the practice's impact when it took the challenged action.[39] If the employer had no reason to know that its actions would have an age-based adverse impact, then it cannot be expected to take any action to ameliorate such impact. An employer, however, cannot hide behind lack of knowledge. A reasonable employer implementing practices that harm significant numbers of employees will evaluate the process to determine whether its practice has a disproportionate impact based on age. If the practice has a substantial adverse age-based impact, the employer's failure to have measured the impact will not protect it from a finding that it should have known of the impact.

Relevant Factors

To aid in assessing whether an employment practice is based on a reasonable factor other than age, proposed paragraph 1625.7(b)(1) sets forth a nonexhaustive list of factors that may be relevant to the RFOA defense. As noted above, relevant considerations include whether the practice and its implementation are common business practices and the extent to which the employer took steps to assess and ameliorate the adverse impact on older workers. The extent to which the factor is related to the employer's stated business goals also is relevant to whether it is a reasonable one. For example, in *Smith,* the city's "decision to grant a larger raise to lower echelon

sex")); *compare id. with* 29 U.S.C. 623(f)(1) (ADEA's RFOA provision, which bars recovery only when based on a reasonable factor other than age). *Cf. Wards Cove Packing Co.* v. *Atonio,* 490 U.S. 642, 660 (1989) ("A mere insubstantial justification * * * will not suffice, because such a low standard of review would permit discrimination to be practiced through the use of spurious, seemingly neutral employment practices.").

[30] *See* W. Page Keeton et al., "Prosser and Keeton on Torts" 1, at 4–6 (5th ed. 1984) (torts "consist of the breach of duties fixed * * * by law," provide "compensation of individuals, rather than the public, for losses which they have suffered within the scope of their legally recognized interests," and impose liability "upon conduct which is socially unreasonable").

The Supreme Court has turned to tort law for useful guidance in resolving employment discrimination cases. *See, e.g., Kolstad* v. *American Dental Assn.,* 527 U.S. 526, 538 (1999) (employer's state of mind relevant to award of punitive damages); *Faragher* v. *City of Boca Raton,* 524 U.S. 775, 799–802 (1998) (because lower courts have applied a negligence standard to coworker harassment, it is not appropriate to treat supervisory harassment as being within the scope of employment; however, agency principles weighed in favor of holding an employer vicariously liable for some tortious conduct of a supervisor made possible by abuse of his supervisory authority). So, too, have lower courts. *See Baskerville* v. *Culligan International Company,* 50 F.3d 428, 432 (7th Cir. 1995) (Posner, J.) (in determining when an employer has taken reasonable steps to discover and rectify acts of sexual harassment of its employees, the court observed that "what is reasonable depends on the gravity of the harassment[; j]ust as in conventional tort law a potential injurer is required to take more care, other things being equal, to prevent catastrophic accidents than to prevent minor ones, [citing, inter alia]; W. Page Keeton et al., "Prosser and Keeton on the Law of Torts" 34, at 208 (5th ed. 1984)"); *Shager* v. *Upjohn Co.,* 913 F.2d 398, 405 (7th Cir. 1990) (noting that age discrimination constitutes a tort and therefore doctrine of respondeat superior applies).

[31] *Cf.* Restatement (Second) of Torts 283 (1965) (standard of conduct to avoid liability for negligence "is that of a reasonable man under like circumstances").

[32] *Cf.* Restatement (Second) of Torts 283 cmt. c (1965) ("reasonable man" standard refers to a person of "ordinary prudence").

[33] *See Smith,* 544 U.S. at 235, n.5 (quoting Wirtz Report).

[34] *Cf. Faragher* v. *City of Boca Raton,* 524 U.S. 775, 808–09 (1998) (rejecting employer's argument that it should not be held liable for negligently failing to promulgate anti-harassment policy where EEOC regulations advised employers to take all steps necessary to prevent harassment and holding as a matter of law that employer did not exercise reasonable care to prevent sexual harassment).

[35] *See Smith,* 544 U.S. at 235 n.5 (quoting Wirtz Report's discussion of employment standards that unfairly limit employment opportunities of older individuals).

[36] *See id.* at 241 ("it is not surprising that certain employment criteria that are routinely used may be reasonable despite their adverse impact on older workers as a group").

[37] *See Pippin* v. *Burlington Res. Oil & Gas Co.,* 440 F.3d 1186, 1200–01 (10th Cir. 2006) (finding that reliance on performance ratings and employee skill sets when choosing workers for layoff was reasonable as a matter of law but placing RFOA burden of persuasion on plaintiff).

[38] *See, e.g., Meacham* v. *Knolls Atomic Power Lab.,* 461 F.3d 134, 144 (2d Cir. 2006) (noting that employer's expert testified that " 'criticality' and 'flexibility' were ubiquitous components of 'systems for making personnel decisions' "), *vacated and remanded,* 128 S. Ct. 2395 (2008). However, selecting employees for retention based on their work schedule "flexibility" might expose an employer to allegations of disparate treatment or failure to accommodate under Title VII or the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* For example, ranking employees according to their ability to work flexible schedules might affect an employee who has been assigned to a regular, set schedule as a reasonable accommodation.

[39] *Cf. Burlington Industries, Inc.* v. *Ellerth,* 524 U.S. 742, 759 (1998) (applying agency principles, the Court noted that an employer may be liable for a supervisor's sexual harassment when the employer's "own negligence is a cause of the harassment" and that "[a]n employer is negligent if it knew or should have known about the conduct and failed to stop it").

employees for the purpose of bringing salaries in line with that of surrounding police forces * * * responded to the City's legitimate goal of retaining police officers."[40]

The extent to which the employer took steps to define the factor accurately also is relevant to reasonableness. For example, an employee's flexibility may be assessed through concrete examples of behavior such as accepting or resisting new assignments, seeking or refusing training, and being open or opposed to new ways of doing things. Similarly, the steps the employer took to apply the factor fairly and accurately affect the determination of whether the factor was reasonable. For example, the extent to which the employer provided decision makers with training or other guidance on how to implement the practice may be relevant to whether the practice was administered in a reasonable way.

In addition, the list includes the severity of the practice's impact on individuals within the protected age group. Severity is measured both in terms of the degree of injury to affected employees and the scope of the impact, i.e., the number of persons harmed.[41] *Smith* is perhaps the quintessential example of negligible impact because the impact was slight in both degree and scope. Although the raises given to older workers were smaller in percentage terms, they were higher in actual dollar terms. Thus, to the extent that any older workers suffered any harm, it was minor.[42] In addition, to the extent workers could be said to have been disadvantaged, the numbers of those so affected were small.

The other end of the severity spectrum is one in which the harm to affected individuals is significant and falls primarily on older individuals. The more severe the harm, the greater the care that ought to be exercised.[43] This end of the spectrum is exemplified by the facts in *Meacham,* where the affected employees lost their jobs and the age-based effect was "startlingly skewed."[44] This is not to say that a reasonable employer must entirely eliminate the impact but, rather, that a reasonable employer would investigate the reason for the result and attempt to reduce the impact to the extent appropriate to the given facts.

The extent to which the employer took preventive or corrective steps to minimize the severity of the harm, in light of the burden of undertaking such steps, also is relevant to the issue of reasonableness. As noted in the Restatement, the reasonableness of the employer's actions also includes consideration of the relationship between the severity of the harm and the availability of measures that would reduce or eliminate the risk of harm.[45] If, as in *Smith,* the harm is negligible both in terms of the numbers affected and the degree of harm to those affected, it is not necessary to consider whether there are measures that would further reduce or eliminate the harm.

On the other hand, if the harm is severe, the determination of reasonableness includes consideration of whether the employer knew or should have known of measures that would reduce or eliminate the harm and the extent of the burden that implementing such measures would place on the employer.[46] For example, a reduction-in-force designed to cut costs by terminating sales people with the highest salaries might severely affect older workers. The employer could mitigate the harm by also considering the sales revenues that the affected individuals generated. By considering revenue as well as salary, the process would reasonably achieve the employer's important goal of cutting costs without unfairly limiting the employment opportunities of older individuals.

Finally, the determination of reasonableness includes consideration of whether other options were available and the reasons the employer selected the option it did. As the proposed regulation notes, this does not require an employer to adopt a practice that has the least impact on members of the protected group. Unlike Title VII's business necessity defense, which requires an employer to use the least discriminatory alternative,[47] "the reasonableness inquiry includes no such requirement."[48] Thus, the availability of a less discriminatory practice does not by itself make a challenged practice unreasonable.

That the reasonableness inquiry does not require an employer to use the least discriminatory alternative, however, does not mean that the existence of alternatives is irrelevant. An employer's knowledge of and failure to use equally effective, but less discriminatory, alternatives is relevant to whether the employer's chosen practice is reasonable. This is especially true if the chosen practice significantly affects the employment opportunities of older individuals but only marginally advances a minor goal of the employer. "If the actor can advance or protect his interest as adequately by other conduct which involves less risk of harm to others, the risk contained in his conduct is clearly unreasonable."[49]

On the other hand, the dearth of equally effective options also is relevant to whether the employer's chosen practice is reasonable. The fewer options available, the more reasonable the employer's action appears. Thus, for example, a practice that appears unreasonable in the abstract because it severely affected a high percentage of older workers might in fact be reasonable because there were no other options or the available options were more burdensome than the one chosen.

Factors Other Than Age

Proposed paragraph 1625.7(b)(2) makes clear that, for the RFOA defense to apply, the challenged practice must be based on a non-age factor.[50] As the proposed paragraph notes, disparate impact challenges typically involve

[40] *Smith,* 544 U.S. at 242.

[41] Restatement (Second) of Torts 293 (1965) (in determining the magnitude of the risk for the purpose of determining whether the actor is negligent, factors that must be considered include the extent of the likely harm and the number of persons whose interests are likely to be harmed).

[42] The city's pay plan divided five police ranks into a series of steps and set the wages for the ranks based on a survey of wages in surrounding communities. Most of the officers were in the three lowest ranks, where age did not affect compensation. Compensation was affected only in the two highest ranks, police lieutenant and deputy police chief, where all of the officers were over 40. Although the raises given to the more senior older workers were smaller in percentage terms than the raises given to the less senior younger workers, they were larger in dollar terms. Overall, approximately 66% of the officers under 40 received raises of more than 10% while approximately 45% of those over 40 did. *Smith,* 544 U.S. at 241–42.

[43] *Cf.* Restatement (Second) of Torts 298 cmt. b (1965) ("The greater the danger, the greater the care which must be exercised.").

[44] *Meacham* v. *Knolls Atomic Power Lab.,* 461 F.3d 134, 145 (2d Cir. 2006), *vacated,* 128 S. Ct. 2395 (2008).

[45] *Cf.* Restatement (Second) of Torts 292 cmt. c (1965) ("if the actor can advance or protect his interest as adequately by other conduct which involves less risk of harm to others, the risk contained in his conduct is clearly unreasonable.").

[46] *Id.*

[47] Title VII requires an employer to adopt the least discriminatory alternative. *See* 42 U.S.C. 2000e–2(k)(1)(A). In contrast, factors listed in the proposed paragraph refer to what the employer "knew or should have known" at the time of the challenged action. These factors recognize that the RFOA test is less stringent than the business necessity test and that "the scope of disparate-impact liability under ADEA is narrower than under Title VII." *Smith,* 544 U.S. at 240.

[48] *Smith,* 544 U.S. at 243.

[49] Restatement (Second) of Torts 292, cmt. c (1965).

[50] *See* 29 CFR 1625.7(c) ("When an employment practice uses age as a limiting criterion, the defense that the practice is justified by a reasonable factor other than age is unavailable."); *Smith,* 544 U.S. at 239 (RFOA "preclud[es] liability if the adverse impact was attributable to a nonage factor that was 'reasonable.' ").

practices that are based on objective, non-age factors.[51] Objectively measurable factors such as salary and seniority are non-age factors. Although they may sometimes correlate with age, they are analytically and factually distinct from age.[52]

On the other hand, the unchecked use of subjective criteria that are subject to age-based stereotypes may not be distinct from age.[53] The Supreme Court has recognized that the problem of discrimination by lower-level managers given unchecked discretion to engage in subjective decision making needs to be addressed and that disparate impact analysis is sometimes the only way to do so.[54] Like Title VII, the ADEA was directed at "the *consequences* of employment practices, not simply the motivation" and "good faith 'does not redeem employment procedures * * * that operate as 'built-in headwinds' for [protected] groups and are unrelated to measuring job capability.' "[55]

For example, an employer that is downsizing may want to retain individuals with the ability to learn new computer skills. If the employer makes no effort to assess that ability objectively but instead gives managers unchecked discretion to determine whom to retain, the decision makers may act on the basis of stereotypes about older workers' willingness or ability to learn computer skills. As a consequence, the downsizing may result in a significantly younger but not necessarily more technologically capable workforce. In that situation, where age-based stereotypes infected an undisciplined decision-making process, the employer did not rely on a factor other than age.

An employer that gives unchecked discretion to supervisors to engage in subjective decision making should know that doing so may well cause an age-based disparate impact. Thus, employers that give their supervisors unchecked discretion to make subjective decisions expose themselves to liability on this basis. They should particularly avoid giving such discretion to rate employees on criteria known to be susceptible to age-based stereotyping, such as flexibility, willingness to learn, or technological skills. Instead, evaluation criteria should be objectified to the extent feasible. For example, instead of asking supervisors in the abstract to rate employees' willingness to take on new tasks, employers should instruct supervisors to identify times that an employee was asked to perform new tasks and to describe the employee's reaction to such assignments. In addition, supervisors should be trained to become aware of and avoid age-based stereotyping. If the employer does give supervisors unchecked discretion to engage in subjective decision making, it should determine whether doing so had a disparate impact and, if so, should take reasonable steps to determine whether that impact might be attributable to supervisors' conscious or unconscious age bias and to mitigate the problem.[56]

To aid in assessing whether an employment practice is based on a non-age factor, proposed paragraph 1625.7(b)(2) sets forth a nonexhaustive list of factors that are relevant to the RFOA defense. Relevant factors include the extent to which the employer gave supervisors unchecked discretion to assess employees subjectively, the extent to which supervisors were asked to evaluate employees based on factors known to be subject to age-based stereotypes, and the extent to which supervisors were given guidance or training about how to apply the factors and avoid discrimination.

The Commission invites comments on the proposed changes from all interested parties.

[51] *See Meacham,* 128 S. Ct. at 2403 ("in the typical disparate-impact case, the employer's practice is 'without respect to age' and its adverse impact (though 'because of age') is 'attributable to a nonage factor' * * *").

[52] *See Hazen Paper Co.* v. *Biggins,* 507 U.S. 604, 611 (1993) ("Because age and years of service are analytically distinct, an employer can take account of one while ignoring the other, and thus it is incorrect to say that a decision based on years of service is necessarily 'age based.' "); *Anderson* v. *Baxter Healthcare Corp.,* 13 F.3d 1120, 1125–26 (7th Cir. 1994) (age and compensation levels are analytically distinct).

[53] *See Durante* v. *Qualcomm,* 144 Fed. Appx. 603, 606 (9th Cir. 2005) (unpublished) (although "'[p]laintiffs generally cannot attack an overall decisionmaking process in the disparate impact context, [and] must instead identify the particular element or practice within the process that causes an adverse impact[,]' * * * an overall decision-making process may be subject to a disparate impact challenge if the employer utilizes an 'undisciplined system of subjective decision-making' ") (quoting *Stout* v. *Potter,* 276 F.3d 118, 1124 (9th Cir. 2002) and *Watson* v. *Fort Worth Bank & Trust,* 487 U.S. 977, 990 (1988)).

[54] *Watson* v. *Fort Worth Bank and Trust,* 487 U.S. 977, 990 (1988).

[55] *Smith,* 544 U.S. 228, 234–35 (emphasis in original) (citing *Griggs* v. *Duke Power Co.,* 401 U.S. 424, 432 (1971)).

[56] An employer that gives supervisors unchecked discretion to engage in subject decisionmaking should also determine whether doing so resulted in age-based disparate treatment. Cases challenging subjective decisionmaking may involve allegations of disparate treatment as well as disparate impact. *See, e.g., Meacham,* 128 S. Ct. at 2398 (noting that plaintiffs raised both disparate-treatment and disparate-impact claims).

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has coordinated this proposed rule with the Office of Management and Budget. Under section 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation will not 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 or local tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

This proposal contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it imposes no economic or reporting burdens on such firms and makes no change to employers' compliance obligations under the Act. Instead, the proposed rule brings the Commission's regulations into compliance with recent Supreme Court interpretations of the Act. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 29 CFR Part 1625

Advertising, Age, Employee benefit plans, Equal employment opportunity, Retirement.

Dated: February 12, 2010.

For the Commission.

Stuart J. Ishimaru,

Acting Chairman.

For the reasons set forth in the preamble, the Equal Employment Opportunity Commission proposes to

amend 29 CFR chapter XIV part 1625 as follows:

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

1. The authority citation for part 1625 continues to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621; 5 U.S.C. 301; Secretary's Order No. 10–68; Secretary's Order No. 11–68; Sec. 9, 81 Stat. 605; 29 U.S.C. 628; sec. 12, 29 U.S.C. 631, Pub. L. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

Subpart A—Interpretations

2. Revise paragraph (b) of § 1625.7 to read as follows:

§ 1625.7 Differentiations based on reasonable factors other than age.

* * * * *

(b) Whether a differentiation is based on reasonable factors other than age ("RFOA") must be decided on the basis of all the particular facts and circumstances surrounding each individual situation.

(1) *Reasonable.* A reasonable factor is one that is objectively reasonable when viewed from the position of a reasonable employer (i.e., a prudent employer mindful of its responsibilities under the ADEA) under like circumstances. To establish the RFOA defense, an employer must show that the employment practice was both reasonably designed to further or achieve a legitimate business purpose and administered in a way that reasonably achieves that purpose in light of the particular facts and circumstances that were known, or should have been known, to the employer. Factors relevant to determining whether an employment practice is reasonable include but are not limited to, the following:

(i) Whether the employment practice and the manner of its implementation are common business practices;

(ii) The extent to which the factor is related to the employer's stated business goal;

(iii) The extent to which the employer took steps to define the factor accurately and to apply the factor fairly and accurately (*e.g.,* training, guidance, instruction of managers);

(iv) The extent to which the employer took steps to assess the adverse impact of its employment practice on older workers;

(v) The severity of the harm to individuals within the protected age group, in terms of both the degree of injury and the numbers of persons adversely affected, and the extent to which the employer took preventive or corrective steps to minimize the severity of the harm, in light of the burden of undertaking such steps; and

(vi) Whether other options were available and the reasons the employer selected the option it did.[1]

(2) *Factors Other Than Age.* When an employment practice has a significant disparate impact on older individuals, the RFOA defense applies only if the practice is not based on age. In the typical disparate impact case, the practice is based on an objective non-age factor and the only question is whether the practice is reasonable. When disparate impact results from giving supervisors unchecked discretion to engage in subjective decision making, however, the impact may, in fact, be based on age because the supervisors to whom decision making was delegated may have acted on the bases of conscious or unconscious age-based stereotypes. Factors relevant to determining whether a factor is "other than age" include, but are not limited to, the following:

(i) The extent to which the employer gave supervisors unchecked discretion to assess employees subjectively;

(ii) The extent to which supervisors were asked to evaluate employees based on factors known to be subject to age-based stereotypes; and

(iii) The extent to which supervisors were given guidance or training about how to apply the factors and avoid discrimination.

* * * * *

[FR Doc. 2010–3126 Filed 2–17–10; 8:45 am]

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[1] This does not mean that an employer must adopt an employment practice that has the least severe impact on members of the protected age group. "Unlike the business necessity test, which asks whether there are other ways for the employer to achieve its goals that do not result in a disparate impact on a protected class, the reasonableness inquiry includes no such requirement." *Smith* v. *City of Jackson,* 544 U.S. 228, 243 (2005). Instead, this simply means that the availability of other options is one of the factors relevant to whether the practice was a reasonable one. "If the actor can advance or protect his interest as adequately by other conduct which involves less risk of harm to others, the risk contained in his conduct is clearly unreasonable." Restatement (Second) of Torts 292, cmt. c (1965).

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN37

Payment for Inpatient and Outpatient Health Care Professional Services at Non-Departmental Facilities and Other Medical Charges Associated With Non-VA Outpatient Care

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to update the Department of Veterans Affairs (VA) medical regulations concerning the payment methodology used to calculate VA payments for inpatient and outpatient health care professional services and other medical services associated with non-VA outpatient care.

DATES: Comments must be received on or before April 19, 2010.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov*; by mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AN37—Payment for Inpatient and Outpatient Health Care Professional Services at Non-Departmental Facilities and Other Medical Charges Associated with Non-VA Outpatient Care." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joseph C. Enderle, Jr., National Fee Program Manager, Department of Veterans Affairs, P.O. Box 469066, Denver, CO 80246–9066, telephone (303) 370–5088. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1703(a), "[w]hen [VA] facilities are not capable of furnishing economical hospital care or medical services because of geographical inaccessibility or are not capable of furnishing the care or services required, the Secretary, as authorized in [38

U.S.C. 1710], may contract with non-[VA] facilities in order to furnish" certain hospital care and medical services to veterans who qualify under 38 U.S.C. 1703. VA implemented this authority in 38 CFR 17.52.

Also, under 38 U.S.C. 1728, VA shall authorize payment for emergency care in a non-VA facility in limited situations primarily where the care is needed for the treatment of a service-connected disability or related conditions aggravating a service connected disability. Under that authority, as implemented in 38 CFR 17.120, VA reimburses either the veteran who made payments for hospital care or medical services, the person or organization making such expenditure on behalf of such veteran, or the hospital or other health facility furnishing the care or services if such care or services were provided in a medical emergency and VA or other Federal facilities were not feasibly available, and an attempt to use them beforehand would not be reasonable.

Payment methodology for health care professional services associated with outpatient and inpatient care that are payable under either 38 U.S.C. 1703 or 1728 is currently set forth in 38 CFR 17.56.

Current § 17.56(a) adopted the Medicare Participating Physician Fee Schedule for the payment of non-VA physician and other health care professional services. For services not covered by the Medicare Participating Physician Fee Schedule, VA pays the lesser of the actual amount billed or the amount calculated using the 75th percentile methodology set forth in current § 17.56(c) (or the usual and customary rate if there are fewer than 8 treatment occurrences for a procedure during the previous fiscal year). We cannot predict whether there will be 8 treatment occurrences during an upcoming fiscal year, or the precise charges of such treatment occurrences, because these depend upon the billing practices of the non-VA facilities involved. In the vast majority of these cases, the non-VA facilities' charges are far greater than the allowable Medicare charges for the same treatment. As a result, VA's expenditures can be unpredictable and, in some cases, can greatly exceed the costs VA would incur using the Medicare schedules. We propose to broaden § 17.56 to apply a new payment methodology to all non-VA inpatient and outpatient health care professional services and other outpatient services. Such charges would include ancillary and facility costs such as those that are reimbursed using the following Medicare schedules: Ambulatory Surgical Center Payment, Clinical Laboratory Fee Schedule, Home Health Prospective Payment System ("PPS"), Hospice, Hospital Outpatient PPS, and End Stage Renal Disease composite rate payment method. In the absence of an amount negotiated between VA and the provider under the Federal Acquisition Regulation ("FAR"), this new methodology will allow VA to pay the lesser of an amount negotiated under the VA Acquisition Regulation ("VAAR"), the applicable Medicare or VA Fee schedule rate, and the billed charge.

VA OIG Report 05–03037–107 (2006) concluded that clarification of VA's regulatory authority for payment of outpatient facility charges is necessary to ensure consistent, predictable medical costs and control expenditures. This audit recommended that VA adopt Medicare fee schedules via specific regulatory action. VA subsequently determined that in the absence of a contract it had authority to pay facility charges and similar costs utilizing Medicare rates as its payment methodology without regulatory change. As a result, in early 2009, VA utilized Medicare schedules for a brief period of time to pay for certain institutional services. In response to an expressed concern received from a health care organization, VA determined that regulatory action was the preferred method of implementing Medicare schedules. We believe that using the Medicare schedules will clearly help VA contain costs, as explained in greater detail later in this notice. It is in the interest of the American public that these methodologies be adopted in order to help contain costs. We recognize that potential cost-savings realized by VA as a result of this proposed rule will economically impact the health care community. Historically, other Federal payers have utilized a phased-in approach for implementation of changes resulting in an economic transfer action upon the health care community. We solicit comments from the health care industry as to how VA may best implement such a transition.

The current § 17.56 states that "[n]otwithstanding other provisions of this section, VA, for physician services covered by this section, will pay the lesser of the amount determined under paragraphs (a) through (e) of this section or the amount negotiated with the physician or the physician's agent." There are three basic types of negotiated contracts VA uses to pay for purchased health care: (1) Contracting under 48 CFR, (2) negotiated contracts under 48 CFR Chapter 8, and (3) negotiated contracts using a repricing agent. We propose to revise the regulation to clarify how payments will be computed for inpatient and outpatient health care professional services at non-VA facilities and other medical charges associated with non-VA outpatient care. Proposed paragraph (a) would require that the costs of the listed services be paid in accordance with a preferential hierarchy set forth in paragraphs (a)(1) and (a)(2). The proposed rule would give preference to "[t]he amount negotiated by VA and the provider under Federal Acquisition Regulation (FAR), 48 CFR Chapter 1."

However, proposed § 17.56(a)(1) does not fully reflect VA's existing statutory and regulatory authority to negotiate rates through the contracting authority in 38 U.S.C. 1703 and the regulatory procedures set forth in 48 CFR Chapter 8, or to apply rates negotiated by a repricing agent. Accordingly, in proposed paragraph (a)(2)(i) and (a)(2)(ii), we added a clarifying amendment to specify that negotiating such agreements is the preferred method for determining payment amounts for all non-VA physician and other health care professional services only if such amount is lesser than would be payable under the applicable Medicare or VA Fee Schedule rate and billed charge.

Accordingly, proposed paragraph (a)(2) would provide the second payment methodology, which would be the lesser of the amounts described in paragraphs (a)(2)(i), (ii), (iii), or (iv). Proposed paragraph (a)(2)(i) is based upon the authority to enter into negotiated contracts under 48 CFR 801.670–3. Proposed paragraph (a)(2)(ii) is based on current § 17.56(f), which in part currently permits VA to pay physicians the amount that they have negotiated with an agent. The proposed paragraph would clarify the current rule. We would use the word "provider" where current paragraph (f) uses "physician" because we propose to broaden this regulation to reach "other medical charges associated with non-VA outpatient care." We would also use the term "repricing agent" instead of "physician's agent" for the same reason.

Paragraph (a)(2)(iii)(A) and (B) would describe the payment methodology that applies where there has been no negotiated amount. In paragraph (a)(2)(iii)(A), we would adopt Medicare's "applicable fee schedule or prospective payment system payment amount." As explained above regarding proposed § 17.56(a), this regulation would apply the Medicare rates to more than simply physician professional services, as is done in the current rule.

Under current law, the Federal Government may waive Medicare

payment rules and allow alternative payment methods. At this time, such a waiver has been granted only to hospitals in the state of Maryland. In our view, the Medicare methodology implemented in current § 17.56 and that we propose to expand in this rulemaking includes alternative payment methods authorized under a Medicare waiver. We propose to clarify in proposed paragraph (a)(2)(iii)(A) that absent a lesser charge under proposed paragraphs (a)(2)(i), (ii) or (iv), payment will be made in accordance with the terms of any alternative methodology authorized by a Medicare waiver or as otherwise prescribed in paragraph (a)(2)(iii)(A).

Paragraph (a)(2)(iii)(A) would not include the exception in current § 17.56(a) for payments for "anesthesia services." This exception is no longer required because Medicare includes payment for anesthesia in its fee schedules and prospective payment systems. The current regulation also describes in detail the payment formula for physician and non-physician professional services, which is already included in the Medicare fee schedule that VA would adopt under this rule. There is no reason to repeat it in the proposed regulation.

We also note that this rule would not authorize additional payments or any payment adjustments greater than the amount specified in the published Medicare fee schedule and prospective payment system, such as end-of-year settlements or other periodic adjustments made by Medicare as a result of cost reporting. Such adjustments allow for additional payments or recovery of payment on the basis of actual cost as reported by Medicare participating providers. The payments determined by cost reporting for hospital outpatient services include transitional pass-through payments, bad debts, and costs of direct medical education. Unlike Medicare, VA is a direct supporter of medical education through its residency, internship, and research affiliations with educational institutions. Furthermore, a treating facility incurs no risk of bad debt accumulation as a result of referral of veterans for treatment, as VA pays 100 percent of the determined allowable amount. VA does not have systems in place to obtain the data necessary to make such adjustments, and we believe it would not be cost-effective for us to develop such systems because of the relatively small numbers of veterans affected. In contrast, Medicare has a larger program that reaches a significantly larger group of people than the number of veterans whose non-VA care is paid for under §§ 17.52 and 17.120. For these reasons VA proposes not to make settlement or adjustment payments.

Proposed paragraph (a)(2)(iii)(B) would apply "[i]n the absence of a Medicare rate." In such cases, we would apply the formula in current § 17.56(c), which we would restate in paragraph (a)(2)(iii)(B).

Under paragraph (a)(2)(iv), we would pay "[t]he amount the provider bills the general public for the same service." If the provider is willing to accept payment from the general public of an amount that is less than the other amounts set forth in paragraphs (a)(2)(i), (ii), or (iii), there would be no reasonable justification in our view for charging the government a greater amount for the same services.

Proposed paragraph (b) would repeat the exception in the current § 17.56(d) for services provided in the state of Alaska, without substantive change.

Paragraph (c) would bar providers or their agents from imposing any additional charges to those authorized for payment under this section. This is based on current § 17.56(e) and is substantively identical.

Proposed paragraph (d) would implement recent revisions to 38 U.S.C. 1728(a) that require VA to "reimburse [certain] veterans eligible for hospital care or medical services under [38 U.S.C. chapter 17] for the customary and usual charges of emergency treatment (including travel and incidental expenses under the terms and conditions set forth in [38 U.S.C. 111]) for which such veterans have made payment, from sources other than [VA]." We interpret this provision to authorize VA to reimburse the veteran for all of his or her out-of-pocket payments relating to the emergency treatment; however, we do not interpret this provision to bar the application of the sound, cost-savings principles used to reimburse providers in paragraphs (a) and (b). Therefore, under this rule, we would reimburse the veteran for out-of-pocket payments and, if there is any remaining balance due to the provider, VA would reimburse the provider using the principles set forth in proposed paragraphs (a) and (b).

Finally, as a result of this proposed rule making, it came to our attention that 38 CFR 17.52(a) contains a typographical error. Prior versions of this regulation (codified at 38 CFR 17.50b(a)) included cross-references to 38 CFR 17.50c through f. Sections 17.50c, 17.50d and 17.50f have subsequently been recodified as 38 CFR 17.53, 17.54 and 17.55, respectively. 61 FR 21964 (1996). Additionally, since the most recent revision to this regulation, § 17.56, was added to the regulatory sequence. Therefore, we propose that the reference in § 17.52(a) to the "provisions of § 17.53 through f" should be amended to the "provisions of §§ 17.53, 17.54,17.55 and 17.56."

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may have an annual effect on the economy of $100 million or more.

Regulatory Impact Analysis

VA followed OMB circular A–4 to the extent feasible in this analysis. The circular first calls for a discussion of the *need* for the regulation. The preamble above discusses the need for the regulation in more detail.

Need

Under 38 U.S.C. 1703(a), "[w]hen [VA] facilities are not capable of furnishing economical hospital care or medical services because of geographical inaccessibility or are not capable of furnishing the care or services required, the Secretary, as authorized in [38 U.S.C. 1710], may

contract with non-[VA] facilities in order to furnish" certain hospital care and medical services to veterans who qualify under 38 U.S.C. 1703. Medicare is the largest U.S. Federal health care payer and is recognized as the Federal health care industry standard for reimbursement rates. Providers, particularly the medical facilities affected by this rule, are familiar with Medicare payment methodologies. Indeed, VA currently uses Medicare methodologies in connection with hospital care and inpatient and outpatient physician services. Moreover, two separate audits by VA's Office of Inspector General concluded that clarification of VA's regulatory authority for payment of outpatient facility charges is necessary. *See* VA OIG Reports 08–02901–185 (2009) and 05–03037–107 (2006). As such, we believe the adoption of Medicare rates will help ensure consistent, predictable medical costs and will help control expenditures. Thus, we believe that adoption of this rate is important to both VA and the general public.

Impact

An estimate of the number of small entities potentially affected by this rule may be found in the Regulatory Flexibility Act section below. The following "Benefit-Cost Analysis" discussion provides a high level overview concerning the economic impact of this proposed rule. We seek any information or comment on these and other issues.

Benefits-Cost Analysis

End Stage Renal Disease (ESRD)

To estimate the potential savings to be realized with the adoption of Medicare pricing, we first identified outpatient dialysis services provided to veterans in non-VA facilities in the first six months of calendar year 2008. We focused on a subset of dialysis procedure and injectable drug codes that together accounted for the vast bulk of outpatient dialysis facility charges for care purchased by VA. We edited the data to remove outliers (claims with very high or low paid amounts per unit of service). We eliminated the small number of dialysis procedure claims that had more than one unit of service. For dialysis drug claims, on the other hand, we eliminated claims that had only one unit of service because these injectable drugs are normally administered as multiple units of service. We also excluded claims that VA reimbursed through purchased care contracts.

We then calculated the impact of paying these non-VA dialysis claims using Medicare's dialysis facility pricing methods to set the maximum allowable charge (based on Medicare's composite rate for dialysis procedures and Medicare prices for separately payable injectable drugs). Medicare's national average composite rate (approximately $157 per dialysis session) was used in this analysis. This rate was adjusted using Medicare's geographic wage index adjustment for ESRD dialysis facility charges. For the injectable drug claims Medicare prices were used. We then compared the original amount paid by VA to the price Medicare would pay, and from this comparison we kept the lesser amount as the final amount VA would pay for a given claim (the Medicare price would set the maximum charge for that claim, but in some cases the local VA facility might already have negotiated a lower rate than the Medicare rate).

Cost reductions for the dialysis procedures ranged from 21–35 percent for the three most common dialysis codes and the savings on injectable drugs ranged from 48–69 percent for the three most common codes. By utilizing Medicare pricing we estimate that VA's outpatient dialysis facility expenditures will decrease by 39 percent.

Clinical Lab Services

Similarly, we first identified all clinical lab services provided through VA purchased care to veterans in the first six months of calendar year 2008. We then edited the data to remove outliers (claims paid under $1 or over $500). We also eliminated a very small number of claims that we were unable to map to zip codes or that had more than one unit of service on a line item. We also excluded claims that were paid under contracts with clinical labs or with certain managed care providers.

To estimate the impact of using Medicare's clinical lab fee schedule, we focused on the 100 clinical lab services (by CPT code) with the highest aggregate non-VA (purchased care) allowed amounts. These 100 codes accounted for about 86.5 percent of all non-VA clinical lab service costs. We calculated the impact of paying these non-VA clinical lab claims using Medicare's fee schedule as the maximum allowable charge. In calculating the impact of Medicare pricing, we excluded a small number of the top 100 CPT codes that are not on Medicare's lab fee schedule because Medicare pays these services using the Medicare physician fee schedule. We also excluded physician claims, clinical labs at Maryland hospitals, and critical access hospitals because they are not subject to the Medicare lab fee schedule. Our estimates accounted for Medicare's higher payments for clinical lab services at sole community hospitals. We also used the unique Medicare carrier rates for lab services where appropriate in individual locations.

We found that VA paid an average of almost $49 per line item for clinical lab services for the top 100 VA purchased care clinical lab services. Under Medicare pricing, the VA would pay an average of $11.47 for these claims. This represents a cost reduction of approximately 75 percent.

We performed further analysis of the 15 clinical lab codes with the highest VA purchased care volumes. We found that these 15 clinical lab codes accounted for about one-half of the VA's payments for clinical lab services in the first six months of CY08. The cost reductions for these 15 codes ranged from 63 percent to 85 percent which indicates that the allowed amounts under Medicare's pricing would be equal to 15–37 percent of the current VA allowed amounts. This indicates that the impact of using the Medicare clinical lab schedule will lead to a relatively homogeneous reduction in clinical lab payments.

Home Health Care/Hospice

The estimated impact of using Medicare's home health care and hospice payment methodologies is zero. We estimate no impact because VA currently utilizes these payment methodologies for reimbursement of such non-VA care.

Percent of Veterans Utilizing VA Health Care System

Approximately 1.6 percent of the total U.S. population are veterans who utilize the VA Health Care System. Of the total number of veterans who utilized the VHA Health Care System in fiscal year 2008, VHA preauthorized non-VA outpatient hospital services for approximately 5.4 percent of veterans, 2.5 percent used community hospital emergency rooms, 0.8 percent used freestanding ambulatory surgery centers, 0.7 percent used independent laboratories, and 0.1 percent were authorized care at end stage renal disease treatment centers at VA expense. We believe that the impact of veterans authorized non-VA health care services at VA expense in the local health care market is minimal, as illustrated in Table 1.

TABLE 1—PERCENT OF VETERANS UTILIZING VA HEALTH CARE SYSTEM

State	FY 2008 total population	FY 2008 total veteran users	Percent of total veteran users/total U.S. population
Alabama	4,692,977	94,426	2.0
Alaska	689,791	13,826	2.0
Arizona	6,630,722	114,126	1.7
Arkansas	2,910,777	80,831	2.8
California	37,873,407	369,346	1.0
Colorado	4,962,478	68,628	1.4
Connecticut	3,550,231	50,373	1.4
Delaware	885,956	13,099	1.5
District of Columbia	589,366	8,894	1.5
Florida	19,119,225	420,202	2.2
Georgia	9,863,250	139,428	1.4
Hawaii	1,312,372	18,706	1.4
Idaho	1,549,062	32,886	2.1
Illinois	13,177,638	168,982	1.3
Indiana	6,468,433	111,562	1.7
Iowa	3,042,015	66,833	2.2
Kansas	2,828,255	56,131	2.0
Kentucky	4,295,044	90,718	2.1
Louisiana	4,500,627	79,472	1.8
Maine	1,349,506	37,359	2.8
Maryland	5,743,662	70,754	1.2
Massachusetts	6,518,184	77,112	1.2
Michigan	10,314,853	119,290	1.2
Minnesota	5,357,700	95,409	1.8
Mississippi	2,986,953	65,369	2.2
Missouri	5,977,318	122,411	2.0
Montana	965,024	29,279	3.0
Nebraska	1,814,105	42,322	2.3
Nevada	2,730,425	53,423	2.0
New Hampshire	1,343,347	25,220	1.9
New Jersey	8,890,186	75,882	0.9
New Mexico	2,029,633	44,824	2.2
New York	19,554,879	225,452	1.2
North Carolina	9,231,191	166,138	1.8
North Dakota	652,934	16,954	2.6
Ohio	11,633,295	190,646	1.6
Oklahoma	3,672,886	79,735	2.2
Oregon	3,814,725	79,168	2.1
Pennsylvania	12,631,267	266,529	2.1
Rhode Island	1,078,084	19,174	1.8
South Carolina	4,479,461	98,624	2.2
South Dakota	809,862	28,291	3.5
Tennessee	6,244,163	114,393	1.8
Texas	24,627,546	371,259	1.5
Utah	2,677,229	29,042	1.1
Vermont	636,472	14,163	2.2
Virginia	7,899,205	114,076	1.4
Washington	6,628,203	91,233	1.4
West Virginia	1,836,864	56,541	3.1
Wisconsin	5,701,620	104,787	1.8
Wyoming	526,857	16,884	3.2
Totals	309,299,265	4,940,212	1.6

Accounting Statement

It is anticipated that adoption of Medicare pricing standards for outpatient care would result in significant cost savings; however, the amount of savings will vary depending on current VA payment methodology and utilization rates. Under current § 17.56, VA utilizes Medicare's participating physician fee schedule for the payment of physician and professional services for both inpatient and outpatient care; therefore no savings would be realized for the portion of non-VA outpatient expenditures for services paid under that pricing standard.

The following assumptions were used to arrive at a projected savings estimate:

- Outpatient disbursements for future years are based on total expenditures for non-VA outpatient services during 2006, 2007 and 2008, the number of veteran users, and an anticipated inflation rate.
- The number of veteran users for outpatient purchased care services was estimated at 8 percent of the number of enrolled veterans for future years.
- The anticipated inflation rate used in the estimate is 3.5 percent for 2008–2011, 3.7 percent for 2012, and 3.8 percent for all subsequent years.

- Outpatient disbursements made in FY 2008 were used to identify disbursements for specific categories of outpatient services, such as: clinical laboratory, dialysis, ambulatory surgical center, home health, hospice, etc.
- Savings were estimated by comparing current VA payment methodology for sample codes within each category with the Medicare's pricing standards for the same codes to determine an estimated percentage of savings.
- The percentage of savings for each category was then used to calculate the estimated savings if Medicare pricing standards were adopted.
  - Savings for dialysis services using Medicare pricing standards are estimated at 39 percent.
  - Savings for laboratory services using Medicare pricing standards are estimated at 75 percent.
  - Savings for Ambulatory Surgery Center services using Medicare pricing standards are estimated at 11 percent.
- No savings were anticipated for either home health care or hospice services, as these services are paid by VA utilizing Medicare LUPA rates.
- Facility charges were estimated for all other outpatient service expenditures. It is anticipated that a cost savings of 25 percent will be realized in this category.

Fiscal year	Estimated annual savings resulting from adoption of medicare pricing standards for payment of outpatient services
2011	$251,800,000
2012	280,400,000
2013	314,200,000
2014	344,100,000
2015	375,600,000
Estimated Total Savings	1,566,100,000

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.011, Veterans Dental Care.

Congressional Review Act

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100 million or more or have certain other impacts. This proposed rule is a major rule under the Congressional Review Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals, Ambulatory Surgery Centers, and other providers subject to this rule are considered to be small entities, either by being nonprofit organizations or by meeting Small Business Administration (SBA) definition of a small business, as codified in 13 CFR 121.201. Therefore, the Secretary has determined that this proposed rule would have a significant impact on a substantial number of small entities.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 5 U.S.C. 603. Interested parties are invited to submit comments on VA's regulatory flexibility analysis. The analysis is as follows:

Description of the Reasons Why Action by the Agency Is Being Considered

This document proposes to update the Department of Veterans Affairs (VA) medical regulations concerning the payment methodology used to calculate VA payments for inpatient and outpatient health care professional services and other medical services associated with non-VA outpatient care. Moreover, two separate audits by VA's Office of Inspector General concluded that clarification of VA's regulatory authority for payment of outpatient facility charges is necessary. *See* VA OIG Reports 08–02901–185 (2009) and 05–03037–107 (2006). As such, we believe the adoption of Medicare rates will help ensure consistent, predictable medical costs and will help control costs. Thus, we believe that adoption of this rate is important to both VA and the general public.

Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

Under 38 U.S.C. 1703(a), "[w]hen [VA] facilities are not capable of furnishing economical hospital care or medical services because of geographical inaccessibility or are not capable of furnishing the care or services required, the Secretary, as authorized in [38 U.S.C. 1710], may contract with non-[VA] facilities in order to furnish" certain hospital care and medical services to veterans who qualify under 38 U.S.C. 1703. Payment methodology for health care professional services associated with outpatient and inpatient care that are payable under either 38 U.S.C. 1703 or 1728 is currently set forth in 38 CFR 17.56. Current § 17.56(a) adopted the Medicare Participating Physician Fee Schedule for the payment of professional services.

Description of, and, Where Feasible, Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

Kidney Dialysis Centers (North American Industry Classification System (NAICIS) 621492)

Payments excluded from this analysis include services purchased by competitive contracting, services purchased in foreign countries, and emergency care ESRD services authorized under 38 U.S.C. 1725. Lesser payment rates negotiated between VA and the non-VA provider are included, as VA is unable to identify such payments in its centralized payment files. VA has authority under 38 CFR 17.56 to negotiate a lesser payment amount with non-VA providers for services purchased on an individual basis. We acknowledge that inclusion of negotiated payment rate data overstates the financial impact upon small businesses.

VA payment information is primarily maintained by the payee's federal tax identification number (TIN). VA assigns a two character suffix to the base nine-digit TIN to distinguish multiple components of an entity; however, the payment files are indexed by the vendor remit-to-addresses rather than the place of service. For this reason we conducted a comprehensive geographical analysis of payments based upon the address of the payee.

Medicare utilizes their ESRD prospective payment pricer for the payment for ESRD treatment. Dialysis treatments are performed mostly at dialysis centers and paid by Medicare under the method 1 of the ESRD pricer. Medicare may pay home dialysis treatments using a second method of determining pricing, which is known as method 2. When VA authorizes dialysis treatment and negotiates a payment rate based upon Medicare methodology it pays for such dialysis treatments under method 1. The percentage of vendors receiving VA payments for all ESRD related treatment totaling less than $50,000 was 82 percent; the percentage of vendors receiving payments totaling

less than $150,000 annually was 95 percent.

A total of 1,888 health care providers furnished care in an end stage renal disease treatment facility at VA expense. Approximately 90 percent of the total annual payments received by these providers was less than $100,000. All of the providers with earnings equal to or greater than $100,000 were dialysis treatment centers, representing 9.5 percent of the total providers paid. There were approximately 484 dialysis centers in 2002 and approximately 85 percent of these dialysis centers (NAICS 621492) were classified as small businesses earning less than $10 million per year (*http://www.sba.gov/advo/research/us_rec02.txt*). VA currently pays ESRD treatment for veterans at approximately one-third of available dialysis centers.

The following table illustrates the location and amount of annual VA payments in increments of $50,000 to these 180 dialysis treatment centers.

AMOUNT OF VA PAYMENTS TO VENDORS FOR DIALYSIS TREATMENT IN ESRD FACILITIES

[Sorted by state in increments of $50,000]

VA payment range	$100,000 $150,000	$150,000 $200,000	$200,000 $250,000	$250,000 $300,000	$300,000 $350,000	$350,000 $400,000	$400,000 $450,000	$450,000 $500,000
State:								
AL	1							
AR						1		
AZ	1	1	2	1	1		1	
CA	5	1	1					
CO			1					
FL	1	3						
GA	6	5	3	4	1	1	1	1
HI								
IL	3	2	2		1		2	
IN		1						
KS	1		1				1	
KY	2			1				
LA			1					
MA	1	1	2		1			
MD		3			1			
MI	3			1				
MO	1							
NC	5	1	1	1				
NH		1						
NM					1			
NY	3							
OH		3		1				
PA	5	5	1				1	1
SC	1							
TN	4	1	2	1	1	1	1	
TX	3	2			2	1		
WA	3							
WI	1			2				
WV				1				
Total	50	30	17	13	9	4	7	2
Percent of Total	2.6	1.6	0.9	0.7	0.5	0.2	0.4	0.1

AMOUNT OF VA PAYMENTS TO VENDORS FOR DIALYSIS TREATMENT IN ESRD FACILITIES

[Sorted by state in increments of $50,000]

VA payment range	$500,000 $550,000	$550,000 $600,000	$600,000 $650,000	$650,000 $700,000	$700,000 $750,000	$750,000 $800,000	$800,000 $850,000	$850,000 $900,000	$900,000 $950,000	$950,000+
State:										
AL										
AR										
AZ		1							2	
CA			1				1			
CO										
FL										1
GA	1			1		1	1			9
HI				1						
IL										1
IN										
KS										
KY										
LA	1				1					1
MA					2					
MD										1
MI										
MO										
NC										
NH										

AMOUNT OF VA PAYMENTS TO VENDORS FOR DIALYSIS TREATMENT IN ESRD FACILITIES—Continued
[Sorted by state in increments of $50,000]

VA payment range	$500,000 $550,000	$550,000 $600,000	$600,000 $650,000	$650,000 $700,000	$700,000 $750,000	$750,000 $800,000	$800,000 $850,000	$850,000 $900,000	$900,000 $950,000	$950,000+
NM										
NY										
OH										
PA	1	1		2	1				1	4
SC										
TN	1	2				1			1	2
TX		1								1
WA	1									
WI										
WV										
Total	5	5	1	4	4	2	2	0	4	20
Percent of Total	0.3	0.3	0.1	0.2	0.2	0.1	0.1	0.0	0.2	1.1

During fiscal year 2008, approximately 10,500 veterans received dialysis treatment at non-VA facilities at VA expense, which represents 2.8 percent of all persons receiving dialysis in the United States. One major dialysis provider characterized government programs, other than Medicare and Medicaid programs, as comprising 2 percent of their annual revenues for calendar year ending December 31, 2008, as stated on their annual Securities Exchange Commission form 10–K submission. We consider these reported numbers as reflective of VA workload throughout the dialysis treatment industry and conclude that VA patient workload in dialysis centers does not represent a substantial source of income for these businesses.

Clinical Diagnostic Laboratory (Medical Laboratories NAICS 621511)

Medicare utilizes the Clinical Diagnostic Laboratory fee schedule to determine the payment amount for laboratory tests. Both VA and Medicare use the Physician Fee Schedule to pay professional interpretation and reporting fees associated with laboratory tests. Under this proposal, VA would use the Medicare Clinical Diagnostic Laboratory fee schedule to pay for laboratory tests purchased from non-VA providers. In FY 2008, VA paid 8,283 unique vendors for laboratory services purchased from health care facilities and providers. VA annual payments for these services totaled less than $50,000 for 98 percent of the vendors paid, 99.2 percent of vendors received less than $100,000, and 99.5 percent of vendors were paid less than $150,000 per year. A total of 13 vendors were paid an annual sum greater than $300,000. VA estimates that payment for laboratory services utilizing the Medicare Clinical Laboratory Diagnostic fee schedule will reduce the amount of payments by approximately 75 percent. Due to the current level of workload and VA expenditures per non-VA facility we do not consider adoption of Medicare reimbursement rates for laboratory services to have a major financial impact upon individual entities.

Home Health Care Services (NAICS 621610)

VA purchases home health care and hospice care in accordance with 38 U.S.C. 7120(c). These services are paid for via contracts, basic coordinated agreements, provider agreements and/or other negotiated agreements. Currently, Medicare Low Utilization Payment Adjustment (LUPA) rates are used by VA to determine acceptable rates upon which to base contracts and agreements for such non-VA care purchases. In addition to the LUPA rates, VA takes into consideration the need for and provision of services not otherwise included in the Medicare PPS. Such additional services will continue to be paid for by VA under the proposed regulatory changes. This proposed rule will simply codify the practices currently in place, and no significant financial impact on non-VA providers is anticipated.

General Medical & Surgical Hospitals/ Freestanding Ambulatory Surgical & Emergency Centers (NAICS 622110/ 621493)

We propose to adopt the Medicare ASC and Hospital OPPS payment methodology for payment of invasive and non-invasive procedures and treatment in an outpatient hospital setting or freestanding surgical center that VA authorizes under 38 U.S.C. 1703 and 1728. VA currently pays for such facility charges utilizing its 75th percentile methodology. VA is unable to accurately project potential cost savings realized from utilizing Medicare Hospital OPPS payment methodology. During Fiscal Year 2008, less than one-half of one percent of all facilities paid that furnished non-VA care in emergency departments received payments greater than $100,000 per year. Additionally, the majority of payments for care rendered in ambulatory surgical centers during FY 2008 was below $50,000 per facility (95.4 percent; 99.2 percent were paid less than $150,000 per year). We project that adopting Medicare ASC methodology will result in a reduction of approximately 11 percent and we estimate a reduction of 25 percent for hospital outpatient expenditures.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

This rulemaking will impose no new reporting or recordkeeping requirements on large or small entities.

Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

There are no duplicative, overlapping, or conflicting Federal rules identified with this proposed rule.

Description of Any Significant Alternatives to the Proposed Rule Which Would Accomplish the Stated Objectives of Applicable Statutes and Which Would Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

We believe adoption of Medicare payment schedules would standardize VA reimbursement for the purchase of non-VA health care services as suggested by previous OIG audits. For reasons discussed above in the cost-benefits-analysis section of the

Regulatory Impact Analysis, we do not believe there are any reasonable alternatives to our adoption of all current and future Medicare payment schedules and prospective payment systems. Historically, other Federal payers have transitioned changes to payment methodology over a period of time to lessen the potential financial impact upon the health care community. We believe an immediate adoption of Medicare rates is reasonable because most health care providers are accustomed to Medicare rates, and there is low VA market penetration in the non-VA health care community. Furthermore, we believe the cost-savings realized as a result of adopting Medicare rates would be beneficial to the veteran population. However, we are sensitive to the needs of the health care community and we welcome any comments regarding plausible alternatives for implementation, including a phased-in approach.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

Non-VA health care providers currently bill VA using uniform billing forms CMS–1450, OMB # 0938–0997, and CMS–1500, OMB # 0938–0999. This practice will not be altered or amended. As such, this document contains no new provisions constituting a collection or reporting of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 15, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

2. Revise paragraph (a) introductory text of § 17.52 to read as follows:

§ 17.52 Hospital care and medical services in non-VA facilities.

(a) When VA facilities or other government facilities are not capable of furnishing economical hospital care or medical services because of geographic inaccessibility or are not capable of furnishing care ore services required, VA may contract with non-VA facilities for care in accordance with the provisions of this section. When demand is only for infrequent use, individual authorizations may be used. Care in public or private facilities, however, subject to the provisions of §§ 17.53, 17.54, 17.55, and 17.56, will only be authorized, whether under a contract or an individual authorization, for—

* * * * *

3. Revise § 17.56 to read as follows:

§ 17.56 VA payment for inpatient and outpatient health care professional services at non-departmental facilities and other medical charges associated with non-VA outpatient care.

(a) Except for health care professional services provided in the state of Alaska (see paragraph (b) of this section), VA will determine the amounts paid under §§ 17.52 or 17.120 for inpatient and outpatient health care professional services, and all other medical services associated with non-VA outpatient care, using the applicable method in this section:

(1) The amount negotiated by VA and the provider under Federal Acquisition Regulation (FAR), 48 CFR Chapter 1.

(2) If an amount has not been negotiated under paragraph (a)(1), VA will use the lesser of the following:

(i) The amount negotiated by VA and the provider under Department of Veterans Affairs Acquisition Regulation (VAAR), 48 CFR Chapter 8;

(ii) The amount negotiated by a repricing agent if the provider is participating within the repricing agent's network and VA has a contract with that repricing agent; or

(iii) Either:

(A) The applicable Medicare fee schedule or prospective payment system payment amount ("Medicare rate") for the period in which the service was provided (without any changes based on the subsequent development of information under Medicare authorities). In the event of a Medicare waiver, payment will be made in accordance with such waiver; or

(B) In the absence of a Medicare rate or Medicare waiver, payment will be the VA Fee Schedule amount for the period in which the service was provided. The VA Fee Schedule amount is determined by the authorizing VA medical facility, which ranks all billings (if the facility has had at least eight billings) from non-VA facilities under the corresponding procedure code during the previous fiscal year, with billings ranked from the highest to the lowest. The VA Fee Schedule amount is the charge falling at the 75th percentile. If the authorizing facility has not had at least eight such billings, then this paragraph does not apply; or

(iv) The amount the provider bills the general public for the same service.

(b) For physician and non-physician professional services rendered in Alaska, VA will pay for services in accordance with a fee schedule that uses the Health Insurance Portability and Accountability Act mandated national standard coding sets. VA will pay a specific amount for each service for which there is a corresponding code. Under the VA Alaska Fee Schedule the amount paid in Alaska for each code will be 90 percent of the average amount VA actually paid in Alaska for the same services in Fiscal Year (FY) 2003. For services that VA provided less than eight times in Alaska in FY 2003, for services represented by codes established after FY 2003, and for unit-based codes prior to FY 2004, VA will take the Centers for Medicare and Medicaid Services' rate for each code and multiply it times the average percentage paid by VA in Alaska for Centers for Medicare and Medicaid Services-like codes. VA will increase the amounts on the VA Alaska Fee Schedule annually in accordance with the published national Medicare Economic Index (MEI). For those years where the annual average is a negative percentage, the fee schedule will remain the same as the previous year. Payment for non-VA health care professional services in Alaska shall be the lesser of the amount billed, or the amount calculated under this subpart.

(c) Payments made by VA to a non-VA facility or provider under this section shall be considered payment in full. Accordingly, the facility or

provider or agent for the provider or facility may not impose any additional charge for any services for which payment is made by VA.

(d) In a case where a veteran has paid for emergency treatment for which VA may reimburse the veteran under § 17.120, VA will reimburse the amount that the veteran actually paid. Any amounts due to the provider but unpaid by the veteran will be reimbursed to the provider under paragraphs (a) and (b) of this section.

(Authority: 38 U.S.C. 1703, 1728)

[FR Doc. 2010–3042 Filed 2–17–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600 and 697

RIN 0648–XT83

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a request for an EFP; request for comments.

SUMMARY: This EFP application, submitted by the Pemaquid Fishermen's Cooperative Association (PFC), is intended to assist NMFS and the Atlantic Large Whale Take Reduction Team (ALWTRT) in their efforts to address the identified entanglement threat of vertical lines in fixed gear fisheries to Atlantic large whale populations. The EFP application is for testing of fixed fishing gear with no vertical lines on the northern edge of Jeffrey's Ledge in the Gulf of Maine.

The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration and that the activities authorized under the EFP would be consistent with the goals and objectives of federal management of the American lobster (lobster) resource. However, further review and consultation may be necessary before a final determination is made to issue an EFP. NMFS announces that the Assistant Regional Administrator proposes to issue an EFP and, therefore, invites comments on the issuance of this EFP.

DATES: Comments must be received on or before March 5, 2010.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope "Comments - Lobster EFP Proposal." Comments also may be sent via facsimile (fax) to 978–281–9117. Comments may also be submitted by e-mail to *Alobster@noaa.gov*. Include in the subject line of the e-mail the following document identifier: "Comments - Lobster EFP Proposal."

FOR FURTHER INFORMATION CONTACT: Sarah Towne, Research Associate, (978) 675–2162, fax (978) 281–9117.

SUPPLEMENTARY INFORMATION:

Background

The regulations that govern exempted fishing, at § 600.745(b) and § 697.22, allow the Regional Administrator to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up, and/or hazardous removal purposes, and the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of federal management of the lobster resource are not compromised, and issuance of the EFP is beneficial to the management of the species.

The lobster fishery is one of the most valuable fisheries in the northeastern United States. In 2008, approximately 82 million lbs (37,120 mt) of lobster were landed, with an ex-vessel value of approximately $306 million. Under the Atlantic States Marine Fisheries Commission's interstate management process, lobsters are managed in state waters under Amendment 3 to the American Lobster Interstate Fishery Management Plan (Amendment 3). In federal waters of the Exclusive Economic Zone (EEZ), lobsters are managed under federal regulations at 50 CFR part 697.

The ALWTRP is a program to reduce the risk of serious injury or death of large whales due to incidental entanglement in U.S. commercial fishing gear. The plan is required by the Marine Mammal Protection Act (MMPA), and has been implemented by NMFS. The ALWTRP evolves as NMFS and the ALWTRT learn more about why whales become entangled and how fishing practices might be modified to reduce the risk of entanglement.

Proposed EFP

The EFP application requests exemptions from regulations in order to conduct gear research on the northern edge of Jeffrey's Ledge in the Gulf of Maine to study fixed lobster fishing gear without vertical lines that could reduce or diminish whale entanglement. One contracted commercial fisherman would fish 140 traditional wire lobster traps with no vertical lines (experimental) and 140 traditional wire lobster traps with vertical lines (control), each set in multiple trawl configurations, rigging no fewer then 7 trawls with 20 traps each. Both the experimental and control group trawls would be hauled 30 times each during the fishing season, totaling no fewer than 420 hauls. The EFP application proposes the collection of statistical and scientific information as part of the project. Investigators would complete a NMFS-approved data sheet on each trip, collecting data on weather and sea conditions, position of gear, bottom type, water depth and temperature, duration of hauling time, set time, trap loss, configuration changes, hauling procedure modifications, catch, price per pound, and gear conflicts.

Trawls would be tested on different bottom types, and the grappling hook gear used to retrieve the lineless trawls would be specific to that bottom type. Although the grappling hooks might adversely impact benthic habitats, their limited use for the proposed activity would not constitute a threat that is significantly greater than the one associated with the impact of the traps themselves, or of the other lobster traps that are already being fished in the proposed project location. Therefore there would be no anticipated adverse effects on protected resources or habitat as a result of this work.

This project would not involve the authorization of any additional lobster trap gear. To allow for experimentation with traps without vertical lines, the EFP would provide exemptions from the vertical line and buoy regulations at § 697.21(b)(2). All traps fished by the participating vessel would comply with all other applicable lobster regulations specified at 50 CFR part 697. There would not be observers or researchers onboard the participating vessel.

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

Dated: February 12, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–3150 Filed 2–17–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–AX89

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management Measures for Groundfish of the Bering Sea and Aleutian Islands Management Area; Amendment 91

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council submitted Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) to NMFS for review. If approved, Amendment 91 would be a novel approach to managing Chinook salmon bycatch in the Bering Sea pollock fishery that combines a limit on the amount of Chinook salmon that may be caught incidentally with an incentive plan agreement and performance standard designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years. This action is necessary to minimize Chinook salmon bycatch in the Bering Sea pollock fishery to the extent practicable while maximizing the potential for the full harvest of the pollock total allowable catch within specified prohibited species catch limits. Amendment 91 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Comments on the amendment must be received on or before April 19, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AX89, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Fax: (907) 586–7557, Attn: Ellen Sebastian
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: No comments will be posted for public viewing until after the comment period has closed. 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 (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 91, the Final Environmental Impact Statement (EIS), the Final Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from the Alaska Region website at *http://alaskafisheries.noaa.gov/regs/summary.htm*.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington or Seanbob Kelly, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan or fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

This document announces that proposed Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) is available for public review and comment. The groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Areas are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

The Bering Sea (BS) pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note) enacted by Congress in October 1998. The AFA identifies vessels and processors eligible to participate in the directed pollock fishery and allocates pollock among the Community Development Quota (CDQ) Program, the catcher/processor sector, the mothership sector, and the inshore sector.

The BS pollock fishery is the largest single species fishery, by volume, in the United States. The first wholesale gross value of this fishery was over $1.4 billion in 2008. Pollock is harvested with fishing vessels using trawl gear during two seasons: the A season (January 20 to June 10) and the B season (June 10 to November 1). Chinook salmon and pollock occur in the same locations in the BS. Consequently, Chinook salmon are accidentally caught in the nets as fishermen target pollock.

The BS pollock fishery catches up to 95 percent of the Chinook salmon taken incidentally as bycatch in the Bering Sea and Aleutian Islands groundfish fisheries. From 1992 through 2001, the average Chinook salmon bycatch in the BS pollock fishery was 32,482 Chinook salmon. This average increased substantially from 2002 to 2007, to 74,067 Chinook salmon. A historic high of approximately 122,000 Chinook salmon were taken in the BS pollock fishery in 2007. However, Chinook salmon bycatch has declined in recent years to 20,493 Chinook salmon in 2008 and 12,410 Chinook salmon through October 31, 2009, the end of the 2009 fishing year for pollock.

Chinook salmon is a culturally and economically valuable species, which is fully allocated and, in some cases, facing conservation concerns. Estimates vary, but more than half of the Chinook salmon bycatch in the BS pollock fishery may be destined for river systems in western Alaska. In general, western Alaska Chinook salmon stocks declined sharply in 2007 and remained low in 2008 and 2009. Consequently, the in-river harvest of western Alaska Chinook salmon has been severely restricted and, in some cases, river systems have not met escapement goals.

Chinook salmon is a prohibited species in the BS pollock fishery and is closely regulated. Over the past fifteen years, the Council and NMFS implemented several management measures to limit Chinook salmon bycatch in the BSAI trawl fisheries. In 1995, the Council adopted and NMFS

approved, Amendment 21b to the FMP. Amendment 21b established annual prohibited species catch (PSC) limits for Chinook salmon and specific seasonal no-trawling zones in the Chinook salmon savings area that would be triggered when the limits were reached (60 FR 31215; November 29, 1995). In 2000, the Council and NMFS implemented Amendment 58 to the FMP which reduced the Chinook salmon savings area closure limit, redefined the Chinook salmon savings area as two non-contiguous areas of the BSAI, and established new closure periods (65 FR 60587; October 12, 2000).

The Council adopted Amendment 84 in October 2005, to address increases in Chinook and non-Chinook salmon bycatch that were occurring despite PSC limits that triggered closure of the Chinook and chum salmon savings areas. Amendment 84 established the salmon bycatch intercooperative agreement (ICA) which allows vessels participating in the directed fisheries for pollock in the BS to utilize their internal cooperative structure to reduce Chinook and non-Chinook salmon bycatch using a method called the ''voluntary rolling hotspot system''(VRHS). The VRHS provides real-time salmon bycatch information in time for the fleet to avoid areas of high Chinook or non-Chinook salmon bycatch rates. Regulations implementing Amendment 84 were approved in 2007 (72 FR 61070; October 29, 2007) and a salmon bycatch reduction ICA using the VRHS was approved by NMFS in January 2008.

Although the management measures implemented under Amendment 84 provided the pollock fleet with tools to reduce salmon bycatch, these measures contained no effective limit on the amount of salmon bycatch that could occur in the BS pollock fishery. Therefore, the Council further evaluated measures to limit both Chinook and non-Chinook salmon bycatch.

In April 2009, the Council adopted Amendment 91 and recommended that NMFS develop regulations to implement that action. Amendment 91 would be a novel approach to managing Chinook salmon bycatch in the Bering Sea pollock fishery that combines a limit on the amount of Chinook salmon that may be caught incidentally with an incentive plan agreement and performance standard designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years. The Council is currently considering a separate action to modify the non-Chinook salmon management measures to minimize non-Chinook salmon bycatch.

In developing Amendment 91, the Council recognized that the number of Chinook salmon caught as bycatch in the BS pollock fishery is highly variable from year to year, from sector to sector, and even from vessel to vessel. Current information about Chinook salmon is insufficient to determine the reasons for high or low encounters of Chinook salmon in the pollock fishery or the degree to which encounter rates are related to Chinook salmon abundance or other conditions. The uncertainty and variability in Chinook salmon bycatch led the Council to create a program with a combination of management measures that together achieve its objective to minimize bycatch in all years while providing the fleet the flexibility to harvest the pollock total allowable catch (TAC).

Under Amendment 91, the PSC limit would be 60,000 Chinook salmon if some or all of the pollock industry participates in an industry-developed contractual arrangement, called an incentive plan agreement (IPA), that establishes an incentive program to minimize bycatch at all levels of Chinook salmon abundance. Participation in an IPA would be voluntary; however, any vessel or CDQ group that chooses not to participate in an IPA would be subject to a restrictive opt-out allocation (also called a backstop cap).

To ensure participants develop effective IPAs, participants would demonstrate to the Council through performance and annual reports that the IPA is accomplishing the Council's intent that each vessel does its best to avoid Chinook salmon at all times while fishing for pollock and that collectively, bycatch is minimized in each year. The Council believed that the addition of an IPA that could impose rewards for avoiding Chinook salmon bycatch, penalties for failure to avoid Chinook salmon bycatch at the vessel level, or both, would warrant setting the PSC limit at 60,000 Chinook salmon. The Council recognized that while the IPA should minimize bycatch in all years to a level far below the limit, a limit of 60,000 Chinook salmon would provide the industry the flexibility to harvest the pollock TAC in high encounter years when bycatch was extremely difficult to avoid.

A 47,591 Chinook salmon PSC limit would apply fleet-wide if industry does not form any IPAs. This PSC limit of 47,591 Chinook salmon is the approximate 10–year average Chinook salmon bycatch from 1997 to 2006. The Council determined that the 47,591 PSC limit was an appropriate limit on Chinook salmon bycatch in the BS pollock fishery if no other incentives were operating to minimize bycatch below this level.

Both PSC limits would be divided between the A and B seasons and allocated to AFA sectors, cooperatives, and CDQ groups as transferable PSC allocations. Transferability is expected to mitigate the variation in the encounter rates of salmon bycatch among sectors, CDQ groups, and cooperatives in a given season by allowing eligible participants to obtain a larger portion of the PSC allocation in order to harvest their pollock allocation or to transfer surplus allocation to other entities. When a transferable PSC allocation is reached, the affected sector, inshore cooperative, or CDQ group would have to stop fishing for pollock for the remainder of the season even if its pollock allocation had not been fully harvested.

The sector-level performance standard is an additional tool to ensure that the IPA is effective and that sectors do not fully harvest the Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit in most years. For a sector to continue to receive Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit, that sector may not exceed its annual threshold amount in any 3 years within 7 consecutive years. If a sector fails this performance standard, it will permanently be allocated a portion of the 47,591 Chinook salmon PSC limit. The Council believed that the risk of bearing the potential economic impacts of a reduction from the 60,000 PSC limit to the 47,591 PSC limit would create incentives for fishery participants to cooperate in an effective IPA.

In selecting the appropriate Chinook salmon bycatch management program, the Council considered a wide range of alternatives to assess the impacts of minimizing Chinook salmon bycatch to the extent practicable while maximizing the potential for the full harvest of the pollock TAC within the PSC limit. In selecting these PSC limits, the Council considered the trade-offs between the potential Chinook salmon saved and the forgone pollock catch. The EIS, RIR, and IRFA contain a complete description of the alternatives and a comparative analysis of the potential impacts of the alternatives (see **ADDRESSES**).

Public comments are being solicited on proposed Amendment 91 to the BSAI FMP through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 91,

following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act. The requirements governing the transfer and use of the proposed Chinook salmon PSC allocations, IPA application process, annual reporting requirements, and other aspects of Amendment 91 will be specified in the proposed rule implementing this action.

Public comments on the proposed rule must be received by the end of the comment period on Amendment 91 to be considered in the approval/disapproval decision on Amendment 91. All comments received by the end of the comment period on Amendment 91, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the FMP amendment approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

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

Dated: February 12, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–3115 Filed 2–17–10; 8:45 am]

BILLING CODE S

Notices

Federal Register
Vol. 75, No. 32
Thursday, February 18, 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

February 5, 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.

Rural Business Service

Title: 7 CFR Part 4279–B, Guaranteed Loan Making—Business and Industry Loans.

OMB Control Number: 0570–0017.

Summary of Collection: The Business and Industry (B&I) program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved through bolstering the existing private credit structure through the guaranteeing of quality loans made by lending institutions, thereby providing lasting community benefits. The B&I program is administered by the Rural Business Service (RBS) through Rural Development State and sub-State offices serving each State.

Need and Use of the Information: RBS will collect information to determine a lender and borrower eligibility and creditworthiness. The information is used by RBS loan officers and approval officials to determine program eligibility and for program monitoring.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 8,686.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 19,907.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–3039 Filed 2–17–10; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 5, 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.

Rural Housing Service

Title: 7 CFR Part 1924–F, Complaints and Compensation Defects.

OMB Control Number: 0575–0082.

Summary of Collection: Section 509C of Title V of the Housing Act of 1949, as amended, authorizes the Rural Housing Service (RHS) to pay the costs for correcting defects or compensate borrowers of Section 502 Direct loan funds for expenses arising out of defects with respect to newly constructed dwellings and new manufactured housing units with authorized funds. This regulation provides instruction to all RHS personnel to enable them to implement a procedure to accept and process complaints from borrowers/owners against builders and dealers/contractors, to resolve the complaint

informally. When the complaint involves structural defects which cannot be resolved by the cooperation of the builder or dealer/contractor, it authorizes expenditure to resolve the defect with grant funds. Resolution could involve expenditure for (1) repairing defects; (2) reimbursing for emergency repairs; (3) pay temporary living expenses or (4) convey dwelling to RHS with release of liability for the RHS loan.

Need and Use of the Information: The information is collected from agency borrowers and the local agency office serving the county in which the dwelling is located. This information is used by Rural Housing Staff to evaluate the request and assist the borrower in identifying possible causes and corrective actions. The information is collected on a case-by-case basis when initiated by the borrower. Without this information, RHS would be unable to assure that eligible borrowers would receive compensation to repair defects to their newly constructed dwellings.

Description of Respondents: Business or for-profit.

Number of Respondents: 300.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 120.

Rural Housing Service

Title: 7 CFR Part 1940–G, Environmental Program.

OMB Control Number: 0575–0094.

Summary of Collection: The National Environmental Policy Act (NEPA) requires Federal agencies prior to the approval of proposed actions to consider the potential environmental impacts of these actions. Consequently, for the agencies to comply with NEPA, it is necessary to have information on the types of environmental resources on site or in the vicinity that might impact the proposed action. Also, information is required on the nature of the project selected by the applicant.

Need and Use of the Information: The agency will collect environmental data using form RD 1940–20, Request for Environmental Information. Having all activities and environmental information on the proposed project site will enable the Agency official to determine the magnitude of the potential environmental impacts and whether the project is controversial for environmental reasons. The agency's failure to collect the environmental information would result in a violation of NEPA. Thus, the agency would have no basis to support a decision regarding the need for an environmental impact statement.

Description of Respondents: Farms; Individuals or households; business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 2,416.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 18,029.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–3041 Filed 2–17–10; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Correction

February 5, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Unshu Oranges from the Republic of Korea into Alaska.

OMB Control Number: 0579–0314.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701—*et seq.*), the Secretary of Agriculture is authorized to carry out operation or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) amended the regulations governing the importation of citrus fruit to allow fresh Unshu oranges from the Republic of Korea to be imported in the State of Alaska under certain conditions.

Need and Use of the Information: APHIS requires that some plants or plant products are accompanied by a phytosanitary inspection certificate that is completed by plant health officials in the originating or transiting country. Also, individual boxes in which oranges are shipped must be stamped or printed with the following: "For importation into and distribution within the State of Alaska only." APHIS uses the information on the certificate to determine the pest condition of the shipment at the time of inspection in the intensity of the inspection APHIS conducts when the shipment arrives. Without this information, all shipments would need to be inspected very thoroughly, thereby requiring considerably more time. This would slow the clearance of international shipments.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 5.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 31.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–3040 Filed 2–17–10; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, February 26, 2010; 11 a.m. EST.

PLACE: Via Teleconference, Public Dial in: 1–800–597–7623, Conference ID # 57721922.

MEETING OPEN TO PUBLIC:

Meeting Agenda

This meeting is open to the public, except where noted otherwise.

I. Approval of Agenda
II. Program Planning
- Approval of Findings and Recommendations for *The Impact of Illegal Immigration on the Wages and Employment Opportunities of Black Workers* Report
- Update on Status of 2010 Enforcement Report—Some of the discussion of this agenda item may be held in closed session.
- Update on Status of Title IX Project—Some of the discussion of this agenda item may be held in closed session.

III. State Advisory Committee Issues
- Pennsylvania SAC
- Nevada SAC
- Missouri SAC

IV. 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: February 16, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–3302 Filed 2–16–10; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–965]

Drill Pipe From the People's Republic of China: Amendment to Initiation of Antidumping Duty Investigation

DATES: *Effective Date:* February 18, 2010.

SUMMARY: The Department of Commerce ("Department") is currently conducting an antidumping duty investigation of drill pipe from the People's Republic of China ("PRC"). The period of investigation ("POI") is April 1, 2009, through September 30, 2009. We are limiting the number of quantity and value questionnaires that will be sent directly to exporters and producers and extending the deadline for parties to submit a response to the quantity and value questionnaire.

FOR FURTHER INFORMATION CONTACT: Toni Dach or Bobby Wong, AD/CVD Operations Office 9, (202) 482–1655 or (202) 482–0409, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

BACKGROUND

On January 28, 2010, the Department published a notice of initiation of an antidumping duty investigation of drill pipe from the PRC. *See Drill Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*s, 75 FR 4531 (January 28, 2010) ("*Initiation*").

SUPPLEMENTARY INFORMATION: In the *Initiation,* the Department stated that it intended to release quantity and value questionnaires to those PRC companies known to be exporters and producers of subject merchandise identified with complete contact information in the Petition by the Petitioners.[1] See "Petitions for the Imposition of Antidumping and Countervailing Duties: Drill Pipe from the People's Republic of China," dated December 31, 2009 ("Petition"), at Exhibit I–7; see also "Petitions for the Imposition of Antidumping and Countervailing Duties: Response to the Department's Letter of January 14, 2010," dated January 15, 2010, at Exhibit 4.

Petitioners identified 77 producers and exporters of drill pipe from the PRC. Subsequent to the *Initiation,* after considering the large number of producers and exporters of drill pipe from the PRC identified by Petitioners, and considering the resources that must be utilized by the Department to mail quantity and value questionnaires to all 77 identified producers and exporters—including entering each address in a shipping handler's Web site, researching companies' addresses to ensure correctness, organizing mailings, and following up on potentially undeliverable mailings—the Department has thus determined that we do not have sufficient administrative resources to mail quantity and value questionnaires to all 77 identified producers and exporters. Therefore, the Department has determined to limit the number of quantity and value questionnaires it will send out to exporters and producers based on U.S. Customs and Border Protection ("CBP") data for U.S. imports under the Harmonized Tariff Schedule of the United States ("HTSUS") numbers 7304.22.0030, 7304.22.0045, 7304.22.0060, 7304.23.3000, 7304.23.6030, 7304.23.6045, 7304.23.6060 and 8431.43.8040. These are the same HTSUS numbers used by Petitioner to demonstrate that dumping occurred during the POI, and closely match the subject merchandise. *See* Petition at 13–17. The Department will review the CBP data and comments from parties on the CBP data to determine how many quantity and value questionnaires we will mail to producers and exporters of drill pipe from the PRC.

Moreover, although the Department is limiting the number of quantity and value questionnaires it will send out, exporters and producers of drill pipe that do not receive quantity and value questionnaires that intend to submit a response can obtain a copy from the Import Administration Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html.* Accordingly, the Department is extending the deadline to submit responses to the quantity and value questionnaires from February 11, 2010, to March 2, 2010.

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended.

Dated: February 4, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–3118 Filed 2–17–10; 8:45 am]

BILLING CODE 3510–DS–P

[1] 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, collectively, the "Petitioners."

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU43

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Scallop Plan Team will meet March 3 and 4th, 2010 in Juneau, AK.

DATES: The meeting will be held on March 3–4, 2010, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Ted Stevens Marine Research

Institute, Room 256, 17109 Point Lena Road, Juneau, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Agenda: Review status of Statewide scallop stocks; compile annual Stock Assessment Fishery Evaluation Report; review preliminary analysis of Annual Catch Limits; review and recommend changes as necessary to scallop Essential Fish Habitat designations; update on modifications to the Scallop Observer Program data collection and database; discuss federal scallop bycatch data and recommend changes as necessary to meet ACL requirements.

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

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: February 16, 2010.

William D. Chappell,

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

[FR Doc. 2010–3193 Filed 2–17–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary for Communications and Information on spectrum policy matters.

DATES: The meeting will be held on March 4, 2010, from 9:00 a.m. to 2:00 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 4830, Washington, DC 20230. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW, Room 4725, Washington, DC 20230 or emailed to spectrumadvisory@ntia.doc.gov.

FOR FURTHER INFORMATION CONTACT: Joe Gattuso, Designated Federal Officer, at (202) 482–0977 or jgattuso@ntia.doc.gov; and/or visit NTIA's web site at www.ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management to enable the introduction of new spectrum-dependent technologies and services, including long-range spectrum planning and policy reforms for expediting the American public's access to broadband services, public safety, and digital television. This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. § 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit http://www.ntia.doc.gov/advisory/spectrum.

Matters to Be Considered: The Committee is expected to hear presentations on spectrum related issues from representatives of the Federal Communications Commission and from NTIA staff. The Committee will discuss draft reports from its subcommittees.

There also will be an opportunity for public comment at the meeting.

Time and Date: The meeting will be held on March 4, 2010, from 9:00 a.m. to 2:00 p.m. Eastern Standard Time. The times and the agenda topics are subject to change. The meeting may be webcast. Please refer to NTIA's web site, http://www.ntia.doc.gov, for the most up-to-date meeting agenda.

Place: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 4830, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Gattuso at (202) 482–0977 or jgattuso@ntia.doc.gov, at least five (5) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments with the Committee at any time before or after a meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting should send them to the above-listed address. Submissions must be received by close of business on February 25, 2010, to provide sufficient time for review. Comments received after February 25, 2010, will be distributed to the Committee but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in HTML, ASCII, Word or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to spectrumadvisory@ntia.doc.gov. Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's office at the address above. Documents including the Committee's charter, membership list, agendas, minutes, and any reports are available on NTIA's Committee web page at http://www.ntia.doc.gov/advisory/spectrum.

Dated: February 12, 2010.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2010–3151 Filed 2–17–10; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU35

South Atlantic Fishery Management Council; Public Meetings

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

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Information and Education Advisory Panel, a Catch Shares Workshop, Catch Shares Committee, Mackerel Committee, Southeast Data Assessment and Review (SEDAR) Committee, Ecosystem-Based Management Committee, joint Shrimp Committee and Shrimp and Deepwater Shrimp Advisory Panels, joint Executive and Finance Committees, Advisory Panel Selection Committee (Closed Session), Scientific and Statistical Committee (SSC) Selection Committee (Closed Session), Information and Education Committee, joint Law Enforcement Committee and Advisory Panel, Snapper Grouper Committee, and a meeting of the full Council. The Council will also hold an informal public question and answer session, and a public comment session regarding agenda items. See **SUPPLEMENTARY INFORMATION** for additional details.

DATES: The meeting will be held March 1–5, 2010. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Jekyll Island Club Hotel, 371 Riverview Drive, Jekyll Island, GA 31527; Telephone: 800/535–9547 or 912/635–2600; Fax 912/635–2818. Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843/571–4366 or toll free at 866/SAFMC–10; fax: 843/769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Information and Education Advisory Panel Meeting: March 1, 2010, 10:30 a.m. until 5 p.m.; March 2, 2010, 8:30 a.m. - 3 p.m., (Concurrent Session)

The Information and Education Advisory Panel will discuss outreach activities relevant to management issues, review current tools and materials, and develop recommendations based upon outreach, media and educational needs.

2. Catch Shares Workshop: March 1, 2010, 8:30 a.m. until 12 noon.

A workshop for Council members will be held prior to the Catch Shares Committee meeting to provide an overview of the NOAA draft catch share policy, updates on all catch share draft amendments, and a discussion on catch share issues in the South Atlantic.

3. Catch Shares Committee Meeting: March 1, 2010, 1:30 p.m. until 4 p.m.

The Catch Shares Committee will develop comments in response to the NOAA draft catch share policy, receive information on the economic impact of management decisions in the South Atlantic snapper grouper fishery, receive an update on the wreckfish shareholders meeting, and provide direction to staff.

4. Mackerel Committee Meeting: March 1, 2010, 4 p.m. until 5 p.m.

The Mackerel Committee will review recommendations from the Gulf of Mexico Fishery Management Council regarding Amendment 18 (being developed jointly with the Gulf Council) outlining Annual Catch Limits (ACLs) and Accountability Measures for king mackerel, Spanish mackerel, and cobia, and addressing other management measures. The Committee will develop recommendations and provide direction to staff.

5. SEDAR Committee Meeting: March 1, 2010, 5 p.m. until 6 p.m.

The SEDAR Committee will review the SEDAR steering committee report, the SEDAR participant appointment process, and discuss conflict of interest policies. The Committee will develop recommendations for SEDAR 23 participants, schedule, and Terms of Reference and take action as appropriate. SEDAR 23 is an assessment of the South Atlantic's speckled hind and Warsaw grouper fisheries. The Committee will also develop recommendations for the May 2010 SEDAR steering committee meeting.

6. Ecosystem-Based Management Committee Meeting: March 2, 2010, 8:30 a.m. until 10:30 a.m.

The Ecosystem-Based Management Committee will meet to review Comprehensive Ecosystem-Based Amendment 2, take action as appropriate and provide direction to staff. The Committee will receive an update on the National Center for Coastal Ocean Research's Eat Lionfish Campaign, review draft policy on invasive species, and receive an ecosystem update.

7. Joint Shrimp Committee and Shrimp and Deepwater Shrimp Advisory Panels Meeting: March 2, 2010, 10:30 a.m. until 3:30 p.m.

The Shrimp Committee, Shrimp Advisory Panel, and Deepwater Shrimp Advisory Panel will receive a presentation on the economic data collection program, review the status of overwintering white shrimp stocks, discuss biological opinion issues, and provide recommendations.

8. Joint Executive and Finance Committee Meeting: March 2, 2010, 3:30 p.m. until 5 p.m.

The Executive Committee and Finance Committee will meet jointly to review the status of the Calendar Year (CY) budget, the status of the Fiscal Year 2011 President's / Congressional budget, and approve the CY 2010 budget. The Committees will also develop details of a Council and SSC member compensation policy relative to webinars and provide recommendations.

9. Advisory Panel Selection Committee Meeting (Closed Session): March 3, 2010, 8:30 a.m. until 9:30 a.m.

The Advisory Panel Selection Committee will review applications and develop recommendations for appointments.

10. SSC Selection Committee Meeting (Closed Session): March 3, 2010, 9:30 a.m. until 10:30 a.m.

The SSC Selection Committee will receive a joint SSC and SSC Selection Committee report, discuss the SSC Code of Conduct, review conflict of interest policies, discuss regional representation on the SSC, discuss interaction between the SSC and the Interdisciplinary Plan Team, and provide recommendations.

11. Information and Education Committee Meeting: March 3, 2010, 10:30 a.m. until 12 noon

The Committee will receive an update on information and education activities, review outreach tools including the Council's Web site, discuss needs, review the Information and Education Advisory Panel report, and develop recommendations.

12. Joint Law Enforcement Committee and Advisory Panel Meeting: March 3, 2010, 1:30 p.m. until 3:30 p.m.

The Law Enforcement Committee and Advisory Panel will discuss monitoring and enforcement of area closures, review allowable gear regulations in proposed snapper grouper closed areas, discuss enforceability and analysis of proposed regulations, and take action as appropriate. The Committee and AP will finalize development of a Law Enforcement Officer of the Year Award program and provide recommendations.

13. Council Session: March 3, 2010, 3:30 p.m. until 5:30 p.m., March 4, 2010, 8:30 a.m. until 6 p.m., and March 5, 2010, 8:30 a.m. until 3:30 p.m.

Council Session: March 3, 2010, 3:30 p.m. until 5:30 p.m.

From 3:30 p.m. - 3:45 p.m., the Council will call the meeting to order, adopt the agenda, and approve the December 2009 meeting minutes.

From 3:45 p.m. - 4:00 p.m., the Council will receive presentations. Snapper Grouper Committee Meeting of the Whole: March 3, 2010, 4:00 p.m. until 5:30 p.m.

The Snapper Grouper Committee will review management alternatives in Amendment 17A to the Snapper Grouper Fishery Management Plan (FMP) addressing overfishing of red snapper, modify the document as necessary, and provide direction to staff.

NOTE: There will be an informal public question and answer session with NOAA Fisheries Services' Regional Administrator and the Council Chairman on March 3, 2010 beginning at 5:30 p.m. Immediately following the informal session, the public will be provided an opportunity to officially comment on any of the agenda items.

Council Session: March 4, 2010, 8:30 a.m. until 6 p.m.

Snapper Grouper Committee Meeting of the Whole: March 4, 2010, 8:30 a.m. until 6 p.m.

The Snapper Grouper Committee will continue to review management alternatives in Amendment 17A, modify the document as necessary, and provide direction to staff. The Committee will review Amendments 18 and 20 to the Snapper Grouper FMP, modify the documents as necessary and provide guidance to staff. Amendment 18 to the Snapper Grouper FMP addresses several management measures relative to the management complex, including expansion of the management unit northward of the Council's current jurisdiction, limiting participation in the commercial fishery for golden tilefish, modifications of management for the black sea bass pot fishery, allocations, changes to the golden tilefish fishing year, improvements to fisheries statistics, and designation of Essential Fish Habitat in northern areas. Amendment 20 to the Snapper Grouper FMP addresses changes to the Wreckfish commercial fishery Individual Transferable Quota (ITQ) program. The Committee also will receive a presentation from the SSC on the Control Rule relative to the Comprehensive Annual Catch Limit (ACL) Amendment.

Council Session: March 5, 2010, 8:30 a.m. until 3:30 p.m.

Snapper Grouper Committee Meeting of the Whole: March 5, 2010, 8:30 a.m. until 10 a.m.

The Snapper Grouper Committee will continue to review the Comprehensive ACL Amendment and provide direction to staff.

From 10 a.m. - 10:15 a.m., the Council will receive a report from the Catch Shares Committee and take action as appropriate.

From 10:15 a.m. - 10:30 a.m., the Council will receive a report from the Mackerel Committee and take action as appropriate.

From 10:30 a.m. - 10:45 a.m., the Council will receive a report from the SEDAR Committee and take action as appropriate.

From 10:45 a.m. - 11:00 a.m., the Council will receive a report from the Ecosystem-Based Management Committee and take action as appropriate.

From 11 a.m. - 11:15 a.m., the Council will receive a report from the Shrimp Committee and take action as appropriate.

From 11:15 a.m. - 11:30 a.m., the Council will receive a report from the joint Executive/Finance Committees meeting, approve the CY 2010 budget (as necessary), consider other Committee recommendations and take action as appropriate.

From 11:30 a.m. - 11:45 a.m., the Council will receive a report from the Advisory Panel Selection Committee and take action as appropriate.

From 11:45 a.m. - 12 noon., the Council will receive legal briefing on litigation (Closed Session).

From 1 p.m. - 1:15 p.m., the Council will receive a report from the SSC Selection Committee and take action as appropriate.

From 1:15 p.m. - 1:30 p.m., the Council will receive a report from the Information and Education Committee and take action as appropriate.

From 1:30 p.m. - 1:45 p.m., the Council will receive a report from the Law Enforcement Committee and take action as appropriate.

From 1:45 p.m. - 2 p.m., the Council will review and develop recommendations on Experimental Permit requests as necessary.

From 2 p.m. - 3:30 p.m., the Council will receive status reports from NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, agency and liaison reports, and discuss other business including upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal final Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

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**) by February 26, 2010.

Dated: February 12, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–3112 Filed 2–17–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–844]

Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 18, 2010.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that narrow woven ribbons with woven selvedge (narrow woven ribbons) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated dumping margins are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Hector Rodriguez or Holly Phelps, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0629 and (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the initiation of this investigation (*see Narrow Woven Ribbons with Woven Selvedge from the*

People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations, 74 FR 39291 (Aug. 6, 2009) (Initiation Notice)), the following events have occurred.

On August 18, 2009, we received comments on the scope of the investigation from various importers of subject merchandise. Specifically, we received requests that the Department clarify the existing scope language to explicitly exclude formed rosettes and narrow woven ribbons affixed to non–subject merchandise for a functional purpose, both of which are covered by one of the scope exclusions. We also received two requests that the Department modify the existing scope to exclude two products that include merchandise which falls within the scope (*i.e.*, *de minimis* amounts of narrow woven ribbons included within a kit or set and pre–cut, hand–finished narrow woven ribbons for retail packaging in lengths of 72 inches or less). For further discussion, see the "Scope Comments" section of this notice, below.

On August 24, 2009, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of narrow woven ribbons from Taiwan are materially injuring the U.S. industry, and on August 31, 2009, the ITC notified the Department of its findings. *See Narrow Woven Ribbons with Woven Selvedge from China and Taiwan; Determinations*, Investigation Nos. 701 TA 467 and 731 TA 1164–1165 (Preliminary), 74 FR 46224 (Sept. 8, 2009).

Also on August 31, 2009, we selected the following companies as the mandatory respondents in this investigation and issued antidumping duty questionnaires to them: Dear Year Brothers Mfg. Co., Ltd. (Dear Year), Roung Shu Industry Corporation (Roung Shu), and Shienq Huong Enterprise Co., Ltd. (Shienq Huong). *See* Memorandum from James Maeder, Office Director, to John M. Andersen, Acting Deputy Assistant Secretary, entitled, "Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from Taiwan: Selection of Respondents for Individual Review," dated August 31, 2009 (Respondent Selection Memo). In the Respondent Selection Memo, we indicated that the Department intended to solicit information to determine if it is appropriate to "collapse" Shienq Huong with two affiliated exporters of subject merchandise, Hsien Chan Enterprise Co., Ltd. (Hsien Chan) and Novelty Handicrafts Co., Ltd. (Novelty), such that these three companies would be treated as a single entity.

In September 2009, we issued a supplemental questionnaire to Shienq Huong regarding the nature of its relationship with its affiliates, as well as the affiliates' involvement in the production and sale of narrow woven ribbons during the period of investigation (POI). Also in this month, each of the respondents notified the Department that it did not have a viable home market during the POI, and each provided information on its largest third country comparison markets. On September 21, the petitioner[1] submitted comments regarding third country market selection with respect to Shienq Houng. On September 29 and 30, 2009, respectively, we issued supplemental questions to Shienq Houng and Roung Shu regarding their third country markets.

In September and October 2009, we received responses to section A of the antidumping duty questionnaire (*i.e.*, the section covering general information about the company) from each of the respondents, and we issued them supplemental section A questionnaires. In these months, we also requested additional information from each respondent regarding its selling practices. We received the responses to the supplemental questionnaires covering section A and the questionnaires regarding each respondents' selling practices in September and October 2009.

In October 2009, we received Shienq Huong's response to the September supplemental questionnaire on affiliation. We issued an additional supplemental questionnaire on this topic, and received Shienq Huong's response, in this month.

Also in October 2009, we received responses to the market selection supplemental questionnaires from Shienq Houng and Roung Shu, as well as additional comments from the petitioner on this issue. Also in this month, we received responses to sections B (*i.e.*, the section covering comparison market sales) and C (*i.e.*, the section covering U.S. sales) of the antidumping duty questionnaire from each of the respondents.

On October 30, 2009, the petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50–day postponement of the preliminary determination. Therefore, pursuant to section 733(c)(1)(A) of the Act, the Department postponed the preliminary determination of this investigation until February 4, 2010. *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 74 FR 59962 (Nov. 19, 2009).

In November 2009, we issued supplemental questionnaires related to sections B and C to each respondent.

Also in November 2009, the petitioner alleged that Dear Year, Roung Shu, and Shienq Houng made third country sales below the cost of production (COP) and, therefore, requested that the Department initiate a sales–below-cost investigation of these respondents. In December 2009, the Department initiated a sales–below-cost investigation for Dear Year, Roung Shu, and Shienq Houng. *See* the December 8, 2009, Memoranda to James Maeder, Director Office 2, from the Team entitled: "Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from Taiwan: The Petitioner's Allegation of Sales Below the Cost of Production for Dear Year Brothers Mfg. Co." (Dear Year Cost Allegation Memo), "Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from Taiwan: The Petitioner's Allegation of Sales Below the Cost of Production for Roung Shu Industry Corporation" (Roung Shu Cost Allegation Memo), and "Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from Taiwan: The Petitioner's Allegation of Sales Below the Cost of Production for Shienq Huong Enterprise Co., Ltd." (Shienq Huong Cost Allegation Memo). On that same date, we instructed Dear Year, Roung Shu, and Shienq Houng to respond to section D (*i.e.*, the section covering COP and constructed value (CV)) of the questionnaire.

In December 2009, we received responses to our sections B and C supplemental questionnaires from Dear Year, Roung Shu, and Shienq Houng. We also issued additional supplemental questions to Dear Year and Shienq Houng regarding their manufacturing processes, as well as their purchases of ribbons from unaffiliated suppliers.

Also in December 2009, we received comments from the petitioner (including revised scope language) on the two scope clarification, as well as the two scope exclusion, requests submitted in August 2009. For further discussion, see the "Scope Comments" section below.

On December 29, 2009 and January 14, 2010, Roung Shu and Shienq Huong, respectively, requested that in the event of an affirmative preliminary

[1] The petitioner in this investigation is Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc.

determination in this investigation, the Department: 1) postpone its final determination by 60 days in accordance with 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii); and 2) extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four–month period to a six–month period. For further discussion, see the "Postponement of Final Determination and Extension of Provisional Measures" section of this notice, below.

In January 2010, we determined that it is appropriate to "collapse" Shienq Huong with its two affiliates, Hsien Chan and Novelty. *See* Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from the Team entitled, "Whether to Collapse Shieng Houng Enterprise Co., Hsien Chan Enterprise Co., and Novelty Handicrafts Co., Ltd. in the Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from Taiwan," dated January 8, 2010 (Collapsing Memo). In addition, we determined that Roung Shu and Shienq Huong correctly reported sales to Mexico, and Dear Year correctly reported sales to Canada, as the basis for normal value. *See* Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from the Team entitled, "Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from Taiwan - Selection of the Appropriate Third Country Markets," dated January 13, 2010 (Market Selection Memo); *see also* the "Home Market Viability and Selection of Comparison Markets" section of this notice, below, for further discussion. In this month, Shienq Huong submitted a letter permitting the Department to treat the names of its affiliates, Hsien Chan and Novelty, as public information for the remainder of this proceeding.

Also in January 2010, we received responses to section D of the antidumping duty questionnaire from each of the respondents. We issued supplemental questionnaires regarding section D of the questionnaire during this month, as well additional supplemental questionnaires regarding each respondent's sales. The responses to the Department's additional sales supplemental questionnaires for each respondent were received in January 2010. However, because the responses to the Department's section D supplemental questionnaires were not received before the date of the preliminary determination, we are unable to consider them in our preliminary determination. We will consider this information in our final determination.

Also in January 2010, we received additional comments from Essential Ribbons, Inc., responding to the petitioner's December 2009 scope comments, as well as additional comments from the petitioner regarding the scope of this investigation. For further discussion, see the "Scope Comments" section below.

Finally in January 2010, we received a request from the petitioner that the Department collect cost data from the unaffiliated suppliers of narrow woven ribbons purchased by each of the respondents. For further discussion, see the "Cost of Production Analysis" section of this notice, below. In this same month, Shienq Huong responded to the petitioner's request to collect additional cost data.

In February 2010, Dear Year requested that in the event of an affirmative preliminary determination in this investigation, the Department: 1) postpone its final determination by 60 days in accordance with 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii); and 2) extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four–month period to a six–month period. For further discussion, see the "Postponement of Final Determination and Extension of Provisional Measures" section of this notice, below. On the same date, Dear Year also responded to the petitioner's January 2010 request to collect additional cost data.

Finally, in February 2010 we issued a final supplemental sales questionnaire to each of the respondents. In addition, we requested cost information from one of Dear Year's and two of Shienq Huong's unaffiliated suppliers of purchased ribbon. This information is due in March 2010. For further discussion, see the "Cost of Production Analysis" section of this notice, below.

Period of Investigation

The POI is July 1, 2008, to June 30, 2009. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition. *See* 19 CFR 351.204(b)(1).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters, who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four–month period to not more than six months.

On December 29, 2009, January 14, 2010, and February 1, 2010, Roung Shu, Shienq Huong, and Dear Year, respectively, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Roung Shu, Shienq Huong, and Dear Year requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four–month period to a six–month period. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The merchandise subject to the investigation is narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man–made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the investigation may:

- also include natural or other non–man-made fibers;
- be of any color, style, pattern, or weave construction, including but not limited to single–faced satin, double–faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;

- have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- consist of such ribbons affixed to like ribbon and/or cut–edge woven ribbon, a configuration also known as an "ornamental trimming;"
- be wound on spools; attached to a card; hanked (*i.e.*, coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the investigation include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of this investigation.

Excluded from the scope of the investigation are the following:

(1) formed bows composed of narrow woven ribbons with woven selvedge;

(2) "pull–bows" (*i.e.*, an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.*, filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States (HTSUS), Section XI, Note 13) or rubber thread;

(4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) narrow woven labels and apparel tapes, cut–to-length or cut–to-shape, having a length (when measured across the longest edge–to-edge span) not exceeding 8 centimeters;

(6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) cut–edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono–bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) narrow woven ribbons constructed from pile fabrics (*i.e.*, fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric) ;

(10) narrow woven ribbon affixed (including by tying) as a decorative detail to non–subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non–subject merchandise;

(11) narrow woven ribbon that is (a) affixed to non–subject merchandise as a working component of such non–subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non–subject merchandise as a working component that holds or packages such non–subject merchandise or attaches packaging or labeling to such non–subject merchandise, such as a "belly band" around a pair of pajamas, a pair of socks or a blanket; and

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel.

The merchandise subject to this investigation is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On August 18, 2009, we received timely comments on the scope of the investigation from the following interested parties: 1) Costco Wholesale, Hobby Lobby Stores, Inc., Jo–Ann Stores, Inc., Michael Stores, Inc., and Target Corporation (collectively, the "Ribbons Retailers"); 2) Papillon Ribbon and Bow, Inc. (Papillon); and 3) Essential Ribbons, Inc. (Essential Ribbons). Specifically, we received two requests that the Department modify the scope to clarify that certain products are outside the scope, and two additional requests that the Department narrow the scope to exclude two products that include merchandise which falls within the scope. These requests are as follows:

1) The Ribbons Retailers requested that the Department modify exclusions 10 (*i.e.*, narrow woven ribbons affixed as a decorative detail to non–subject merchandise) and 11 (*i.e.*, narrow woven ribbons affixed to non–subject merchandise as a working component) to clarify that narrow woven ribbons affixed to non–subject merchandise for a functional purpose (such as "belly bands" around a pair of pajamas and stationery packaged together by means of a ribbon) is excluded from the scope;
2) Papillon requested that the Department modify the scope to explicitly exclude formed rosettes, which Papillon argued is a subset of exclusions 1 (*i.e.*, formed bows) and 11;
3) The Ribbons Retailers requested that the Department narrow the scope to exclude narrow woven ribbons included within a kit or set in *de minimis* amounts (such as narrow woven ribbons in holiday ornament sets, which are of small, pre–cut lengths and are used to tie ornaments to a tree); and
4) Essential Ribbons requested that the Department narrow the scope to exclude pre–cut, hand–finished narrow woven ribbons for retail

packaging in lengths of 72 inches or less.

On December 22, 2009, and January 29, 2010, the petitioner submitted comments on each of the above scope requests. Specifically, the petitioner agreed in concept with both requests made by the Ribbons Retailers (*i.e.*, items one and three, above), although the petitioner disagreed with the Ribbons Retailers' request to modify exclusion 10. Moreover, while the petitioner also agreed with Papillon that rosettes are not covered by the scope of the investigation (*i.e.*, item two, above), it contended that the existing language of the scope at exclusions 1 and 11 is sufficiently clear on this point, given that rosettes are bows. Finally, the petitioner opposed Essential Ribbon's request that the Department narrow the scope to exclude pre–cut, hand–finished ribbon (*i.e.*, item four, above) because the petitioner intended that such ribbon fall within the scope. Regarding this latter item, the petitioner asserts that it has in the past produced this product and may well produce it in the future, as it requires only a very minor finishing operation to cut and seal the ends of the ribbon. Further, the petitioner notes that it currently sells narrow woven ribbons in similar lengths (*i.e.*, of three feet or less), and it prices these products in the same manner.

On January 19, 2010, Essential Ribbons submitted comments opposing the petitioner's assertion that it wishes to have pre–cut, hand–finished ribbon (*i.e.*, item four, above) covered by the scope of this investigation. Essential Ribbons asserts that the petitioner does not currently produce this product and thus it should be excluded from the scope of this investigation.

We have carefully considered each of the requests noted above, as well as the petitioner's responsive comments. While the Department does have the authority to define or clarify the scope of an investigation, the Department must exercise this authority in a manner which reflects the intent of the petition and the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products From Canada*, 67 FR 15539 (April 2, 2002), and accompanying Issues and Decision Memorandum under Scope Issues (after Comment 49). Thus, absent an overarching reason to modify the scope in the petition, the Department accepts it. *Id. See also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 51788, 51789 (Sept., 5 2008); *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation*, 66 FR 49347 (Sept. 27, 2001), and accompanying Issues and Decision Memorandum at Comment 12; and *Mitsubishi Heavy Industries, Ltd. v. U.S.*, 986 F. Supp. 1428 (CIT 1997).

In this case, the petitioner has no objection to modifying the scope with respect to items one and three described above (*i.e.*, narrow woven ribbons affixed to non–subject merchandise for a functional purpose and narrow woven ribbons included in kits or sets in *de minimis* amounts). Accordingly, we have modified the scope to incorporate the petitioner's revised language with respect to item one because this modification is consistent with the intent of the petition. *See* the "Scope of the Investigation" section above. However, regarding item number three, we have concerns over whether the proposed scope exclusion would be administrable. Therefore, we have not modified the scope to exclude narrow woven ribbons included in kits or sets in "*de minimis*" amounts, as described by the petitioner, for purposes of the preliminary determination. We intend to work with the Ribbons Retailers and the petitioner to determine whether this exclusion could be administrable and will consider modifying the scope for purposes of the final determination.

Regarding item two (*i.e.*, rosettes), the petitioner also agrees that this product is excluded. However, we have not modified the scope language with respect to rosettes because we find that the scope is sufficiently clear that rosettes are not covered by this investigation, and, thus, no modification is necessary. Finally, we have made no change to the scope with respect to item four (*i.e.*, pre–cut, hand–finished ribbons) because: 1) these products are clearly within the scope; and 2) the petitioner intended that these products be covered.

Fair Value Comparisons

To determine whether sales of narrow woven ribbons from Taiwan to the United States were made at LTFV, we compared the export price (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted–average EPs to weighted–average NVs.

For this preliminary determination, we have determined that none of the respondents had a viable home market during the POI. Therefore, as the basis for NV, we used third country sales to Canada for Dear Year, and Mexico for Roung Shu and Shienq Huong, when making comparisons in accordance with section 773(a)(1)(C) of the Act. For further discussion, see the Market Selection Memo.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the same manufacturer and sold by Dear Year in Canada, and Roung Shu and Shienq Huong in Mexico, during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the third country, where appropriate. Where there were no sales of identical merchandise in the third country made in the ordinary course of trade and produced by the same manufacturer to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product, or CV.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: width, type, number of ends in the warp, number of weft picks, spool capacity, yarn composition, metal percentage, selvedge construction, dye process, surface finish, embellishments, dyed color, pattern type, selvedge contour, product unit packaging, and treatments. In addition, we confined our product comparisons to products produced by the same manufacturer. *See* the "Cost of Production Analysis" section, below, for further discussion.

In certain instances, the respondents reported the physical characteristics at a greater level of detail than that requested in the questionnaire. Where appropriate, we reclassified these physical characteristics using the categories listed in the questionnaire.

Finally, Dear Year reported that some of its sales were made in either lengths of: 1) less than one yard; or 2) feet which did not equal whole yards. We note that we have required all respondents to report the spool capacities of their products in whole yards and thus have accepted Dear Year's reported spool capacities for purposes of the preliminary determination. The Department invites interested parties to submit comments in their case briefs on whether the

Department should revise its reporting requirements for the spool capacity product characteristic.

Export Price

We used EP methodology for each respondent, in accordance with section 772(a) of the Act, because the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States and constructed export price (CEP) methodology was not otherwise warranted based on the facts on the record.

A. Dear Year

We based EP on the packed price to an unaffiliated purchaser in the United States. Where appropriate, we made adjustments for handling fees charged to the customer, price adjustments tied to exchange rates, and relabeling fees. We capped relabeling revenue by the amount of packing expenses incurred, in accordance with our practice. *See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (Aug. 11, 2009), and accompanying Issues and Decision Memorandum at Comment 3.

We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight and foreign brokerage and handling expenses.

B. Roung Shu

We based EP on the packed price to an unaffiliated purchaser in the United States. Where appropriate, we made adjustments for post–invoice price markdowns and rebates (including both volume rebates and certain post–sale price adjustments classified by Roung Shu as discounts). We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight and foreign brokerage and handling expenses.

C. Shienq Huong

We based EP on the packed price to an unaffiliated purchaser in the United States. Where appropriate, we made adjustments for billing adjustments. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight and foreign brokerage and handling expenses.

Normal Value

A. Home Market Viability and Comparison–Market Selection

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise. *See* section 773(a)(1)(C) of the Act.

Based on this comparison, we determined that each respondent's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. We used sales to each respondent's largest third country market as the basis for comparison–market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404, as no other comparison market(s) offered grea ter product similiarity. As discussed above, we used Canada for Dear Year, and Mexico for Roung Shu and Shienq Houng. For further discussion, see the Market Selection Memo.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is that of the starting–price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting–price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In this investigation, we obtained information from each respondent regarding the marketing stages involved in making the reported third country and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. We analyzed this data and found that each respondent made direct sales to distributors and/or retailers in both the U.S. and comparison markets. According to the information in their questionnaire responses, these respondents perform essentially the same selling functions in the United States and the relevant third country market (*i.e.*, for Dear Year, strategic/economic planning, inventory maintenance, provision of guarantees, and packing; for Roung Shu, color trend advice, provision of rebates, provision of warranties and guarantees, provision of samples, and packing; and for Shienq Huong, inventory maintenance, freight and delivery arrangements, and packing). Therefore, we find that, for each respondent, the sales channels in each market are at the same LOT. Accordingly, all comparisons are at the same LOT for Dear Year, Roung Shu, and Shienq Huong and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

C. Cost of Production Analysis

Based on our analysis of the petitioner's allegations, we found that there were reasonable grounds to believe or suspect that Dear Year's, Roung Shu's, and Shienq Huong's sales of narrow woven ribbons in their third country markets were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated sales–below-cost investigations to determine whether the respondents' sales were made at prices below their respective COPs. *See* the Dear Year Cost Allegation Memo, the Roung Shu Cost Allegation Memo, and the Shieng Huong Cost Allegation Memo, for further discussion.

In their sections A and D questionnaire responses, the respondents reported that they subcontracted the production of some or all of the narrow woven ribbons manufactured during the POI using unaffiliated suppliers. Moreover, both Dear Year and Shienq Huong also reported that they purchased undyed (or "greige") ribbon from unaffiliated companies, which they then further processed (*e.g.*, dyed, leveled, and/or printed) into the finished products sold in the United States and their comparison markets. Finally, Dear Year reported that it purchased piece–dyed narrow woven ribbons from unaffiliated

suppliers which it cut into final lengths and packed in individual spools before sale. In each of these instances, the respondents claimed that they were the manufacturers of the narrow woven ribbons, arguing that the value added during their own production operations was significant.

On January 26, 2010, the petitioner submitted comments on this topic, in which it argued that the unaffiliated suppliers of the purchased ribbon are the manufacturers and thus should be required to submit cost data in this proceeding. After analyzing the data on the record, we preliminarily determine that the company which weaves the ribbon is the manufacturer because the essential characteristics of the ribbon are established at this stage and because the foreign exporter/producer that further processes the ribbon does not control and direct the production of the basic ribbon which it then further processes. In accordance with our past practice, we are collecting cost data from certain of these unaffiliated suppliers. *See*, *e.g.*, *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823 (Sept. 11, 2008), and accompanying Issues and Decision Memorandum at Comment 15; and *SKF USA Inc. v. United States*, Ct. No. 08–322 (Slip Op. 09–148) (CIT 2009). However, because we currently do not have cost information for the unaffiliated weavers, as facts available, we are determining COP based on acquisition prices for purchased ribbon for purposes of the preliminary determination.

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Here, we lack information necessary to determine the unaffiliated suppliers' actual costs and must, therefore, rely upon facts available. The acquisition prices for purchased ribbon constitute reasonable facts available because they are product–specific and the only data available on the record at this time with respect to purchased ribbon.

We plan to examine the issue of whether the weaver is the producer further at our verifications of Dear Year, Roung Shu, and Shienq Huong and we will reconsider this issue for the final determination, if necessary.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), interest expenses, and third country packing costs. *See* "Test of Third Country Sales Prices" section below for treatment of third country selling expenses. We relied on the COP data submitted by the respondents except, for Dear Year and Roung Shu, we revised the G&A and financial expense ratios to exclude packing expenses from the cost of sales denominator. *See* the February 4, 2010, Memoranda from Heidi Schriefer, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Dear Year Manufacturing Co., Ltd.," and Kristin Case, Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Roung Shu Industry Corporation," for further discussion.

2. Test of Third Country Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the third country sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, discounts, rebates, movement charges, and direct and indirect selling expenses. In determining whether to disregard third country market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below–cost sales of that product, because we determine that in such instances the below–cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we determine that the below–cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Dear Year's, Roung Shu's, and Shienq Huong's third country sales during the POI were at prices less than the COP and, in addition, the below–cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Where there were no sales of any comparable product at prices above the COP, we used CV as the basis for determining NV.

4. Calculation of Normal Value Based on Comparison Market Prices

a. Dear Year

For Dear Year, we calculated NV based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments for discounts. We made deductions for movement expenses, including foreign inland freight expenses and foreign brokerage and handling expenses.

We made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for credit expenses, display unit costs, warranty expenses, and bank charges. We recalculated Dear Year's U.S. warranty expenses to base them on Dear Year's historical experience. *See* Memorandum from Holly Phelps to the file entitled, "Calculations Performed for Dear Year Brothers Mfg. Co., Ltd. for the Preliminary Results in the 08–09 Antidumping Duty Investigation of Narrow Woven Ribbon with Woven Selvedge from Taiwan," dated February 4, 2010, for further discussion.

Regarding display unit costs, Dear Year reported that it sold certain narrow woven ribbons in combinations in displays with other products. However, it did not report the cost of the display units for all products sold in this fashion in its U.S. sales listing. Therefore, we have based the cost of

these displays on the average cost of display units reported in the U.S. sales listing, as facts available. We have afforded Dear Year an opportunity to provide the missing data, and we will consider this information for purposes of the final determination.

We made no adjustment to NV for testing fees incurred by Dear Year because we determined that these expenses were more appropriately classified as indirect selling expenses, in accordance with the Department's practice. *See, e.g., Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part*, 74 FR 32107 (July 7, 2009), and accompanying Issues and Decision Memorandum at Comment 5.

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

b. Roung Shu

For Roung Shu, we calculated NV based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments for post–invoice price markdowns and rebates (including both volume rebates and certain post–sale price adjustments classified by Roung Shu as discounts). We made no adjustment to NV for the cost of contributions made by Roung Shu toward the opening on new retail outlets by one of the company's customers, because we determined that these expenses were more appropriately classified as indirect selling expenses.

We made deductions for movement expenses, including foreign inland freight expenses, foreign brokerage and handling expenses, international freight expenses, and marine insurance. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for credit expenses, the cost of display units, advertising expenses, U.S. warranty expenses, and bank charges. We recalculated Roung Shu's third country and U.S. credit expenses to use the simple average of the POI U.S. Federal Reserve interest rates, as well as to base the expense on gross unit price. *See* Memorandum from Miriam Eqab to the file entitled, "Calculations Performed for Roung Shu Industry Corporation (Roung Shu) for the Preliminary Results in the 08–09 Antidumping Duty Investigation of Narrow Woven Ribbon with Woven Selvedge from Taiwan," dated February 4, 2010, for further discussion. In addition, we denied Roung Shu's claim for third country warranty expenses because the company's response contained conflicting information related to this adjustment, and thus we preliminarily found that it was not adequately supported. Nonetheless, we intend to request additional information from Roung Shu related to its third country warranties and will consider this information for purposes of the final determination.

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

c. Shienq Huong

For Shienq Huong, we calculated NV based on delivered prices to unaffiliated customers. We made deductions for movement expenses, including foreign inland freight expenses and foreign brokerage and handling expenses. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for credit expenses, the cost of display units, U.S. warranty expenses, and bank charges. We recalculated Shienq Huong's third country and U.S. credit expenses for sales denominated in U.S. dollars to use the simple average of the POI U.S. Federal Reserve interest rates. We also recalculated Shienq Huong's U.S. warranty expenses to base them on Shienq Huong's historical experience. *See* Memorandum from Hector Rodriguez to the file entitled, "Calculations Performed for Shienq Huong Enterprise Co., Ltd. (Shieng Huong) for the Preliminary Determination in the Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from Taiwan," dated February 4, 2010, for further discussion.

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

5. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those narrow woven ribbons for which we could not determine the NV based on comparison market sales, we based NV on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the "Cost of Production Analysis" section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in circumstances of sale in accordance with section 773(a)(6)(iii) and (a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance–of-sale adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses to, CV. *See* 19 CFR 351.410(c).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of narrow woven ribbons from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will also instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margins, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted–average dumping margins are as follows:

Manufacturer/Exporter	Weighted–Average Margin (percent)
Dear Year Brothers Mfg. Co., Ltd.	0.00
Roung Shu Industry Corporation	4.54
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd.	0.00
All Others	4.54

For Dear Year and Shienq Huong, because their estimated weighted–average preliminary dumping margins are zero, we are not directing CBP to suspend liquidation of either company's entries.

"All Others" Rate

Section 735(c)(5)(A) of the Act provides that the estimated "All Others" rate shall be an amount equal to the weighted average of the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties to this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination of sales at LTFV. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of narrow woven ribbons from Taiwan are materially injuring, or threatening material injury to, the U.S. industry (*see* section 735(b)(2) of the Act). As we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination no later than 45 days after our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department related to sales issues no later than seven days after the date of the issuance of the last sales verification report issued in this proceeding; the case briefs related to cost of production issues may be submitted no later than seven days after the date of issuance of the last cost verification report issued in this proceeding. *See* 19 CFR 351.309(c). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. *See* 19 CFR 351.310. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: February 4, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–3133 Filed 2–17–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–952]

Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 18, 2010.

SUMMARY: The Department of Commerce (the "Department") preliminarily determines that narrow woven ribbons with woven selvedge ("narrow woven ribbons") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended (the "Act"). The estimated dumping margins are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Zhulieta Willbrand or Karine Gziryan, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3147 and (202) 482–4081, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2009, the Department received petitions concerning imports of narrow woven ribbons from the PRC and Taiwan filed in proper form by Berwick Offray LLC and its wholly–owned subsidiary Lion Ribbon Company, Inc. (collectively, "Petitioner"). *See Petitions for the Imposition of Antidumping and Countervailing Duties on Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan*, dated July 9, 2009 (the "*Petition*"). The Department initiated an antidumping duty investigation of narrow woven ribbons from the PRC and Taiwan on July 29, 2009. *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations*, 74 FR 39291 (August 6, 2009) ("Initiation Notice").

In the *Initiation Notice*, the Department stated that it intended to select PRC respondents based on quantity and value ("Q&V")

questionnaires. *See Initiation Notice*, 74 FR at 39296. On July 30, 2009, the Department requested Q&V information from the 86 companies identified by Petitioner in the Petition as potential producers or exporters of narrow woven ribbons from the PRC. *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, "Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Quantity and Value Questionnaire" (July 30, 2009). Additionally, the Department posted the Q&V questionnaire for this investigation on its website at http://ia.ita.doc.gov/ia–highlights-and–news.html. The Department received timely responses to its Q&V questionnaire from the following 19 companies: Beauty Horn Investment Limited ("Beauty Horn"); Billion Trend International Ltd.; Dongguan Yi Sheng Decoration Co., Ltd.; Fujian Rongshu Industry Co., Ltd. ("Fujian Rongshu"); Guangzhou Complacent Weaving Co., Ltd. ("Guangzhou Complacent"); Ningbo Huarui Import & Export Co., Ltd.; Ningbo Jinfeng Thread & Ribbon Co. Ltd.; Ningbo Jintian Import & Export Co., Ltd. ("Ningbo Jintian"); Ningbo MH Industry Co., Ltd. ("Ningbo MH"); Ningbo V.K. Industry & Trading Co., Ltd. ("Ningbo V.K."); Stribbons (Guangzhou) Ltd. ("Stribbons"); Stribbons (Nan Yang) Ltd.; Tensen International Trading Ltd.; Tianjin Sun Ribbon Co., Ltd. ("Sun Ribbon"); Weifang Dongfang Ribbon Weaving Co., Ltd. ("Weifang Dongfang"); Weifang Yu Yuan Textile Co., Ltd. ("Weifang Yu Yuan"); Xiamen Yi He Textile Co., Ltd. ("Xiamen Yi He"); Yangzhou Bestpak Gifts & Crafts Co., Ltd. ("Yangzhou Bestpak"); and Yama Ribbons and Bows Co., Ltd. ("Yama Ribbons"). *See* Memorandum from Maisha Cryor, International Trade Analyst, AD/CVD Operations, Office 4, to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection in the Antidumping Investigation of Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China" (September 11, 2009) ("Respondent Selection Memorandum").

On August 18, 2009, we received comments from Petitioner regarding product characteristics. On August 25, 2009, we received rebuttal comments from Shienq Huong Enterprise Co., Ltd. ("Shieng Huong") regarding product characteristics. On September 3, 2009, we received additional comments from Petitioner regarding product characteristics. On September 9, 2009, we received additional rebuttal comments from Shienq Hong. On September 21, 2009, we received additional comments from Petitioner regarding product characteristics. On September 24, 2009, the Department released revised product characteristics. On October 30, 2009, Petitioner submitted comments on the Department's revised product characteristics.

On September 1, 2009, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of narrow woven ribbons from the PRC and Taiwan. *See Narrow Woven Ribbons With Woven Selvedge From China and Taiwan*, Investigation Nos. 701–TA–467 and 731–TA–1164–1165 (Preliminary), 74 FR 46224 (September 8, 2009).

On September 11, 2009, the Department selected Yama Ribbons and Ningbo Jintian as mandatory respondents. *See* Respondent Selection Memorandum. On September 11, 2009, the Department issued antidumping questionnaires to the mandatory respondents (*i.e.*, Yama Ribbons and Ningbo Jintian). Yama Ribbons submitted timely responses to sections A through C of the Department's antidumping questionnaire. However, Ningbo Jintian failed to submit responses to any section of the Department's antidumping questionnaires.

Between September 23, 2009, and October 5, 2009, we received timely filed separate–rate applications from the following 12 companies: Beauty Horn; Fujian Rongshu; Guangzhou Complacent; Ningbo MH; Ningbo V.K.; Stribbons; Sun Ribbon; Dongguan Yi Sheng Decoration Co., Ltd. and Sun Rich (Asia) Limited (collectively "Sun Rich"); Weifang Dongfang; Weifang Yu Yuan; Xiamen Yi He; and Yangzhou Bestpak.

The Department issued supplemental questionnaires to and received responses from Yama Ribbons, Beauty Horn, Fujian Rongshu, Guangzhou Complacent, Ningbo MH, Ningbo V.K., Stribbons, Sun Ribbon, Sun Rich, Weifang Dongfang, Weifang Yu Yuan, and Xiamen Yi He between November 2009 and January 2010. From October 2009 through January 2010, Petitioner submitted comments to the Department regarding Yama Ribbons' responses to sections A, C, and D of the antidumping questionnaire.

On October 7, 2009, the Department released a letter to interested parties which listed potential surrogate countries and invited interested parties to comment on surrogate country and surrogate value ("SV") selection. *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, "Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China" (October 7, 2009). On October 21, 2009, Petitioner submitted comments[1] on the appropriate surrogate country. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, *see* "Surrogate Country" section below.

On October 30, 2009, Petitioner made a request for a 50-day postponement of the preliminary determination. On November 19, 2009, pursuant to section 733(c) of the Act and 19 CFR 351.205(f)(1), the Department postponed this preliminary determination by fifty days. *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 74 FR 59962 (November 19, 2009).

On December 7, 2009, and December 14, 2009, Yama Ribbons submitted publicly available SV information in response to specific requests for information by the Department. No other party submitted SV information.

Period of Investigation

The period of investigation ("POI") is January 1, 2009, through June 30, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, July, 2009). *See* 19 CFR 351.204(b)(1).

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on January 21, 2009, and January 29, 2010, Yama Ribbons requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. In the same submissions, Yama Ribbons agreed that the Department may extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) until the date of the final determination. Because our preliminary determination is affirmative, and the respondent requesting an extension of the final determination, and an extension of the provisional measures,

[1] *See* Letter from Petitioner to the Secretary of Commerce, ≥Narrow Woven Ribbons With Woven Selvedge From China: Petitioner's Comments On Surrogate Country Selection≥ (October 21, 2009).

accounts for a significant proportion of exports of the merchandise under consideration, and no compelling reasons for denial exist, we are extending the due date for the final determination by 60 days. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The merchandise subject to the investigation is narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man–made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the investigation may:

- also include natural or other non–man-made fibers;
- be of any color, style, pattern, or weave construction, including but not limited to single–faced satin, double–faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- consist of such ribbons affixed to like ribbon and/or cut–edge woven ribbon, a configuration also known as an "ornamental trimming;"
- be wound on spools; attached to a card; hanked (*i.e.*, coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the investigation include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of this investigation.

Excluded from the scope of the investigation are the following:

(1) formed bows composed of narrow woven ribbons with woven selvedge;

(2) "pull–bows" (*i.e.*, an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.*, filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States (HTSUS), Section XI, Note 13) or rubber thread;

(4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) narrow woven labels and apparel tapes, cut–to-length or cut–to-shape, having a length (when measured across the longest edge–to-edge span) not exceeding 8 centimeters;

(6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) cut–edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono–bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) narrow woven ribbons constructed from pile fabrics (i.e., fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) narrow woven ribbon affixed (including by tying) as a decorative detail to non–subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non–subject merchandise;

(11) narrow woven ribbon that is (a) affixed to non–subject merchandise as a working component of such non–subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non–subject merchandise as a working component that holds or packages such non–subject merchandise or attaches packaging or labeling to such non–subject merchandise, such as a "belly band" around a pair of pajamas, a pair of socks or a blanket; and

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel.

The merchandise subject to this investigation is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.*

On August 18, 2009, we received timely comments on the scope of the investigation from the following interested parties: 1) Costco Wholesale, Hobby Lobby Stores, Inc., Jo–Ann Stores, Inc., Michael Stores, Inc., and Target Corporation (collectively, "The Ribbons Retailers"); 2) Papillon Ribbon and Bow, Inc. ("Papillon"); and 3) Essential Ribbons, Inc. ("Essential Ribbons"). Specifically, we received two requests that the Department modify the

scope to clarify that certain products are outside the scope, and two additional requests that the Department narrow the scope to exclude two products that include merchandise which falls within the scope. These requests are as follows: 1) The Ribbons Retailers requested that the Department modify exclusions 10 (*i.e.*, narrow woven ribbons affixed as a decorative detail to non–subject merchandise) and 11 (*i.e.*, narrow woven ribbons affixed to non–subject merchandise as a working component) to clarify that narrow woven ribbons affixed to non–subject merchandise for a functional purpose (such as "belly bands" around a pair of pajamas and stationery packaged together by means of a ribbon) is excluded from the scope; 2) Papillon requested that the Department modify the scope to explicitly exclude formed rosettes, which Papillon argued is a subset of exclusions 1 (*i.e.*, formed bows) and 11; 3) The Ribbons Retailers requested that the Department narrow the scope to exclude narrow woven ribbons included within a kit or set in *de minimis* amounts (such as narrow woven ribbons in holiday ornament sets, which are of small, pre–cut lengths and are used to tie ornaments to a tree); and 4) Essential Ribbons requested that the Department narrow the scope to exclude pre–cut, hand–finished narrow woven ribbons for retail packaging in lengths of 72 inches or less.

On December 22, 2009, and January 29, 2010, Petitioner submitted comments on each of the above scope requests. Specifically, Petitioner agreed in concept with both requests made by The Ribbons Retailers (*i.e.*, items one and three, above), although Petitioner disagreed with The Ribbons Retailers' request to modify exclusion 10. Moreover, while Petitioner also agreed with Papillon that rosettes are not covered by the scope of the investigation (*i.e.*, item two, above), it contended that the existing language of the scope at exclusions 1 and 11 is sufficiently clear on this point, given that rosettes are bows. Finally, Petitioner opposed Essential Ribbon's request that the Department narrow the scope to exclude pre–cut, hand–finished ribbon (*i.e.*, item four, above) because Petitioner intended that such ribbon fall within the scope. Regarding this latter item, Petitioner asserts that it has in the past produced this product and may well produce it in the future, as it requires only a very minor finishing operation to cut and seal the ends of the ribbon. Further, Petitioner notes that it currently sells narrow woven ribbons in similar lengths (*i.e.*, of three feet or less), and it prices these products in the same manner.

On January 19, 2010, Essential Ribbons submitted comments opposing Petitioner's assertion that it wishes to have pre–cut, hand–finished ribbon (*i.e.*, item four, above) covered by the scope of this investigation. Essential Ribbons asserts that the petitioner does not currently produce this product and thus it should be excluded from the scope of this investigation.

We have carefully considered each of the requests noted above, as well as Petitioner's responsive comments. While the Department does have the authority to define or clarify the scope of an investigation, the Department must exercise this authority in a manner which reflects the intent of the petition and the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products From Canada*, 67 FR 15539 (April 2, 2002), and accompanying Issues and Decision Memorandum under Scope Issues (after Comment 49). Thus, absent an overarching reason to modify the scope in the petition, the Department accepts it. *Id. See also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 51788, 51789 (September, 5 2008); *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001) and accompanying Issues and Decision Memorandum at Comment 12; and *Mitsubishi Heavy Industries, Ltd. v. U.S.*, 986 F. Supp. 1428 (CIT 1997).

In this case, Petitioner has no objection to modifying the scope with respect to items one and three described above (*i.e.*, narrow woven ribbons affixed to non–subject merchandise for a functional purpose and narrow woven ribbons included in kits or sets in *de minimis* amounts). Accordingly, we have modified the scope to incorporate Petitioner's revised language with respect to item one because this modification is consistent with the intent of the petition. *See* the "Scope of the Investigation" section above. However, regarding item number three, we have concerns over whether the proposed scope exclusion would be administrable. Therefore, we have not modified the scope to exclude narrow woven ribbons included in kits or sets in "*de minimis*" amounts, as described by Petitioner, for purposes of the preliminary determination. We intend to work with The Ribbons Retailers and Petitioner to determine whether this exclusion could be administrable and will consider modifying the scope for purposes of the final determination.

Regarding item two (*i.e.,* rosettes), Petitioner also agrees that this product is excluded. However, we have not modified the scope language with respect to rosettes because we find that the scope is sufficiently clear that rosettes are not covered by this investigation, and thus no modification is necessary. Finally, we have made no change to the scope with respect to item four (*i.e.*, pre–cut, hand–finished ribbons) because: 1) these products are clearly within the scope; and 2) Petitioner intended that these products be covered.

Non–Market Economy Treatment

The Department considers the PRC to be a non–market economy ("NME") country. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007) ("*Coated Free Sheet Paper*"). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value ("NV"), in most circumstances, on the NME producer's factors of production ("FOPs") valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market–economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the

surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department determined that India, the Philippines, Indonesia, Colombia, Thailand and Peru are countries comparable to the PRC in terms of economic development.[2] Once the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable. In their October 21, 2009, submission, Petitioner referenced their statement in the Petition where they argued that the Department should select India as a surrogate country because it satisfies the statutory requirements for the selection of a surrogate country since it is at a level of economic development that is comparable to the PRC, and is a significant producer of merchandise comparable to the merchandise under investigation. *See* Petitioner's October 21, 2009, submission at 1–2. No other party provided comments on the record concerning the surrogate country.

We have determined that it is appropriate to use India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (1) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOPs. Thus, we have calculated NV using Indian prices when available and appropriate to the FOPs of Yama Ribbons. We have obtained and relied upon publicly available information wherever possible. *See* Memorandum to the File from Zhulieta Willbrand, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Investigation of Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China: Surrogate Values for the Preliminary Determination," which is dated concurrently with this notice ("Surrogate Value Memorandum").

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[3]

Separate Rates

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations. *See Initiation Notice*, 74 FR at 39296–39297. The process requires exporters and producers to submit a separate rate status application.[4]

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both de jure and de facto governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under the test announced in the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign–owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

Separate Rate Recipients

1. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Four separate rate applicants in this investigation, Yangzhou Bestpak, Ningbo MH, Ningbo V.K., and Weifang Yu Yuan (collectively, "Chinese SR Applicants"), provided evidence that they are either joint ventures between Chinese and foreign companies or wholly Chinese–owned companies. The Department has analyzed whether each of the four Chinese SR Applicants has demonstrated the absence of *de jure* and *de facto* governmental control over its respective export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export license; (2) legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589. The evidence provided by the four Chinese SR Applicants supports a preliminary finding that all of the above criteria have been satisfied.

The evidence provided by the four Chinese SR Applicants supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of Chinese companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to de facto

[2] *See* Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4, "Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Narrow Woven Ribbon With Woven Selvedge from the People's Republic of China" (September 15, 2009).

[3] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[4] *See Policy Bulletin 05.1: Separate-Rate Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries*, (April 5, 2005), at 6, available at http://ia.ita.doc.gov/policy/bull05-1.pdf. ("*Policy Bulletin 05.1*"). *Policy Bulletin 05.1* states, in relevant part, "While continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation."

governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The evidence provided by the four Chinese SR Applicants supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing that the companies: (1) set their own export prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this investigation by the four Chinese SR Applicants demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, the Department has preliminarily granted a separate rate to the Chinese SR Applicants. *See* "Preliminary Determination" section below.

2.Wholly Foreign–Owned

Eight separate rate applicants in this investigation, Beauty Horn, Fujian Rongshu, Guangzhou Complacent, Stribbons, Sun Ribbon, Sun Rich, Weifang Dongfang, Xiamen Yi He, and the mandatory respondent Yama Ribbons, ("Foreign–Owned SR Applicants"), provided evidence that they are wholly owned by individuals or companies located in market economies in their separate rate applications. Therefore, because they are wholly foreign–owned and the Department has no evidence indicating that they are under the control of the government of the PRC, a separate rates analysis is not necessary to determine whether these companies are independent from government control. See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China, 64 FR 71104 (December 20, 1999) (determining that the respondent was wholly foreign–owned and, thus, qualified for a separate rate). Accordingly, the Department has preliminarily granted a separate rate to these Foreign–Owned SR Applicants. See "Preliminary Determination" section below.

Companies Not Receiving a Separate Rate

In the *Initiation Notice*, the Department requested that all companies wishing to qualify for separate rate status in this investigation submit a separate rate status application. *See Initiation Notice*. The following five exporters submitted a timely response to the Department's Q&V questionnaire but did not provide a separate rate application: 1) Billion Trend International Ltd.; 2) Ningbo Huarui Import & Export Co., Ltd.; 3) Ningbo Jinfeng Thread & Ribbon Co. Ltd.; 4) Ningbo Jintian; and 5) Tensen International Trading Ltd., and therefore have not demonstrated their eligibility for separate rate status in this investigation. As a result, the Department is treating these Chinese exporters as part of the PRC–wide entity.

Margins for Separate Rate Recipients

Through the evidence in their applications, the separate–rate applicants have demonstrated their eligibility for a separate rate, *see* the "Separate Rates" section above. Normally, the separate rate is determined based on the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available ("AFA"). *See* section 735(c)(5)(A) of the Act. In this case, because there are no rates other than de minimis or those based on AFA, we have determined to take a simple average of the AFA rate applied to the PRC–wide entity and the *de minimis* rate calculated for Yama Ribbons as a reasonable method for purposes of determining the rate assigned to separate rate applicants. *See* Section 735(c)(5)(B) of the Act. We note that this methodology is consistent with the Department's past practice. *See 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 10545, 10546 (March 11, 2009). That rate is 115.70 percent. The separate–rate applicants are listed in the "Suspension of Liquidation" section of this notice.

Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" ("FA") if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Application of Partial Facts Available for Yama Ribbons

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. We have preliminarily determined that the application of partial facts available is warranted for certain packing materials FOPs reported by Yama Ribbons.

The Department must rely upon FA because Yama Ribbons did not provide us with accurate information with respect to certain packing materials FOPs with sufficient time to utilize Yama Ribbons' data for the preliminary

determination. On January 29, 2010, the Department informed Yama Ribbons' counsel that in the process of evaluating Yama Ribbons' packing data submitted on January 13, 2010, it had noticed that Yama Ribbons reported, for certain sales, a wide range of consumption rates for packing materials. The Department requested that Yama Ribbons evaluate its January 13, 2010, FOP database and inform the Department if there were misreported consumption rates for packing materials. The Department also expressly instructed Yama Ribbons not to submit any new numerical database in response to the Department's inquiry. *See* Memorandum to the File from Zhulieta Willbrand, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Antidumping Duty Investigation on Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Packing Materials," (January 29, 2010). On February 1, 2009, Yama Ribbons submitted a narrative explanation identifying sales with misreported consumption rates for packing materials, and stated reasons why these consumption rates were misreported. *See* "Narrow Woven Ribbons With Wovern Selvedge from People's Republic of China, Antidumping Duty Investigation: Packing Materials Consumption Rates Response" (February 1, 2010). On February 1, 2010, the Department informed Yama Ribbons that the company could provide a revised FOP database reflecting only the narrative information submitted on February 1, 2010. The Department also notified Yama Ribbons that even if the revised FOP database was submitted to the Department before the preliminary determination, the Department could not guarantee that the new information would be considered in Yama Ribbons' margin calculation for the preliminary determination. *See* Memorandum to the File from Zhulieta Willbrand, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Antidumping Duty Investigation on Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: New Numerical Data," (February 1, 2010). On February 2, 2010, Yama Ribbons provided a revised FOP database and a narrative explanation for all discrepancies.

The Department has determined that it lacks the sufficient amount of time before the preliminary determination to properly evaluate Yama Ribbons' revised FOP database. Yama Ribbons' new FOP database was submitted just two days prior to the completion of the preliminary determination, which is an insufficient amount of time for the Department to evaluate the new database for consistency with the prior database. Thus, the Department has determined to use Yama Ribbons' January 13, 2010, FOP database in the preliminary determination margin calculation program. However, the Department acknowledges that the January 13, 2010, database suffers some deficiencies, as identified by Yama Ribbons pursuant to the Department's inquiries. Because the January 13, 2010, FOP database cannot serve as a reliable basis for this determination under section 782(e) of the Act, the Department finds that for the packing materials FOPs at issue, the Department must calculate dumping margins using the facts otherwise available pursuant to sections 776(a)(2)(A) of the Act.

In accordance with section 776(a)(2)(A) of the Act, the Department has applied FA for some of Yama Ribbons packing materials FOPs. As FA, for certain misreported packing materials FOPs we have applied a simple average consumption rate for each of the respective packing materials. *See* Analysis Memorandum for Yama Ribbons and Bows Co. Ltd. ("Yama's Analysis Memo") dated February 4, 2010.

At this time the Department does not find that it is necessary to apply an adverse inference, pursuant to section 776(a)(2)(B) of the Act, because Yama Ribbons responded to the Department's request for additional information concerning its January 13, 2010, FOP database. The Department may issue supplemental questionnaires after issuance of the preliminary determination to further analyze these packing FOPs for the final determination.

PRC–Wide Entity

1. Non–Responsive Companies

On July 30, 2009, the Department requested Q&V information from the 86 companies that Petitioner identified as potential exporters or producers of narrow woven ribbons from the PRC. Additionally, the Department's *Initiation Notice* informed these companies of the requirements to respond to both the Department's Q&V questionnaire and the separate rate application in order to receive consideration for separate rate status. *See Initiation Notice*, 74 FR at 39296. However, only 19 exporters/manufacturers responded to the Department's request for Q&V information.[1] Furthermore, only 12 exporters/manufacturers that submitted Q&V information also submitted a separate rate application.[2] Therefore, the Department preliminarily determines that there were exports of merchandise under investigation from PRC exporters/manufacturers that did not respond to the Department's Q&V questionnaire, and/or subsequently did not demonstrate their eligibility for separate rate status. As a result, the Department is treating these PRC exporters/manufacturers ("non–responsive companies") as part of the PRC–wide entity.

2. Ningbo Jintian

As stated above, Ningbo Jintian did not respond to the Department's antidumping questionnaires (*i.e.*, Sections A, C and D questionnaire). Because Ningbo Jintian failed to participate in this investigation, Ningbo Jintian has failed to demonstrate that it operates free of government control and that it is entitled to a separate rate. Therefore, the Department preliminarily finds that Ningbo Jintian is part of the PRC–wide entity.

Application of Total Adverse Facts Available

As noted above, the Department has determined that the companies that did not submit separate rate applications, including Ningbo Jintian, are part of the PRC–wide entity. Pursuant to section 776(a) of the Act, the Department further finds that the PRC–wide entity failed to respond to the Department's questionnaires, withheld required information, and/or submitted information that cannot be verified, thus significantly impeding the proceeding. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 70 FR 77121, 77128 (December 29, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303 (May 22, 2006). Accordingly, the Department has preliminarily determined to base the PRC–wide entity's margin on FA. *See* section 776(a) of the Act. Further, because the

[1] As stated in the "Background" section above, the Department received 19 timely responses to the 86 Q&V questionnaires the Department sent to potential exporters identified in the Petition.

[2] As stated in the "Separate Rates" section above, 19 exporters submitted a timely response to the Department's Q&V questionnaire with sales within the POI, but only 12 of these exporters submitted a separate rate application.

PRC–wide entity failed to cooperate by not acting to the best of its ability to comply with the Department's request for information, the Department preliminarily determines that, when selecting from among the FA, an adverse inference is warranted for the PRC–wide entity pursuant to section 776(b) of the Act.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). Further, it is the Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005) (quoting Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994)).

It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From The People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decision Memorandum, at "Facts Available." In the instant investigation, as AFA, we have preliminarily assigned to the PRC–wide entity, including companies that did not respond to the Department's Q&V questionnaire, such as Ningbo Jintian, , the highest rate on the record of this proceeding for narrow woven ribbons from the PRC, which in this case is the 231.40 percent margin from the Petition. *See Initiation Notice*, 74 FR at 39296. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate AFA rate for the PRC–wide entity, including Ningbo Jintian.

The dumping margin for the PRC–wide entity applies to all entries of the merchandise under investigation except for entries of subject merchandise from the exporter/manufacturer combinations listed in the chart in the "Preliminary Determination" section below.

Corroboration of Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as "information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation."[5] To "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[6]

The AFA rate that the Department used is from the Petition. Petitioner's methodology for calculating the United States price and NV in the Petition is discussed in the *Initiation Notice*. To corroborate the AFA margin that we have selected, we compared this margin to the margin we found for the respondent. We found that the margin of 231.40 percent has probative value because it is in the range of the model–specific margins that we found for the mandatory respondent, Yama Ribbons. *See* Yama's Analysis Memo. Accordingly, we find that the rate of 231.40 percent is corroborated within the meaning of section 776(c) of the Act.

Date of Sale

The Department's regulations state that, "in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." *See* 19 CFR 351.401(i). In *Allied Tube*, the Court of International Trade ("CIT") found that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to satisf{y}' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'"*Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) ("*Allied Tube*"). Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *see also Allied Tube*, 132 F. Supp. 2d at 1090–1092. The date of sale is generally the date on which the parties agree upon all material terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. *See Nakornthai Strip Mill Pub. Co. v. United States*, 614 F. Supp. 2d 1323, 1334 (CIT 2009).

Yama Ribbons reported that the date of sale was determined by the shipment date of the subject merchandise to the unaffiliated United States customer because the shipment date is the date by which all terms of sale are considered final. In this case, as the Department found no evidence contrary to Yama Ribbon's claims that shipment date was the appropriate date of sale, the Department used shipment as the date of sale for this preliminary determination.

Fair Value Comparison

To determine whether sales of narrow woven ribbons to the United States by Yama Ribbons were made at LTFV, we

[5] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479, 6481 (February 4, 2008), quoting SAA at 870.

[6] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

compared export price ("EP") to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, for Yama Ribbons, we based the U.S. price of sales on EP because the first sale to unaffiliated purchasers was made prior to importation and the use of constructed export price was not otherwise warranted. In accordance with section 772(c) of the Act, we calculated EP for Yama Ribbons by deducting the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign movement expenses, foreign brokerage and handling expenses and international freight. We reduced movement expenses, where appropriate, by the amount of freight revenue paid by the customer to Yama Ribbons. In accordance with our practice in the recently completed administrative review of polyethylene retail carrier bags from the PRC, we capped the amount of freight revenue deducted at no greater than the amount of movement expenses. *See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009) and accompanying Issues and Decision Memorandum at Comment 4. Yama also claimed an additional revenue adjustment to EP (*i.e.*, additional processing fees). For processing fees, we have preliminarily determined to allow this adjustment because Yama Ribbons claimed that it accounted for the additional FOPs utilized in providing for the additional processing in its reported FOPs. *See* Yama's Analysis Memo. We plan to closely examine the processing fees issue at verification. Additionally, we based movement expenses on surrogate values where the service was purchased from a PRC company. *See* Yama's Analysis Memo. For details regarding our EP calculation, *see* Yama's Analysis Memo.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006).

As the basis for NV, Yama Ribbons provided FOPs used in each stage for producing narrow woven ribbons. Consistent with section 773(c)(1)(B) of the Act, it is the Department's practice to value the FOPs that a respondent uses to produce the merchandise under consideration.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Yama Ribbons. To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001) and accompanying Issues and Decision Memorandum at Comment 5. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for Yama Ribbons can be found in the Surrogate Value Memorandum.

For this preliminary determination, in accordance with the Department's practice, we used data from the Indian import statistics in the World Trade Atlas ("WTA"), and other publicly available Indian sources in order to calculate surrogate values for Yama Ribbons' FOPs (direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non–export average values, most contemporaneous with the POI, product–specific, and tax–exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that data in the WTA Indian import statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product–specific, and tax–exclusive. *See* Surrogate Value Memorandum. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index as published in the International Financial Statistics of the International Monetary Fund. *See* Surrogate Value Memorandum at Exhibit 2.

Furthermore, with regard to the Indian import–based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7. Further, guided by the legislative history, it is the Department's practice not to

conduct a formal investigation to ensure that such prices are not subsidized. *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Coated Free Sheet Paper. Rather, the Department bases its decision on information that is available to it at the time it makes its determination. See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008) ("*PET Film from China*"), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008). Therefore, we have not used prices from these countries in calculating the Indian import–based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. *See PET Film from China*, 73 FR at 24559.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's home page, http://ia.ita.doc.gov/wages/index.html, "Expected Wages Of Selected Non–Market Economy Countries, Expected Wage Calculation: 2007 GNI Data, Regression Analysis: 2007 GNI Data." Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. *See* Surrogate Value Memorandum at Exhibit 6.

We valued truck freight expenses using a per–unit average rate calculated from data on the infobanc Web site: http://www.infobanc.com/logistics/logtruck.htm. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. The value is contemporaneous with the POI. *See* Surrogate Value Memorandum at Exhibit 9.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated March 2008. These electricity rates represent actual country–wide, publicly available information on tax–exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation. *See* Surrogate Value Memorandum at Exhibit 3.

We calculated the surrogate value for steam based upon the April 2007–March 2008 financial statement of Hindalco Industries Limited. *See* Surrogate Value Memorandum at Exhibit 5.

The Department valued water using data from the Maharashtra Industrial Development Corporation (http://midcindia.org) as it includes a wide range of industrial water tariffs. This source provides 376 industrial water rates within the Maharashtra province for April 2009: 188 of the water rates were for the "inside industrial areas" usage category and 188 of the water rates were for the "outside industrial areas" usage category. *See* Surrogate Value Memorandum at Exhibit 4.

We valued brokerage and handling using a simple average of the brokerage and handling costs reported in public submissions filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot–rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. The Department adjusted the average brokerage and handling rate for inflation. *See* Surrogate Value Memorandum at Exhibit 8.

We valued international ocean freight using rate quotes from Maersk Sealand, a market–economy shipper. *See* Surrogate Value Memorandum at Exhibit 10.

We valued international air freight using rates obtained from DHL. *See* Surrogate Value Memorandum at Exhibit 11.

To value factory overhead, selling, general, and administrative expenses, and profit, we used the factory overhead, selling, general and administrative expenses, and profit data from an Indian producer of comparable merchandise, Ratan Glitter Industries Ltd., a producer of comparable narrow woven ribbons, for the fiscal year April 1, 2007, through March 31, 2008. See Volume II of the Petition, at Exhibit 39.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*, 74 FR at 39297. This practice is described in *Policy Bulletin 05.1*, available at http://ia.ita.doc.gov/.

Preliminary Determination

The Department preliminarily determines that the following dumping margins exist for the period January 2009 through June 2009:

Exporter	Producer	Weighted–Average Percent Margin
Yama Ribbons and Bows Co., Ltd.	Yama Ribbons and Bows Co., Ltd.	0
Beauty Horn Investment Limited	Tianjin Sun Ribbon Co., Ltd.	115.70
Fujian Rongshu Industry Co., Ltd.	Fujian Rongshu Industry Co., Ltd.	115.70
Guangzhou Complacent Weaving Co., Ltd.	Guangzhou Complacent Weaving Co., Ltd.	115.70
Ningbo MH Industry Co., Ltd.	Hangzhou City Linghu Jiacheng Silk Ribbon Co., Ltd.	115.70
Ningbo V.K. Industry & Trading Co., Ltd.	Ningbo Yinzhou Jinfeng Knitting Factory	115.70
Stribbons (Guangzhou) Ltd.	Stribbons (Guangzhou) Ltd.	115.70
Stribbons (Guangzhou) Ltd.	Stribbons (Nanyang) MNC Ltd.	115.70
Sun Rich (Asia) Limited	Dongguan Yi Sheng Decoration Co., Ltd.	115.70
Tianjin Sun Ribbon Co., Ltd.	Tianjin Sun Ribbon Co., Ltd.	115.70

Exporter	Producer	Weighted–Average Percent Margin
Weifang Dongfang Ribbon Weaving Co., Ltd.	Weifang Dongfang Ribbon Weaving Co., Ltd.	115.70
Weifang Yu Yuan Textile Co., Ltd.	Weifang Yu Yuan Textile Co., Ltd.	115.70
Xiamen Yi He Textile Co., Ltd.	Xiamen Yi He Textile Co., Ltd.	115.70
Yangzhou Bestpak Gifts & Crafts Co., Ltd.	Yangzhou Bestpak Gifts & Crafts Co., Ltd.	115.70
PRC–wide Entity		* 231.40

*(Including Ningbo Jintian Import & Export Co., Ltd.)

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of narrow woven ribbons from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the normal value exceeds U.S. price, as indicated above.

Additionally, the Department has determined in its *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 66090, 66096 (December 14, 2009) (''*CVD Prelim*'') that the product under investigation, exported and produced by Yama Ribbons, did not benefit from an export subsidy. However, the countervailing duty rate for Ningbo Jintian, Beauty Horn, Fujian Rongshu, Guangzhou Complacent, Ningbo MH, Ningbo V.K., Stribbons, Sun Ribbon, Sun Rich, Weifang Dongfang, Weifang Yu Yuan, Xiamen Yi He, and Yangzhou Bestpak is the all–others rate, which is 59.49 percent. *Id.* Therefore, we will instruct CBP to require an antidumping duty cash deposit or the posting of a bond for each entry equal to the weighted–average margin indicated above for these companies adjusted for the export subsidies determined in the *CVD Prelim*. The adjusted cash deposit rate for Ningbo Jintian, Beauty Horn, Fujian Rongshu, Guangzhou Complacent, Ningbo MH, Ningbo V.K., Stribbons, Sun Ribbon, Sun Rich, Weifang Dongfang, Weifang Yu Yuan, Xiamen Yi He, and Yangzhou Bestpak is 115.70 percent.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of narrow woven ribbons from Taiwan are materially injuring, or threatening material injury to, the U.S. industry (*see* section 735(b)(2) of the Act). As we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination no later than 45 days after our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs and must be received no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309(c)(i) and (d). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if timely requested, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing two days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: February 4, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–3128 Filed 2–17–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU28

International Whaling Commission; 2010 Intersessional Meetings; Nominations

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

ACTION: Notice; request for nominations.

SUMMARY: This notice is a call for nominees for the U.S. Delegation to the March 2010 Small Working Group and intersessional meetings of the International Whaling Commission (IWC). The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations. Generally, only one non-

governmental position is selected for the U.S. Delegation, but as these meetings may be quite technical in nature, an additional representative may be chosen as a technical advisor.

DATES: The IWC is holding its 2010 Small Working Group and intersessional meetings March 2–5, 2010, in St. Pete Beach, FL. All written nominations for the U.S. Delegation to these IWC meetings must be received by February 24, 2010.

ADDRESSES: All nominations for the U.S. Delegation to the IWC annual meeting should be addressed to Monica Medina, Acting U.S. Commissioner to the IWC, and sent via post to: Ryan Wulff, National Marine Fisheries Service, Office of International Affairs, 1315 East-West Highway, SSMC3 Room 12620, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Ryan Wulff, 202–482–3689.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the domestic obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. IWC Commissioner has responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other agencies. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations. Generally, only one non-governmental position is selected for the U.S. Delegation. As these meetings may be quite technical in nature, an additional representative may be chosen as a technical adviser. This person should have extensive knowledge of the International Convention for the Regulation of Whaling, experience in working with the U.S. Delegation, and the ability to provide legal advice, as appropriate.

The IWC's 2010 Small Working Group and intersessional meetings will be held March 2–5, 2010, at the Tradewinds Island Resorts in St. Pete Beach, FL. When the agenda is finalized it will be posted on the IWC website at *www.iwcoffice.org.*

Dated: February 12, 2010.

James W. Balsiger,

Acting Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 2010–3081 Filed 2–12–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: Department of the Army, DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3. 140 through 160), the Department of the Army announces the following committee meeting:

Name of Committee: U.S. Army Command & General Staff College Subcommittee.

Date: March 9–10, 2010.

Place: U.S. Army Command and General Staff College, Ft. Leavenworth, KS, Lewis & Clark Center, 66027.

Time: 8:30 a.m. to 4 p.m. (March 9, 2010). 8:30 a.m. to 12 p. m. (March 10, 2010).

Proposed Agenda: Starting point of the meeting will be an overview of the CGSC, as well as its constituent schools, the Command and General Staff School and the School of Advanced Military Studies. Subcommittee members will gather information from students, staff and faculty. General deliberations leading to provisional findings for referral to the Army Education Advisory Committee will follow on 10 March beginning at about 0900.

FOR FURTHER INFORMATION CONTACT: For information, please contact Dr. Robert Baumann at *robert.f.baumann@us.army.mil.* Written submissions are to be submitted to the following address: U.S. Army Command and General Staff College Subcommittee, *ATTN:* Alternate Designated Federal Officer (Baumann), Lewis & Clark Center, U.S. Army Command and General Staff College, Ft. Leavenworth, KS 66027.

SUPPLEMENTARY INFORMATION: Meeting of the Advisory subcommittee is open to the public. Attendance will be limited to those persons who have notified the Advisory Subcommittee Management Office at least 10 calendar days prior to the meeting of their intention to attend.

FILING WRITTEN STATEMENT: Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak, however, interested persons may submit a written statement for consideration by the subcommittees. Individuals submitting a written statement must submit their statement to the Alternate Designated Federal Officer (ADFO) at the address listed (*see* **FOR FURTHER INFORMATION CONTACT**). Written statements not received at least 10 calendar days prior to the meeting, may not be provided to or considered by the subcommittees until their next meeting.

The ADFO will review all timely submissions with the Chairperson, and ensure they are provided to the members of the respective subcommittee before the meeting. After reviewing written comments, the Chairperson and the ADFO may choose to invite the submitter of the comments to orally present their issue during open portion of this meeting or at a future meeting.

The ADFO, in consultation with the Chairperson, may allot a specific amount of time for the members of the public to present their issues for review and discussion.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–3038 Filed 2–17–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Educational Advisory Committee

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. § 552b, as amended), and 41 CFR 102–3.150, the following meeting notice is announced:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Date of Meeting: March 11, 2010.

Place of Meeting: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, Pennsylvania 17013.

Time of Meeting: 8:30 a.m.–4 p.m.

Proposed Agenda: Receive information briefings; conduct discussions with the Commandant and staff and faculty; table and examine online College issues; assess resident and distance education programs, self-study techniques, assemble a working

group for the concentrated review of institutional policies and a working group to address committee membership and charter issues; propose strategies and recommendations that will continue the momentum of Federal accreditation success and guarantee compliance with regional accreditation standards.

FOR FURTHER INFORMATION CONTACT: To request advance approval or obtain further information, contact Mr. Kevin Connelly at (717) 245–3345.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Interested persons may submit a written statement for consideration by the U.S. Army War College Subcommittee. Written statements should be no longer than two typewritten pages and must address: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals submitting a written statement must submit their statement to the Designated Federal Officer at USAWC, 122 Forbes Avenue, Carlisle, PA, at any point; however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the U.S. Army War College Subcommittee until its next open meeting.

The Designated Federal Officer will review all timely submissions with the U.S. Army War College Subcommittee Chairperson, and ensure they are provided to members of the U.S. Army War College Subcommittee before the meeting that is the subject of this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the U.S. Army War College Subcommittee Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the U.S. Army War College Subcommittee.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–3037 Filed 2–17–10; 8:45 am]

BILLING CODE 3710–08–P

DENALI COMMISSION

Denali Commission Fiscal Year 2010 Draft Work Plan

AGENCY: Denali Commission.

ACTION: Denali Commission Fiscal Year 2010 Draft Work Plan request for comments.

SUMMARY: The Denali Commission (Commission) is an independent Federal agency based on an innovative Federal-State partnership designed to provide critical utilities, infrastructure and support for economic development and in training in Alaska by delivering Federal services in the most cost-effective manner possible. The Commission was created in 1998 with passage of the October 21, 1998 Denali Commission Act (Act) (Title III of Pub. L. 105–277, 42 U.S.C. 3121). The Denali Commission Act requires that the Commission develop proposed work plans for future spending and that the annual Work Plan be published in the **Federal Register**, providing an opportunity for a 30-day period of public review and written comment. This **Federal Register** notice serves to announce the 30-day opportunity for public comment on the Denali Commission Draft Work Plan for Federal Fiscal Year 2010.

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

ADDRESSES: Submit comments to the Denali Commission, Attention: Valerie Boyd, 510 L Street, Suite 410, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Valerie Boyd, Denali Commission, 510 L Street, Suite 410, Anchorage, AK 99501. Telephone: (907) 271–1414. E-mail: *vboyd@denali.gov*.

Background: The Commission's mission is to partner with tribal, Federal, State, and local governments and collaborate with all Alaskans to improve the effectiveness and efficiency of government services, to develop a well-trained labor force employed in a diversified and sustainable economy, and to build and ensure the operation and maintenance of Alaska's basic infrastructure.

By creating the Commission, Congress mandated that all parties involved partner together to find new and innovative solutions to the unique infrastructure and economic development challenges in America's most remote communities.

Pursuant to the Denali Commission Act, as amended, the Commission determines its own basic operating principles and funding criteria on an annual Federal fiscal year (October 1 to September 30) basis. The Commission outlines these priorities and funding recommendations in an annual Work Plan.

The Work Plan is adopted on an annual basis in the following manner, which occurs sequentially as listed:

- Commissioners first provide an approved draft version of the Work Plan to the Federal Co-Chair.
- The Federal Co-Chair approves the draft Work Plan for publication in the **Federal Register** providing an opportunity for a 30-day period of public review and written comment. During this time the draft Work Plan is also disseminated widely to Commission program partners including, but not limited to the Bureau of Indian Affairs (BIA), the Economic Development Administration (EDA), and the United States Department of Agriculture—Rural Development (USDA–RD).
- Public comment concludes and Commission staff provides the Federal Co-Chair with a summary of public comment and recommendations, if any, associated with the draft Work Plan.
- If no revisions are made to the draft, the Federal Co-Chair provides notice of approval of the Work Plan to the Commissioners, and forwards the Work Plan to the Secretary of Commerce for approval; or, if there are revisions the Federal Co-Chair provides notices of modifications to the Commissioners for their consideration and approval, and upon receipt of approval from Commissioners, forwards the Work Plan to the Secretary of Commerce for approval.
- The Secretary of Commerce approves the Work Plan.

The Work Plan authorizes the Federal Co-Chair to enter into grant agreements, award grants and contracts and obligate the Federal funds identified by appropriation below.

FY10 Appropriations Summary

The Denali Commission has historically received several Federal funding sources. These fund sources are governed by the following general principles:

- In FY 2010 no project specific earmarks were directed.
- The Energy and Water Appropriation is eligible for use in all programs, but has historically been used substantively to fund the Energy Program.
- The Energy Policy Act of 2005 established new authorities for the Commission's Energy Program, with an emphasis on renewable and alternative energy projects. No new funding accompanied the Energy Policy Act, and

prior fiscal year Congressional direction has indicated that the Commission should fund renewable and alternative Energy Program activities from the available Energy and Water appropriation.

• All other funds outlined below may be used only for the specific program area and may not be used across programs. For instance, Health Resources and Services Administration (HRSA) funding, which is appropriated for the Health Facilities Program, may not be moved to the Energy Program.

Final transportation funds received may be reduced due to agency modifications, reductions and fees determined by the U.S. Department of Transportation. Final program available figures will not be provided until later this spring.

Final USDA–Rural Utility Services (RUS) funds received may be reduced based on the amount made available to the Commission. Historically, the Commission has received 50% of the total RUS funds available nationally, and the Commission is using historic funding percentages to provide the appropriations and program available estimate for RUS in the FY10 Work Plan and funding chart below.

All Energy and Water Appropriation funds, including operational funds, designated as "up to" may be reassigned to the Legacy Energy program, Bulk Fuel and Rural Power System Upgrades (RPSU), if they are not fully expended in a program component area or a specific project.

All U.S. Department of Health and Human Services—HRSA funds designated as "up to" may be reassigned to the primary care clinic program if they are not fully expended in a program component area.

The table below provides the following information, by fund source:

Total FY10 Budgetary Resources provided in the Omnibus Bill: These are the figures that appear in the rows marked by an asterisk (*) and are the original appropriation amounts which do not include Commission overhead deductions. These funds are identified by their source name (i.e., "Energy and Water Appropriation; USDA, RUS, etc.) The grand total for all appropriations appears at the end of the chart.

Total FY10 Program Available Funding: These are the figures that appear in the rows entitled "FY10 Appropriations—Program Available" and are the amounts of funding available for program(s) activities after Commission overhead has been deducted. Traditionally, the Commission's overhead rate has been limited to 5%, except in the case of RUS funds, where it is limited to 4%. The following appropriations language for the Energy and Water appropriation in FY10 allows the Commission to retain more than 5% of the Energy and Water for operational activities as it deems appropriate and prudent: "* * * *notwithstanding the limitations contained in section 306(g) of the Denali Commission Act of 1998.*" The grand total for all program available funds appears at the end of the chart.

Program Funding: These are the figures that appear in the rows entitled with the specific Program and Sub-Program area, and are the amounts of funding the Draft FY10 Work Plan recommends, within each program fund source for program components.

Project Funding: These are the figures that appear in the rows entitled with the specific Program and Sub-Program area and in italics and are the amounts of funding the Draft FY10 Work Plan recommends within each program fund source for specific projects.

Subtotal of Program Funding

These are the figures that appear in the rows entitled "subtotal" and are the subtotals of all program funding within a given fund source. The subtotal must always equal the Total FY10 Program Available Funding.

DENALI COMMISSION FY 2010 FUNDING TABLE

	Totals ($)
* FY 2010 Energy & Water Appropriation	11,965,000.
For expenses of the Denali Commission including the purchase, construction, and acquisition of plant and capital equipment as necessary and other expenses, $11,965,000, to remain available until expended, notwithstanding the limitations contained in section 306(g) of the Denali Commission Act of 1998.	
FY 2010 Energy & Water Appropriation—Program Available (less overhead—not limited to 5% in FY 2010 and designated as "up to").	9,965,000.
Energy	8,665,000.
• *Emerging Technology Projects*	*2,241,607 (up to).*
• *Construction Contingency Funds*	*2,193,393 (up to).*
• *Hoonah—Rural Power System Upgrade*	*3,330,000.*
• *Brevig Mission/Teller Intertie*	*900,000.*
Training Program	1,000,000 (up to).
• *AK Dept. of Labor (A–DOL) Denali Training Fund*	*500,000.*
• *A–DOL Youth Initiatives*	*500,000.*
Pre-Development Program	150,000 (up to).
Sponsorship Program	150,000 (up to).
Sub-total	9,965,000.
* FY 2010 USDA, Rural Utilities Service (RUS)—Estimate	8,000,000.
FY 2010 USDA—Rural Utilities Service (RUS)—Program Available (less 4% overhead)—Estimate	7,680,000.
Stebbins/St. Michael—Bulk Fuel Facility Construction	730,630.
Igiugig—Rural Power System Upgrade	1,350,000.
Yakutat—Rural Power System Upgrade	3,150,000.
Pending Bulk Fuel or RPSU project to be selected per Energy Program Prioritization Process as outlined in the FY 2010 Work Plan.	1,500,000.
Conceptual Planning/Design for Bulk Fuel and RPSU	949,370.
Sub-total	7,680,000.
* FY 2010 Trans Alaska Pipeline Liability (TAPL) Trust	7,084,606.
FY 2010 Trans Alaska Pipeline Liability (TAPL)—Program Available (less 5% overhead)—Estimate	6,730,370.
Stebbins/St. Michael—Bulk Fuel Facility Construction	6,730,370.
Sub-total	6,730,370.
*FY 2010 DHHS—Health Resources & Services Administration (HRSA)	10,000,000.

DENALI COMMISSION FY 2010 FUNDING TABLE—Continued

	Totals ($)
The Committee provides $10,000,000 for the Denali Commission. The fiscal year 2009 comparable level was $19,642,000 and the budget request for fiscal year 2010 did not include funding for this program. These funds support the construction and renovation of health clinics, hospitals and social service facilities in rural Alaska, as authorized by Public Law 106–113, to help remote communities in Alaska develop critically needed health and social services to Alaskans in remote rural communities as they are in other communities throughout the country. The Committee expects the Denali Commission to allocate funds to a mix of rural hospital, clinic, long-term care and social service facilities, rather than focusing exclusively on clinic funding.	
FY 2010 DHHS-Health Resources & Services Administration (HRSA)—Program Available (less 5% overhead)	9,500,000.
Primary Care	7,267,400.
Igiugig—Primary Care Clinic	*1,000,000.*
Ekwok—Primary Care Clinic	*1,600,000.*
Kasaan—Small Primary Care Clinic	*800,000.*
Kaltag—Primary Care Clinic	*1,818,400.*
Design Pool and Program Management, ANTHC	*2,049,000.*
Behavioral Health	492,900 (up to).
[Projects are undergoing due diligence and vetting process at publication. No specific projects are named at this time.]	
Primary Care in Hospitals	734,700 (up to).
Petersburg—Radiology Equipment	*36,733.*
Bartlett Regional Hospital—Blood Chemistry Analyzer	*52,500.*
Mt. Edgecumbe—Fluoroscopy Radiography	*100,000.*
Wrangell Medical Center—Mammography Equipment	*43,000.*
Kanakanak Hospital—CT Scan Equipment	*100,000.*
Providence Seward—Electronic Health Records	*100,000.*
Providence Kodiak—Infant Security System	*28,919.*
Ketchikan General Hospital—Breast Biopsy Equipment	*76,500.*
Central Peninsula Hospital—Medication Verification System	*97,976.*
Providence Valdez—Patient Services Equipment	*7,996.*
Sitka Community Hospital—Surgical Equipment	*91,076.*
Elder Supportive Housing	$805,000 (up to).
Kenai Peninsula Housing Initiatives, Soldotna (6 units)	*770,000.*
Program Management, AHFC	*35,000.*
Health Program: Technical Assistance Contract to Alaska Summit Enterprises	200,000 (up to).
Sub-total	9,500,000.
*FY 2010 Federal Transit Administration (FTA)—Estimate	$5,000,000.
$5,000,000 from section 3011 (FTA) for docks and harbors;	
*FY 2010 Federal Highway Administration (FHWA)—Estimate	17,784,000.
For necessary, expenses for the Denali Access System Program as authorized under Section 1960 of Public Law 109–59, $5,700,000, to remain available until expended and $4,800,000 from section 1934 (FHWA) for docks and harbors; and $11,400,000 from section 1960 (FHWA) for Denali Access System Program.	
*FY 2010 Additional Transportation Funding—Estimate	2,200,000.
FY 2010 Transportation—Program Available (less 5% overhead)—Estimate	23,644,800.
Transportation Program: Docks & Harbors—Estimate	13,644,800.
Transportation Program: Roads -Estimate	10,000,000.
Sub-total	23,644,800.
*TOTAL FY 2010 Federal Appropriations—Estimate	62,033,606.
TOTAL FY 2010 Federal Program Available—Estimate	57,520,170.

FY10 Program Details and General Information

The following section provides narrative discussion, by each of the Commission Programs identified for FY10 funding in the table above, in the following categories:

- Program History and Approach.
- FY10 Project Description.
- FY10 Project Selection Process.
- FY10 Program and Project Policy Issues (as applicable).

The final section also includes a general summary of other program and policy issues facing the Commission, statements of support by the Commission for the funding requests and activities of other program partners which the Commission works in partnership with, and detail regarding the Commission's evaluation and reporting efforts.

Government Coordination

The Commission is charged with the special role of increasing the effectiveness of government programs by acting as a catalyst to coordinate the many Federal and State programs that serve Alaska. In FY10, the Commission will continue its role of coordinating State and Federal agencies and other partner organizations to accomplish its overall mission of developing Alaska's communities. Particular focus will be given to the collaborative efforts of the Commission's Federal and State Memorandum of Understanding (MOU) and the various workgroups and planning sessions and forums that occur as a result of the MOU meetings.

Energy Program

Legacy Program

The Energy Program is the Commission's original program and is identified as a "legacy" program. The program focuses on bulk fuel facilities (BFU) and rural power system upgrades/power generation (RPSU) across rural Alaska. About 94% of electricity in rural communities is produced by diesel and about half the fuel storage in most villages is used for these power plants for distribution. Alternative means of generating power can reduce the capacity needed for fuel storage and ultimately reduce the cost of power to the community.

Alternative/Renewable Program

The *Energy Policy Act of 2005* established new authorities for the Commission's Energy Program with an emphasis on alternative and renewable energy projects. Although the 2005 Energy Policy Act did not include specific appropriations, the Commission is expected to carry out the intent of the Act through a portion of its Energy and Water appropriation funding. To date, the Commission has co-funded a number of renewable projects and each year new initiatives are considered. In 2007, the State of Alaska passed legislation and funded the Renewable Energy Program (REP) which modeled the project selection process set forth by the Commission's early investment.

Emerging Technologies

With the advent of the REP, more resources to meet commercial-ready renewable technology needs are now available. The area of emerging technologies, meaning pre-commercial yet post-research/development, has become an appropriate role for the Commission. A solicitation was conducted in FY 2009 identifying over $50 M in project requests (and only $4 M in available funds). Similar to the REP, this initiative is a leveraging opportunity with the State of Alaska in considering the development of an emerging technology fund that could accept funds from multiple sources to meet these ongoing needs. The goal of the program is to fund pilot projects for applied research and further technologies focusing on replication in rural Alaska so they are commercially viable and ultimately eligible for REP.

Other Renewable Initiatives

In addition to the emerging technology program, the Commission has funded energy efficiency efforts with the goal of energy cost reduction and leveraging of funding sources. The Commission will continue to track opportunities under the American Revitalization and Recovery Act (ARRA) and to provide supportive incentives, financial or otherwise, to utilize such opportunities. For example, in FY 2009 the Commission provided match funding to tribes that submitted group applications to the Energy Efficiency and Conservation Block Grant program under the Department of Energy. In doing so, the barrier of administering grants by small tribes was minimized and potential funding losses were avoided. The Commission received 8 eligible group applications, representing 106 Alaskan tribes, totaling $456,710 in Commission funding and leveraging over $4 M of Federal funding. While the FY 2010 Work Plan allocates all renewable funds toward emerging technologies, it also recommends that if funds become available to support efforts to incentivize energy efficiency or other stimulus opportunities around energy for rural Alaska be considered allowable. *No funds are currently set aside for these needs.*

The FY 2010 Work Plan outlines a strategy to balance the Energy Program in both legacy and renewable components, providing up to $2.24 M of available program funds specifically toward the emerging technology program which is pending passage by the Alaska State Legislature. If match for this program is not provided, this funding shall be reallocated to legacy projects.

The project amounts listed below are estimates and final award documents may vary based on changes in match by project and receipt of funding.

FY 2010 PROJECT DESCRIPTIONS

Recipient/impacted community	Project description	Total project cost	Denali commission cost ($)	Cost share match (S) *	Project selection methodology
Bulk Fuel Projects					
TBD	TBD	TBD	1,500,000	TBD	TBD
Stebbins/St. Michael	AEA—Bulk Fuel Facility Replacement serving both communities in conjunction with power plant, standby power plant, distribution modifications, recovered heat and intertie between villages.	8,290,000	7,461,000	$829,000	AVEC nominated.
RPSU Projects					
Yakutat	AEA—Rural Power System Upgrade. New powerhouse and distribution system. Waste heat recovery to school and pool..	3,500,000	3,150,000	350,000	AEA nominated.
Hoonah	AVEC—Rural Power System Upgrade. New diesel powerhouse and heat recovery system in conjunction with pursuant hydro, geothermal, wood heating and intertie to Pelican.	3,700,000	3,330,000	370,000	AEA nominated.
Brevig Mission/Teller	Submarine Cable Intertie	1,000,000	900,000	100,000	AVEC nominated.
Igiugig	AEA—Rural Power System Upgrade. Renewal of existing powerhouse including waste heat recovery to washeteria and water plant in conjunction with hydrokinetic project.	1,500,000	1,350,000	150,000	AEA nominated.
Contingency**	Commission to hold	2,193,393	2,193,393	0	N/A.
If Additional Funds Become Available the Following Bulk Fuel and RPSU Projects May Proceed (Not Listed in Priority Order)					
Chenega Bay	RPSU	TBD	TBD	TBD	AEA nominated.

FY 2010 PROJECT DESCRIPTIONS—Continued

Recipient/impacted community	Project description	Total project cost	Denali commission cost ($)	Cost share match (S) *	Project selection methodology
Ekwok	Bulk Fuel Facility	TBD	TBD	TBD	AEA nominated.
Emmonak/Alakanuk	Intertie (State funded), BF Facilities and Power Plant in Emmonak.	TBD	TBD	TBD	AVEC nominated.
Kipnuk	Bulk Fuel Facility	TBD	TBD	TBD	AEA nominated.
Levelock	RPSU	TBD	TBD	TBD	AEA nominated.
Mekoryuk	RPSU	TBD	TBD	TBD	AVEC nominated.
Napakiak	RPSU	TBD	TBD	TBD	AEA nominated.
Red Devil/Sleetmute	Intertie	TBD	TBD	TBD	AEA nominated.
Ruby	RPSU	TBD	TBD	TBD	AEA nominated.
Stebbins/St. Michael	AVEC—main power plant in Stebbins, distribution mods., stand-by power plant in St. Michael, recovered heat and Intertie Construction.	TBD	TBD	TBD	AVEC nominated.
Alternative/Renewable Energy Projects					
Emerging Technology Program.	Applied Research renewable energy pilot projects.	2,241,607	TBD	pending	Selection process in SB150 and accompanied HB.

FY 2010 Program & Project Policy Issues

Cost Share Match *

The approved FY 2008 Denali Commission Policy Document requires and prioritizes cost share match for funded projects. In implementing this policy, the Energy Advisory Committee (EAC) has provided guidance on the appropriate match requirements. In general, projects with match will be prioritized, and a final match policy will be implemented once other match funding sources are known for FY 2010.

Sustainability Policy

As a renewed effort toward sustainability, all energy design and construction grants will proceed after business plans are reviewed and approved by Commission staff. Additionally, Commission staff is expected to be engaged throughout the planning process of projects to assure policy requirements are adhered to earlier in the process.

Construction Contingency Pool**

The Commission has historically handled construction cost overruns on an ongoing basis, with the requirement that those in excess of 10% be reported to Commissioners via an "exceptions report". Concurrently, Commission staff has been critical of project budgets in keeping with the investment policy requirements that per unit costs be considered as part of due diligence when making project decisions. Consequently, either risks are taken on part of program partners in their original project budgets, or extra contingency is worked into project budgets. In an effort to spread available funds further the project budgets listed above do not include contingency funds. Instead, a Construction Contingency Pool in the amount of up to $2,193,393 is dedicated for the Commission to meet these needs.

FY 2010 Project Selection Process

Legacy Program (Bulk Fuel/RPSU)

Due to the nature of the due diligence requirement of energy projects, seasonal logistics in Alaska and funding restrictions (i.e., TAPL funds may only be used for bulk fuel projects)—a project may not progress as quickly as another. Further, cost estimates may change from the FY 2010 Work Plan development to the actual grant execution. The projects are prioritized in the list above, and will progress to construction as a project attains all due diligence requirements; projects may proceed out of priority order and costs may vary from the above numbers to the actual grant document. All match requirements will remain intact given these considerations.

Emerging Technologies Program

Pending State legislation creates a project selection process involving two phases. A review committee was established with representatives name-identified in the legislation. The Commission replicated the process and suggests the same process be used in FY 2010, pending State funding for the program. In summary, applicants in the first round submit a letter of interest which the review committee narrows to a list of second round applicants that are invited to submit a more thorough proposal and present to the review committee face to face. The review process will to the extent possible follow that set forth in pending State legislation however final project/grant approval is subject to approval by the Federal Co-chair.

Health Facilities Program

The Denali Commission Act was amended in 1999 to provide for the "planning, constructing and equipping of health facilities." Since 1999, the Health Facilities Program has been methodically investing in the planning, design and construction of primary care clinics across Alaska.

Primary care clinics have remained the "legacy" priority for the Program. However, in 2003 the "Other Than" primary care component of the Program was adopted in response to Congressional direction to fund a mix of other health and social service related facility needs. Over time, the Program has developed Program sub-areas such as Behavioral Health Facilities, Domestic Violence Facilities, Elder Housing, Primary Care in Hospitals, Emergency Medical Services Equipment and Hospital Designs. The FY10 Draft Work Plan emphasizes the priority of the Primary Care Clinic Program as the legacy program area, with the majority of funding dedicated to clinics.

The Program utilizes a "universe of need" model for primary care and a competitive selection process for other sub-program areas. In 1999 the Program created a deficiency list for primary care clinics, which totaled 288 communities statewide in need of clinic replacement, expansion and/or renovation. Currently, 95 clinics have been completed; 29 are in construction; and approximately 110 are in the conceptual planning/business planning/design phases.

The Program is guided by the Health Steering Committee, an advisory body comprised of the following membership organizations: The State of Alaska, Alaska Primary Care Association, the Alaska Native Tribal Health Consortium, the Alaska Mental Health Trust Authority, the Alaska Native Health Board, the Indian Health Service, the Alaska State Hospital and Nursing Home Association, the Rasmuson Foundation and the University of Alaska.

Projects are recommended for funding by Commission staff if they demonstrate project readiness, which includes the completion of all due diligence requirements. In priority order, those stages of completion are:

1. Having a recently approved business plan.
2. Having a completed (100%) design.
3. Cost share match status.
4. Ranking in the 2000 Rural Health Facility Needs Assessment.

Finally, all of these are considered in regard to the realistic ability to move the project forward in a given construction season.

The Health Facilities Program anticipates the Commission policy document, which was adopted in November 2008, will impact the clinic prioritization process, specifically for those communities located on the road system, and within proximity to one another, and for communities with populations less than 100.

In 2008 the program identified small communities (populations of less than 100) as an area for improvement in terms of cost containment and sustainability. Consequently, the Commission has funded a pilot design project to create a cost effective, energy efficient clinic prototype for these small communities. The result of work to-date is the 35% designs of three small clinics—one around 700 square feet, one approximately 850 square feet, and the third close to 1,000 square feet. These 65% design documents for three prototype clinics will allow the construction of right-sized, energy efficient community health clinics in small communities. It is common for health services in small Alaskan communities to be provided by part-time Community Health Aides/Practitioners.

Furthermore, emergency medical services and preventive health services are of paramount importance to the residents of these small villages, and these clinics will allow for the safe, consistent provision of these. The design team has included a professional architect/engineering firm and representatives from a diversity of interests and expertise, including the tribal health system, practitioners, eventual owners/operators, and funding agencies. The 65% designs are anticipated in late spring, with a pilot project being constructed from one of the three designs in a rural Alaska location in early fall 2010.

The Health Facilities Program is evolving. What began ten years ago with an assessment of rural Alaska health facility needs grew into a $40 M a year infrastructure program by 2005. Over the course of its history, the Commission has invested $191 M in health projects, contributing to the construction of 95 clinics and the planning efforts of another 100.

The projects presented here reflect the process for prioritization recommended and endorsed by the Health Steering Committee. In compliance with recently adopted procedures for the Denali Commission Work Plans, the Health Program must propose specific projects for FY 2010 funding. Projects presented here are aligned with the appropriation conference language, as follows:

The Committee expects the Denali Commission to allocate funds to a mix of rural hospital, clinic, long-term care and social service facilities, rather than focusing exclusively on clinic funding.

For historical context, the following reflects the allocation of Health Facilities Program appropriations across the program component areas:

Fiscal year	Primary care clinics	Primary care in hospitals	Elder supportive housing	Behavioral health	Other program areas
2007	$37,119,040	$2,500,000	$0	$5,063,000	$637,000
2008	23,319,040	4,000,000	5,840,890	5,000,000	0
2009	14,758,102	1,526,746	1,901,420	1,017,831	0

ALLOCATION OF PROGRAM RESOURCES ACROSS PROGRAM COMPONENT AREAS

Primary care clinics	Primary care in hospitals	Elder supportive housing	Behavioral health
$7,267,400	734,700	805,000	492,900

Up to $200,000 will be made available for the technical consultation contract which assists communities through the due diligence application process.

This allocation scenario, recommended by the Health Steering Committee, distributes available funds across the breadth of program areas.

FY 2010 PRIORITIZED PROJECT DESCRIPTIONS

Community	Project description	Total est. project cost	Denali commission share (est.)	Cost share match (est.)
Igiugig	1,600 SF primary care clinic	$2,000,000	$1,000,000	$1,000,000
Ekwok	1,600 SF primary care clinic	2,000,000	1,600,000	400,000
Kasaan	900 SF primary care clinic	1,000,000	800,000	200,000
Kaltag	2,058 SF primary care clinic	2,273,000	1,818,400	454,600
Chistochina	6,000 SF Multi-use facility; 3,000 SF clinic	3,443,120	2,754,496	688,624
Chalkyitsik	1,642 SF primary care clinic	1,855,373	1,484,299	371,074
Shaktoolik	2,650 SF primary care clinic	2,700,000	2,160,000	540,000
Arctic Village	2,067 SF primary care clinic	1,694,016	1,524,614	169,402
Akiachak	3,200 SF primary care clinic	3,094,400	2,784,960	309,440

FY 2010 PRIORITIZED PROJECT DESCRIPTIONS—Continued

Community	Project description	Total est. project cost	Denali commission share (est.)	Cost share match (est.)
Takotna	900 SF primary care clinic	1,000,000	800,000	200,000
Wales	Relocation & renovation of primary care clinic	855,000	769,500	85,500
Venetie	2,147 SF primary care clinic	1,751,952	1,576,757	175,195
Napakiak	2,600 SF primary care clinic	2,514,200	2,262,780	251,420
Circle	1,647 SF primary care clinic	1,343,952	1,209,557	134,395
Tyonek	2,580 SF primary care clinic	2,146,560	1,931,904	214,656
Willow	8,000 SF Community Health Center	4,808,000	4,327,200	480,800
Hoonah	4,000 SF primary care clinic	3,116,000	2,804,400	311,600
Total			31,608,867	

Due to the nature of the due diligence requirement of Primary Care projects, a project may not progress as quickly as another. The projects are prioritized in the list above, and will progress to construction as a project attains all due diligence requirements; projects may proceed out of priority order.

The competitive proposal processes for the elder supportive housing and primary care in hospitals programs were completed in January 2010. Specific projects proposed for FY 2010 funding are included in the FY 2010 Funding Table.

The Commission's major program partner for behavioral health projects is the Alaska Department Health and Social Services (A–DHSS), which maintains a prioritized list of infrastructure needs related to behavioral health. The Health Facilities Program will continue to work with A–DHSS to address the prioritized needs, as projects attain the due diligence standards of the Commission.

As denoted above, if viable, sustainable, and vetted projects in the behavioral health, primary care in hospitals, and elder supportive housing programs will not utilize all of the allotted funds in those component areas (by June 2010), the remaining funds will be re-programmed to the legacy primary care clinic program.

Prior Year Reprogramming of Project Funds:

While care is taken to obligate program funds to viable projects with reliable cost estimates, occasionally a project will not move forward to construction, or will experience a cost savings. In those instances, the Commission staff will identify to Commissioners and the Federal Co-Chair how prior year project funds will be utilized. Historically the Health Facilities Program has funded a mix of health projects. Prior work plans have indicated unexpended funds in Health component areas other than primary care would revert back to primary care projects. As the legacy focus of the Health Facilities program is primary care clinics, a large percentage of funds will be re-programmed to that component area. However, consideration is typically given to ensure that a wide variety of projects in the areas of rural hospitals, clinics, long-term care and social service facilities is supported.

The Denali Commission Health Facilities Program must at this time re-program $6,871,470 in unexpended prior year funds. The funds to be re-programmed are time-limited (they must be expended within five years of the original appropriation), so the money must be used for projects that will be ready to move to construction in calendar year 2010 or early 2011. The following three primary care clinic projects have a high probability of moving into construction in 2010 or early 2011:

Community	Project description	Denali Commission share (est.)
Chistochina	3,000 SF primary care clinic	$2,754,496
Chalkyitsik	1,642 SF primary care clinic	1,484,299
Akiachak	3,200 SF primary care clinic	2,784,960
		7,023,755*

*This amount exceeds the available balance of reprogrammable funds by $152,285—which will be transferred from the design pool budget line in the FY 2010 Work Plan.

If these projects should not proceed to construction as expected the Commission will utilize the prioritization methodology outlined in the health facilities program section above to identify other projects.

Training Program

The Training Program was instituted by the Commissioners as a standalone program in 1999 to ensure local residents were trained to construct, maintain and operate Commission investments in rural Alaska. From 1999 to 2003, it was the general policy of the Commission to appropriate 10% of Energy and Water funds to support the Training Program. In 2004, US Department of Labor (USDOL) began direct appropriations to the Commission to support rural training and continued this support through 2009.

In 2010, the Commission was not appropriated training funds from USDOL, but the FY 2010 includes funding for the program in the amount of $1,000,000 from the Energy and Water appropriation for the continuation of workforce development in rural Alaska.

The Commission's Training Program has been critical to building the capacity of rural communities through training and employment. In February 2009 the Alaska Department of Labor (A–DOL), Research and Analysis Section released an employment and training report that specifically evaluated the participants who completed training funded through the Commission between FY 2001 and FY 2007. This report concluded that the participants' wages increased 64.4%

and their employability increased 12.1%.

The following is a list of training partners who have been funded by the Commission to carry-out training programs responsive to the Training program goals:

- Alaska Department of Labor and Workforce Development.
- University of Alaska.
- Alaska Works Partnership.
- Associated General Contractors/ Construction Education Foundation (CEF).
- First Alaskans.

The FY 2010 Draft Work Plan is based on the two primary goals. First to use the remaining FY 2009 funds in the amount of $3,209,100.00 to continue to support legacy partners who have an excellent reputation of delivering applicable training to rural Alaskans that supports the construction, maintenance and operation of Denali Commission investments.

Secondly, in response to an early policy of the agency, that approximately 10% ($1 M) of the Energy and Water appropriation be provided to the FY 2010 Training Program to ensure its continuation. When combined with prior year funds that were only recently received by the agency from Federal USDOL, this will allow the Commission to continue the program and fund substantial workforce development in rural Alaska.

Transportation

Section 309 of the Denali Commission Act 1998 (amended), created the Commission's Transportation Program, including the Transportation Advisory Committee. The advisory committee is composed of nine members appointed by the Governor of the State of Alaska including the Federal Co-Chair of the Denali Commission; four members who represent existing regional native corporations, native nonprofit entities, or tribal governments, including one member who is a civil engineer; and four members who represent rural Alaska regions or villages, including one member who is a civil engineer.

The Transportation Program addresses two areas of rural Alaska transportation infrastructure, roads and waterfront development. There is consensus among agencies and communities that the Program is successfully addressing improvements to local and regional transportation systems. This is largely a function of the Transportation Advisory Committee's success at project selection and monitoring, and the success of the Program's project development partners.

The Program is generally a competitively-bid contractor or materials-based system grounded in Title 23 CFR. These strict project development and construction guidelines have presented some challenges to the Commission's ability to respond quickly to targets of opportunity, but they have also had the positive effect of ensuring project design and construction is executed at a professional level. The Program operates under a reimbursable payment system that requires local and program partner sponsors to pay close attention to accounting procedures prior to their payments to contractors and vendors. This system helps ensure project payments are eligible when submitted to the Commission.

In FY10 the program will increase its focus on barge landings at rural communities. These projects range from one or two mooring points to secure a barge, to small dock structures, depending on community size and barge operation characteristics. The value of these structures lies in improved fuel/ freight transfer operations and improved worker and environmental safety. The Commission and the U.S. Army Corps of Engineers (USACE) have prepared a barge landing analysis that will be utilized to identify projects in FY10. The universe of need for the first generation of projects is in the range of $40,000,000.

The Committee met on January 13–14, 2010 to select the road and waterfront development projects and program priorities for FY10. Final project approvals and funding amounts will be provided in early February 2010 upon review and approval by the Commission's Federal Co-Chair.

Broadband

Alaska Governor Sean Parnell designated the Denali Commission (Commission) as the lead entity for the Broadband Mapping and Planning initiative which is being funded by the National Telecommunications and Information Administration ("NTIA") of the United States Department of Commerce.

The Commission is charged to lead this important effort to plan broadband in Alaska. The State intends to be an active participant and major partner in this proposed mapping and planning effort with direct involvement by the State Co-Chair, Governor and appropriate State agencies and State personnel. The Commission will partner with broadband mapping leader, Connected Nation, to implement the Connect Alaska program. In addition the Commission will support the creation and management of the Broadband Steering Committee, which will be comprised of State, Federal, non-profit, and State of Alaska telecommunications providers.

The scope of work seeks to employ industry-standard GIS toolsets and experienced personnel to deliver comprehensive and accurate broadband mapping data, develop State-level broadband maps, aid in the development and maintenance of a national broadband map, and fund statewide initiatives directed at broadband planning. The Connect Alaska suite of deliverables will include datasets as required by the NTIA as well as Web-based, interactive broadband maps to inform State and local government officials, consumers, broadband providers, community development organizations, researchers, and other stakeholders. This interactive Web site will be critical to ensure accessibility of the broadband data, but it will also be key to increasing awareness of the mapping program and the benefit of broadband. It will also play an important role in ensuring local verification of the mapping data.

NTIA is providing $1.4 M for broadband mapping in Alaska and $492,000 to manage the Broadband Steering Committee for five years.

Other Program and Policy Issues

Pre-Development Program

The Commission intends to continue to engage in the Pre-Development program in FY 2010. Pre-Development is a joint collaboration between the Alaska Mental Health Trust Authority, the Commission, The Foraker Group, and the Rasmuson Foundation to assist organizations with development of plans for successful capital projects.

The funding agencies are concerned that inadequate planning during the initial projects development phase can result in projects that are not sustainable in the long term. The Pre-Development Program was created to provide guidance and technical assistance to ensure that proposed projects: meet documented need, are consistent with strategic and community plans, consider opportunities for collaboration, have appropriate facility and site plans and realistic project budgets, are financially sustainable and will not negatively impact the sustainability of the proposing organization. Through this partnership an agency's capital project is better equipped to proceed.

The amount of $150,000 will provide funding for the pre-development program for FY 2010.

Sponsorship Program

The Commission plans to continue conference sponsorships in FY 2010. Commissioners reinstated Conference sponsorship funding for events that were consistent with the Commission's mission and values in 2006.

Sponsorship activities provide a positive venue for communicating Commission activities. Sponsorship opportunities also provide Commission outreach to a wide variety of events and audiences. Events sponsored by the Commission promote key programmatic areas that are key to the Commission's values and mission, including efforts in alternative-renewable energy conferences, health, training and leadership and transportation.

In FY 2010 this program will be funded in the amount of $150,000. Events funded will be in line with the major program areas at the Commission and will have a statewide focus.

Dated: February 4, 2010.

Joel Neimeyer,

Federal Co-Chair.

[FR Doc. 2010–3135 Filed 2–17–10; 8:45 am]

BILLING CODE 3300–01–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 April 19, 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: February 12, 2010.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Umbrella Clearance for Customer Satisfaction Surveys, Focus Groups, and Topic Surveys.

Frequency: Quarterly; Semiannually; Annually.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, local or Tribal Governments.

Reporting and Recordkeeping Hour Burden:

Responses: 60,300.

Burden Hours: 13,375.

Abstract: The Higher Education Amendments of 1998 established Federal Student Aid as the first Performance-Based Organization. One purpose of the PBO is to improve service to students and other participants in the student financial assistance programs authorized under title IV, including making those programs more understandable to students and their parents. To do that, FSA has committed to ensuring that all people receive service that matches or exceeds the best service available in the private sector. The legislation's requirements establish an ongoing need for FSA to be engaged in an interactive process of collecting information and using it to improve program services and processes.

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 4190. 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. 2010–3147 Filed 2–17–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 22, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*.

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, 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.

Dated: February 12, 2010.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: Application for Grants under the Predominantly Black Institutions Program.

Frequency: Annually.

Affected Public: Business or other for profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 30.

Burden Hours: 600.

Abstract: The Higher Education Opportunity Act of 2008 (HEOA) amended Title III, Part A of the Higher Education Act to include Section 318—The Predominantly Black Institutions (PBI) Program. Unlike the previous PBI Program (authorized by the College Cost Reduction and Access Act of 2007), which was competitive and focused on programs in the science, technology, engineering and mathematics (STEM) fields, the PBI program authorized under the HEOA is an institutional aid program and grants are based on a formula rather than being competitive. All institutions who qualify as PBIs and submit the required materials will receive a portion of the total appropriation based on a formula. The PBI Program makes grant awards to eligible colleges and universities to plan, develop, undertake and implement programs to enhance the institution's capacity to serve more low- and middle-income Black American students; to expand higher education opportunities for eligible students by encouraging college preparation and student persistence in secondary school and postsecondary education; and to strengthen the financial ability of the institution to serve the academic needs of these students. Allowable activities are numerous and include academic instruction, teacher education, faculty development, equipment purchase, construction and maintenance, and tutoring and counseling services. This information collection is necessary to comply with Section 318 of Title III, Part A of the HEA as amended.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4160. 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 the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to *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. 2010–3152 Filed 2–17–10; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: FR 75,5322 dated February 2, 2010.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:30 a.m., Monday, February 8, 2010.

CHANGES IN THE MEETING: Due to the closure of the Federal government the closed meeting was canceled.

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the meeting.)

Dated: February 12, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–3132 Filed 2–16–10; 11:15 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

Agency Holding the Meeting: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, February 22, 2010.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 12, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–3134 Filed 2–16–10; 11:15 am]

BILLING CODE 6210–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement

under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site *(http://www.fmc.gov)* or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011426–047.

Title: West Coast of South America Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; APL Co. Pte Ltd.; Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Frontier Liner Services, Inc.; Hamburg-Süd; King Ocean Services Limited, Inc.; Mediterranean Shipping Company, SA; Seaboard Marine Ltd.; South Pacific Shipping Company, Ltd.; and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes the geographic sections of the Agreement, adds new authority for the parties to form committees, and restates the Agreement.

Dated: February 12, 2010.

By order of the Federal Maritime Commission.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2010–3065 Filed 2–17–10; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 061 0172]

Roaring Fork Valley Physicians I.P.A.; Analysis of the Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before March 5, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Roaring Fork Valley, File No. 061 0172" to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/roaringforkconsent*) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://public.commentworks.com/ftc/roaringforkconsent.*) If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the "Roaring Fork Valley, File No. 061 0172" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Constance M. Salemi (202-326-2643), Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 3, 2010), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H,

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order ("proposed order") with Roaring Fork Valley Physicians I.P.A., Inc., ("RFV"). The agreement settles charges by the Federal Trade Commission that RFV violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by, among other things, orchestrating and implementing price-related agreements and concerted refusals to deal among competing physician members of RFV to maintain and raise the price at which RFV's physician members contract with payers.

The proposed order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way. Further, the proposed order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondent that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the complaint are summarized below.

RFV is a type of organization commonly referred to in the health care industry as an "independent practice association" because its members consist of independent physicians in solo and small group practices. RFV is controlled by and organized in substantial part for the pecuniary benefit of its approximately 85 physician members. RFV is located in Garfield County, Colorado.

The complaint alleges that since at least 2003 RFV, although purporting to use a messenger model, negotiated price-related terms on behalf of its members for the purpose of increasing and maintaining the rates for services provided by RFV's otherwise competing physician members. RFV increased rates by demanding that payers include automatic annual cost of living adjustments (COLAs) in their contracts. RFV held lengthy bargaining sessions with payers to pressure them into including COLAs and other terms in their contracts. To protect the automatic increases, RFV refused to messenger contracts with Medicare-based rates because of their potential to decline. RFV feared Medicare-based rates would decline over time.

The complaint also alleges that since at least 2003 RFV and its members engaged in concerted refusals to deal with payers except upon the collectively-agreed upon contract terms demanded during negotiations. RFV organized concerted refusals to deal by requiring payers contracting with RFV to persuade 80 percent of all RFV members and 50 percent of each RFV specialty ("80/50 rule") to accept their contracts. After a payer satisfied the 80/50 rule, RFV signed, administered and bound all the members to the payer's contract. RFV refused to messenger the contract of a payer who failed to satisfy the 80/50 rule. RFV reinforced the 80/50 rule by refusing to provide unsuccessful payers with the identity of the members willing to accept their contracts. RFV's refusal prevented the unsuccessful payers from contracting directly with individual physicians willing to accept the proposed contract terms. RFV also reinforced its concerted refusals to deal by encouraging members to only use the IPA for their contracting. RFV targeted its concerted refusals at national payers and warned members against contracting with them. Most national payers attempting to contract with RFV could not satisfy the 80/50 rule. RFV members did not engage in any efficiency-enhancing integration of their practices sufficient to justify the collectively negotiation or the concerted refusals to deal. Accordingly, the complaint alleges that RFV violated Section 5 of the FTC Act.

The Proposed Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits RFV from entering into or facilitating any agreement between or among any physicians: (1) to negotiate with payers on any physician's behalf; (2) to deal, refuse to deal, or threaten to refuse to deal with payers; (3) on any terms on which a physician is willing to deal with any payer; or (4) not to deal individually with any payer, or not to deal with any payer other than through RFV.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits RFV from facilitating exchanges of information between physicians concerning any physician's willingness to deal with a payer or the terms or conditions, including price terms, on which the physician is willing to deal with a payer. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes RFV from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing providers' collective conduct with health-care purchasers, Paragraph II excludes certain kinds of agreements from its prohibitions. First, RFV is not precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, such as a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." The arrangement, however, must not restrict the ability of, or facilitate the refusal of, physicians who participate in it to contract with payers outside of the arrangement.

As defined in the proposed order, a "qualified risk-sharing joint arrangement" possesses two characteristics. First, all physician participants must share substantial financial risks through the arrangement, such that the arrangement creates incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A "qualified clinically-integrated joint arrangement," on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed

order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Paragraph III, for three years, requires RFV to notify the Commission before it enters into any arrangements to act as a messenger or an agent on behalf of any physicians, with payers regarding contracts. Paragraph IV sets out the information necessary to make the notification complete.

Paragraph V, for three years, requires RFV to notify the Commission before participating in contracting with health plans on behalf of either a qualified risk-sharing or a qualified clinically-integrated joint arrangement. Paragraph VI sets out the information necessary to satisfy the notification requirement.

Paragraph VII imposes other notification obligations on RFV and requires the termination of certain contracts that were entered into illegally. Paragraph VII.A require RFV to distribute the complaint and order to (1) physicians who have participated in RFV since 2001; (2) to various past and current personnel of RFV; and (3) to payers with whom RFV has dealt since 2001. Paragraph VII.B requires RFV, at any payer's request and without penalty, to terminate its existing contracts with the payer for the provision of physician services. Paragraph VII.B allows certain contracts currently in effect to be extended at the written request of the payer no longer than one year from the date that the order becomes final. Paragraph VII.C requires RFV to distribute payer requests for contract termination to physicians who participate in the contract Paragraph VII.D requires RFV for three years, to provide new members, personnel, and payers not previously receiving a copy, a copy of the Order and the Complaint. Paragraph VII.D also requires RFV to publish annually a copy of the Order and the Complaint in its newsletter.

Paragraphs VIII, IX, and X impose various obligations on RFV to report or provide access to information to the Commission to facilitate the monitoring of compliance with the order. Finally, Paragraph XI provides that the order will expire in 20 years.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 2010–3033 Filed 2–17–10: 7:19 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Evaluation of Medicare Personal Health Records Choice Pilot—OMB No. 0990–NEW—Office of the Assistant Secretary for Planning and Evaluation.

Abstract: Since 2003, HHS has worked toward the goal of establishing electronic, longitudinal health records for Americans that can be accessed safely, across the Internet, and anytime and anywhere by patients, doctors, and other health care providers. In addition to electronic health records (EHRs), where health information is created, stored and accessed mainly by health care organizations and practitioners, personal health records (PHRs), electronic, patient-centered applications and services, are gaining increasing recognition and momentum. Current PHR business models represent broad and varied uses, from disease management to health promotion, with sponsors consisting of commercial vendors, heath plans, employers, and health care providers. We know very little about why consumers, and specifically Medicare beneficiaries, elect to use PHRs and what functionality they want from a PHR. Understanding these needs will be critical if HHS and the Centers for Medicare & Medicaid Services (CMS) are to pursue PHRs as a tool to empower consumers to manage their health and have the capability to link to their provider's EHR.

In January 2009, CMS launched a new program in Arizona and Utah, the *Medicare PHR Choice Pilot* (PHRC). This pilot encourages Medicare fee-for-service (FFS) beneficiaries to take advantage of the newer, more robust Internet-based tools for tracking their health and health care services. This is the first pilot to offer a choice of PHRs to Medicare FFS beneficiaries, including PHRs with additional functionality and direct data linkages for the consumers. Pilot participants can choose among GoogleHealth™, NoMoreClipboard™, PassportMD™, and HealthTrio™, competitors in the open PHR market.

HHS' Office of the Assistant Secretary for Planning and Evaluation (ASPE) has contracted with Mathematica Policy Research to conduct an evaluation of this pilot program, including a PHR enrollee user satisfaction survey to assess barriers, facilitators, and satisfaction with the PHRs. A self-administered paper-and-pencil instrument will be the primary data collection mode for the PHRC user satisfaction survey, with telephone followup for mail nonrespondents. The one-time data collection field period is expected to be 12 weeks in Fall 2010.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Self-administered questionnaire	Medicare beneficiaries	500	1	25/60	208
Total		500	.....	.....	208

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–3071 Filed 2–17–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0074]

Agency Information Collection Activities; Proposed Collection; Comment Request; Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed extension of an existing collection of information pertaining to registration and product listing for owners and operators of domestic tobacco product establishments and to listing of ingredients in tobacco products under the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act).

DATES: Submit written or electronic comments on the collection of information by April 19, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.Capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products (OMB Control Number 0910–0650)—Extension

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by, among other things, adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Section 905(b) of the act (21 U.S.C. 395(b)), as amended by the Tobacco Control Act, requires that "every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products * * *" register with FDA the name, places of business, and all establishments owned or operated by that person. Every person must register by December 31 of each year. Section 905(i)(1) of the act, as amended by the Tobacco Control Act, requires that all registrants "shall, at the time of registration under any such subsection, file with [FDA] a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution," along with certain accompanying consumer information, such as all labeling and a representative sampling of advertisements. Section 904(a)(1) of the act, as amended by the Tobacco Control Act, requires each tobacco product manufacturer or importer, or agent thereof, to submit "a listing of all ingredients, including tobacco, substances, compounds, and additives that are * * * added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand." Since the Tobacco Control act was enacted on June 22, 2009, the information required under section 904(a)(1) must be submitted to FDA by December 22,

2009, and include the ingredients added as of the date of submission. Section 904(c) of the act also requires submission of information whenever additives, or the quantities of additives, are changed.

FDA issued guidance documents on both (1) Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments (November 12, 2009, 74 FR 58298) and (2) Listing of Ingredients in Tobacco Products (December 1, 2009, 74 FR 62795) to assist persons making such submissions to FDA under the Tobacco Control Act. While electronic submission of registration and product listing information and ingredient listing information are not required, FDA is strongly encouraging electronic submission to facilitate efficiency and timeliness of data management and collection. To that end, FDA designed the eSubmitter application to streamline the data entry process for registration and product listing and for ingredient listing. This tool allows for importation of large quantities of structured data, attachments of files (e.g., in portable document format (PDFs) and certain media files), and automatic acknowledgement of FDA's receipt of submissions. FDA also developed paper forms (FDA Form 3742—Registration and Listing for Owners and Operators of Domestic Tobacco Product Establishments and FDA Form 3743—Listing of Ingredients in Tobacco Products) as an alternative submission tool. Both the eSubmitter application and the paper forms can be accessed at *http://www.fda.gov/tobacco*.

On September 1, 2009 (74 FR 45219), FDA published notice in the **Federal Register** announcing that a proposed collection of information had been submitted to OMB for emergency processing under the Paperwork Reduction Act of 1995. On September 15, 2009 (74 FR 47257), FDA published a notice correcting the length of the comment period, keeping it open until October 1, 2009. On October 13, 2009 (74 FR 52495), FDA published a notice reopening the comment period until October 26, 2009. Based on comments indicating that the burden estimates were too low, FDA has adjusted its original burden estimates. FDA has adjusted its burden estimate for registration and product listing for owners and operators of domestic establishments under section 905 of the act from 0.75 hours per response to 3.75 hours per response. FDA has adjusted its burden estimate for listing of ingredients under section 904 of the act from 0.75 hours per response to 3.0 hours per response. FDA also decreased the number of respondents for listing of ingredients under section 904 from 100,000 to 11,000 in response to comments that this estimate was too high. FDA also added the activity of applying for a Dun and Bradstreet D-U-N-S number to the burden of this information collection for those who chose to use eSubmitter.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Respondents	Hours per Response	Total Hours
Registration and Product Listing for Owners and Operators of Domestic Establishments	100,000	1	100,000	3.75	375,000
Listing of Ingredients	11,000	1	11,000	3.0	33,000
Obtaining a Dun and Bradstreet D-U-N-S Number	1,550	1	1,550	0.5	775
Total	112,550		112,550		408,775

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3031 Filed 2–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0434]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Humanitarian Device Exemption Holders, Institutional Review Boards, Clinical Investigators, and Food and Drug Administration Staff: Humanitarian Device Exemption Regulation: Questions and Answers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 22, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title Guidance for Humanitarian Device Exemption Holders, Institutional

Review Boards, Clinical Investigators, and Food and Drug Administration Staff: Humanitarian Device Exemption Regulation: Questions and Answers; Availability. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Humanitarian Device Exemption Holders, Institutional Review Boards , Clinical Investigators, and Food and Drug Administration Staff: Humanitarian Device Exemption Regulation: Questions and Answers (OMB Control Number 0910–NEW)—Extension

Title III of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85) amended chapter V of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351 *et seq.*) by inserting section 515A, Pediatric Uses of Devices (21 U.S.C. 360e–1).

This new provision requires that new applications under section 520(m) of the act (21 U.S.C. 360j(m)) include both a description of any pediatric subpopulation that suffer from: (1) A disease or condition that the device is intended to treat, diagnose, or cure and (2) the number of affected pediatric patients.

Title III of FDAAA also amended section 520(m) of the act as follows:

Section 520(m)(6)(A)(ii) provides that the Secretary of Health and Human Services will assign an annual distribution number (ADN) for devices indicated for use in a pediatric population or in a pediatric subpopulation. The ADN shall be based on the following information in a humanitarian device exemption (HDE) application: (1) The number of individuals affected by the disease or condition that such device is intended to treat, diagnose, or cure and of that number; (2) the number of individuals likely to use the device and (3) the number of devices reasonably necessary to treat such individuals.

Section 520(m)(6)(A)(iii) provides that an HDE holder immediately notify the agency if the number of devices distributed during any calendar year exceeds the ADN.

Section 520(m)(6)(C) provides that an HDE holder may petition to modify the ADN if additional information on the number of individuals affected by the disease or condition arises.

In the **Federal Register** of August 5, 2008 (73 FR 45460), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA had previously published a 30-day notice on September 30, 2009 (74 FR 50214) and is republishing this 30-day notice to provide a more descriptive response to the comments received in response to the August 5, 2008, notice.

FDA received 7 letters in response to the August 5, 2008, notice. Six of the seven comments were substantive, each containing several comments regarding many of the 66 questions contained in the guidance. The comments and the agency's responses are discussed in the following paragraphs:

(Comment) Several of the comments sought clarification regarding when the Annual Distribution Number (ADN) reporting requirement applied.

(Response) A paragraph was added to clarify that the ADN relates only to those devices that are on the market through the HDE process for a disease or condition that occurs in pediatric patients or in a pediatric subpopulation. The response to Question 27 was augmented to include the phrase "independent Institutional Review Board (IRB)" to clarify that not all IRBs are internal bodies within a hospital or clinic.

(Comment) Question 31 was augmented to describe the different reporting requirements for manufacturers and for user facilities.

(Response) Manufacturers must submit reports to FDA and the "IRB of record" whenever a humanitarian use device (HUD) may have caused or contributed to a death or serious injury, or has malfunctioned and would be likely to cause or contribute to a death or serious injury if the malfunction were to recur (§§ 803.50 and 814.126(a) (21 CFR 803.50 and 814.126(a))). User facilities must submit reports to FDA, the "IRB of record" and the manufacturer whenever a HUD may have caused or contributed to a death. They must also submit reports to FDA and the "IRB of record" if the manufacturer is unknown, whenever a HUD may have caused or contributed to a serious injury (§§ 803.30 and 814.126(a)).

(Comment) Some of the comments related to the placement of information in the draft guidance.

(Response) In Question 40, the statement: "If a HUD is being investigated in an Investigational Device Exemption, (IDE) Study for a different indication, does it impact the number of allowable patients under the HDE" was redesignated as question 35 and moved from the "IRB Section" of the guidance and placed in the section, "After FDA Approves an HDE" because it did not pertain directly to IRBs.

(Comment) Changes were made to the section, "The Role of Institutional Review Boards (IRBs)," question 37 specifically, in order to clarify the distinction between the terms "use," "HUD," and "investigational use/clinical investigation" of a HUD.

(Response) Specifically, FDA clarified that the term "use" in the guidance, when unmodified, refers to the use of a HUD according to its approved labeling and indication(s). If a HUD is being used in a clinical investigation (i.e., collection of safety and effectiveness data), whether for its HDE-approved indications or for a different indication, then this document refers to "investigational use" or "clinical investigation" of the HUD. Finally in addition to adding clarifying information, a decision tree was also added to the guidance for ease of reference for IRBs.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the Federal Food, Drug, and Cosmetic Act	No. of Respondents	Annual Frequency per Response	Total Annual Respondents	Hours per Response	Total Hours
515A(a)(2)	5	1	5	100	500
520(m)(6)(A)(ii)	3	1	3	50	150

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Section of the Federal Food, Drug, and Cosmetic Act	No. of Respondents	Annual Frequency per Response	Total Annual Respondents	Hours per Response	Total Hours
520(m)(6)(A)(iii)	1	1	1	100	100
520(m)(6)(C)	5	1	5	100	500
Total					1,250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on the number of original HDE applications that the Center for Devices and Radiological Health (CDRH) received for the period October 1, 2004, through September 30, 2007. During that time, CDRH received 16 original HDE applications or about 5 per year.

FDA estimates that for each year, CDRH will receive five HDE applications and that three of these applications will be indicated for pediatric use. One HDE holder will notify the agency that the number of devices distributed in the year has exceeded the ADN and five HDE holders will petition to have the ADN modified due to additional information on the number of individuals affected by the disease of condition.

The draft guidance refers also to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A, B, and C, have been approved under OMB control number 0910–0231; the collection of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 814, subpart H, have been approved under OMB control number 0910–0332; and the collection of information requirements in 21 CFR 10.30 have been approved under OMB control number 0910–0183.

Dated: February 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3030 Filed 2–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0512]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Antimicrobial Animal Drug Distribution Reports Under Section 105 of the Animal Drug User Fee Amendments of 2008

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 22, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910—NEW and title "Antimicrobial Animal Drug Distribution Reports Under Section 105 of the Animal Drug User Fee Amendments of 2008." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Antimicrobial Animal Drug Distribution Reports Under Section 105 of the Animal Drug User Fee Amendments of 2008—(OMB Control Number 0910–NEW)—Extension

Section 105 of the Animal Drug User Fee Amendments of 2008 (ADUFA) amended section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b) to require that the sponsor of each new animal drug that contains an antimicrobial agent submit an annual report to FDA on the amount of each antimicrobial active ingredient in the drug that is sold or distributed for use in food-producing animals, including information on any distributor-labeled product. The legislation was enacted to address the problem of antimicrobial resistance, and to help ensure that FDA has the necessary information to examine safety concerns related to the use of antibiotics in food-producing animals (154 Congressional Record H7534).

Each report must specify: (1) The amount of each antimicrobial active ingredient by container size, strength, and dosage form; (2) quantities distributed domestically and quantities exported; and (3) a listing of the target animals, indications, and production classes that are specified on the approved label of the product.

The first report must be submitted not later than March 31, 2010. The report must cover the period of the preceding calendar year and include separate information for each month of the calendar year. The reports required under section 105 of ADUFA are required to be separate from periodic drug experience reports that are required under § 514.80(b)(4) (21 CFR § 514.80(b)(4) (OMB Control No. 0910–0284).

In the **Federal Register** of October 26, 2009 (74FR 55046), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received comments from two organizations. Both commenters supported the information collection and stated that the data to be collected would be useful in addressing

the problem of antimicrobial resistance. However, both comments suggested that more extensive measures are necessary to address this problem. For example, one of the comments stated that the practical utility of the data would be broadened in conjunction with a larger federal monitoring effort requiring manufacturers to report uses of their products in all food animal products, which would involve collecting data from end users such as veterinarians and animal owners. The other comment stated that the information collection would not be sufficient to show how much of each class of antimicrobial is sold for use in different types of food animals, and recommended that FDA collect distribution data on medicated feeds for this purpose because feeds are specific to animal species and class. The comment also recommended that FDA require all data to be submitted through a Web-based application directly into a form created by FDA, and that FDA create a publically accessible database that allows searches by drug class, dose form, and marketing status. FDA has considered the comments, but at this time we have decided to only require the submission of information that is expressly required to be submitted by section 512(l)(3) of the act. We are pursuing notice and comment rulemaking to codify these requirements, during which time we will assess any additional data requirements.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FD&C Act Section 512(l)(3)	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Capital Cost
Annual Reports for Sponsors with Active Applications	29	6.7	194	80	15,520	$107,880
Annual Reports for Sponsors with Inactive Applications	23	4.0	92	1	92	
Total					15,612	$107,880

[1] There are no operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

FD&C Act Section 512(l)(3)	No. of Respondents	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
All Applicants	34	1	34	2	68
Total					68

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden estimates, including the total number of annual responses, are based on the number of sponsors and approved applications for antimicrobial drug products in food-producing animals. The annual frequency of responses was calculated as the total annual responses divided by the number of respondents.

The agency arrived at the estimates for reporting as follows: There are 34 sponsors with approved applications for antimicrobial drugs for food-producing animals. There are 29 animal drug manufacturers with 194 approved applications for antimicrobial drugs for food-producing animals for which the drugs are being actively marketed (active applications). Additionally, there are 93 approved applications for antimicrobial drugs for food-producing animals for which the drugs are not being marketed (inactive applications), owned by 23 animal drug manufacturers.

Regarding the reporting burden associated with the collection of information, FDA believes that the large majority of the burden will be incurred by industry in the first year in which reporting is required to design a report that meets the requirements of section 512(l)(3) of the act. The agency has estimated this burden at 80 hours per applicant with active applications. The agency has factored into this estimate the time it will take industry to identify and locate the necessary information within existing records, and to develop a report that complies with section 512(l)(3) of the act. Once this has been accomplished, FDA believes that the process for producing reports in subsequent years will essentially be automated, and that it will take approximately 3 hours to run a report that satisfies the act's requirements. For sponsors of approved applications that are inactive (i.e., the approved drug is not being marketed), the sponsor would only have to submit a report stating that the drug is not being marketed, which FDA estimates will take approximately 1 hour.

FDA has developed a form to report the information required by section 512(l)(3) of the act. FDA plans to make the form available to animal drug manufacturers through FDA's Web site, however, use of the form would be entirely voluntary. The form contains various fields for information, including the drug manufacturer's name, NADA number, active ingredient name, National Drug Code number, container size, potency, and the number of units sold by month.

The animal drug manufacturers can meet the statutory requirements by submitting their information in paper format using either the FDA-provided form or one of their own design or by designing their own electronic form whose results could be submitted to the agency on a compact disc or on paper. The cost to animal drug sponsors for gathering the necessary information for report design and preparation or for completing FDA's form in the first year of reporting is $107,880 (29 active sponsors x 80 hours x $46.50 per hour = $107,880). This is a one-time cost for a computer or mathematic employees to design and prepare a report that satisfies

the statutory requirements of section 512(l)(3) of the act.[1] For subsequent years, the preparation of the report should take approximately 3 hours. Thus, the total cost in subsequent years would be $139.50.

Regarding the recordkeeping burden associated with this collection of information, FDA believes that most of the necessary information for the annual report required to be submitted under section 512(l)(3) of the act is already collected and maintained by animal drug manufacturers under existing requirements.

Animal drug manufacturers are already required to maintain distribution records for their drug products to comply with FDA's current good manufacturing practice regulations under § 211.196 (21 CFR § 211.96) (OMB Control No. 0910–0139), and to comply with regulations for periodic drug experience reports under § 514.80(b)(4)(i) (OMB Control No. 0910–0284). Therefore, FDA believes that manufacturers of animal drugs already possess the computers, software, and additional equipment necessary to collect and maintain the necessary records and to make reports.

Section 512(l)(3) of the act differs from § 514.80(b)(4)(i) in that it requires that records include separate information for each month of the calendar year. Under § 211.196 (OMB Control No. 0910–0139), manufacturers currently are required to maintain distribution records that include the dosage form and date the drug is distributed. Additionally, FDA believes that manufacturers already keep detailed records of the dates when antimicrobial drugs are distributed for marketing and recall purposes from which monthly reports can be prepared as part of their usual and customary practice. However, FDA estimates an additional hourly burden required by section 512(l)(3) of the act as shown in table 2 of this document.

Dated: February 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3029 Filed 2–17–10; 8:45 am]

BILLING CODE 4160–01–S

[1] BLS Occupation Employment and Wages, May 2006, by occupation, for all industries (*http://www.bls.gov*). Wage ($46.50) includes mean hourly wage of $33.22 for Standard Occupational Classification 15–0000, computer and mathematics occupations, all industries; we add 40 percent to account for benefits.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0390] (formerly Docket No. 2004N–0503)

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance on Consultation Procedures: Foods Derived From New Plant Varieties

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's consultation procedures for foods derived from new plant varieties, including the information collection provisions in the guidance entitled "Consultation Procedures: Foods Derived From New Plant Varieties," and in Form FDA 3665 entitled "Final Consultation For Food Derived From a New Plant Variety (Biotechnology Final Consultation)," which developers may use to prepare the final consultation in a standard format.

DATES: Submit written or electronic comments on the collection of information by April 19, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. In the **Federal Register** of November 24, 2004 (69 FR 68379), FDA published a previous 60-day notice requesting public comment on this proposed collection of information. FDA is publishing this notice to update comments. Comments previously submitted to the Division of Dockets Management do not need to be resubmitted because all such comments that are responsive to the comment request will be summarized and responded to in the Information Collection Request, i.e. 30-day notice, submitted to OMB.

Guidance on Consultation Procedures: Foods Derived From New Plant Varieties

Since 1992, when FDA issued its Statement of Policy: Foods Derived from New Plant Varieties (the 1992 policy) (57 FR 22984, May 29, 1992), FDA has encouraged developers of new plant varieties, including those varieties that are developed through biotechnology, to consult with FDA during the plant development process to discuss possible scientific and regulatory issues that might arise. In the 1992 policy, FDA explained that, under the Federal Food, Drug, and Cosmetic Act (the act), developers of new foods (in this

document food refers to both human food and animal feed) have a responsibility to ensure that the foods they offer to consumers are safe and are in compliance with all requirements of the act (57 FR 22984 at 22985).

FDA has long regarded it to be a prudent practice for producers who use biotechnology in the manufacture or development of foods and food ingredients to work cooperatively with FDA to ensure that products derived through biotechnology are safe and comply with all applicable legal requirements. Consequently, FDA instituted a voluntary consultation process with industry. The guidance on Consultation Procedures: From New Plant Varieties (originally published in 1996 and revised October 1997; the updated version is available on FDA's Web site at *http://www.fda.gov/FoodGuidances*) fosters communication by encouraging developers to submit to FDA their evaluation of the food safety of their new plant variety. Such communication will help to ensure that any potential food safety issues regarding a new plant variety are resolved during development, and will help to ensure that all market entry decisions by the industry are made consistently and in full compliance with the standards of the act.

Description of Respondents: Respondents to this collection of information include developers of new plant varieties intended for food use.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Initial consultation	None	20	2	40	4	160
Final consultation	FDA 3665	12	1	12	150	1,800
Total						1,960

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

A. Initial Consultations

Initial consultations are generally a one-time burden, although a developer might return more than once to discuss additional issues before submitting a final consultation. As noted in its guidance to industry, FDA encourages developers to consult early in the development phase of their products, and as often as necessary. Historically, firms developing a new bioengineered plant variety intended for food use have generally initiated consultation with FDA early in the process of developing such a variety, even though there is no legal obligation for such consultation. These consultations have served to make FDA aware of foods and food ingredients before these products are distributed commercially, and have provided FDA with the information necessary to address any potential questions regarding the safety, labeling, or regulatory status of the food or food ingredient. As such, these consultations have provided assistance to both industry and the agency in exercising their mutual responsibilities under the act.

Generally, for an initial consultation, a developer requests a meeting by sending FDA a letter with an agenda. A mutually convenient time is arranged and the developer comes to discuss their product. In preparation for a meeting, a developer might prepare written materials or a slide presentation to discuss their product under development. A meeting between the developer and FDA typically lasts between 1 and 2 hours. As a result of such a meeting, FDA establishes a file called a biotechnology notification file, or BNF, to collect all documentation and communication regarding the bioengineered plant. For example, FDA typically places information such as the developer's letter, agenda, and any written materials (such as copies of a slide presentation) in a BNF, as well as any memorandum FDA prepares as a record of the meeting. FDA has not issued any recommendations as to the format for these types of materials (e.g., there is no form associated with requesting a meeting).

Depending on the introduced trait, the experience the developer has had with the kind of modification being considered, and their familiarity with the consultation procedures, a developer might choose to do a final consultation without an initial consultation.

B. Final Consultations

Final consultations are a one-time burden. At some stage in the process of research and development, a developer will have accumulated the information that the developer believes is adequate to ensure that food derived from the new plant variety is safe and that it demonstrates compliance with the relevant provisions of the act. The developer will then be in a position to conclude any ongoing consultation with FDA. The developer submits to FDA a summary of the safety and nutritional assessment that has been conducted about the bioengineered food that is intended to be introduced into commercial distribution. FDA evaluates the submission to ensure that all potential safety and regulatory questions have been addressed. FDA has recently developed a form that prompts a developer to include certain elements in the final consultation in a standard format. New Form FDA 3665 is entitled "Final Consultation For Food Derived From a New Plant Variety (Biotechnology Final Consultation)." The form, and elements that would be prepared as attachments to the form, can be submitted in electronic format.

The summary information of the safety and nutritional assessment for a new plant variety submitted to FDA (on the form and in attachments to the form) includes the following information:

- The name of the bioengineered food and the crop from which it is derived;
- A description of the various applications or uses of the bioengineered food, including animal feed uses;
- Information concerning the sources, identities, and functions of introduced genetic material;
- Information on the purpose or intended technical effect of the modification, and its expected effect on the composition or characteristic properties of the food or feed;
- Information concerning the identity and function of expression products encoded by the introduced genetic material, including an estimate of the concentration of any expression product in the bioengineered crop or food derived therefrom;
- Information regarding any known or suspected allergenicity and toxicity of expression products and the basis for

concluding that foods containing the expression products can be safely consumed;

- Information comparing the composition or characteristics of the bioengineered food to that of food derived from the parental variety or other commonly consumed varieties of the same crop with special emphasis on important nutrients, and toxicants that occur naturally in the food;
- A discussion of the available information that addresses whether the potential for the food derived from a bioengineered plant to induce an allergic response has been altered by the genetic modification; and
- Any other information relevant to the safety and nutritional assessment of the bioengineered food.

In 2001, FDA contacted 5 firms that had made 1 or more biotechnology consultation submissions under the 1996 procedures. FDA asked each of these firms for an estimate of the hourly burden to prepare a submission under the voluntary biotechnology consultation process. Three of these firms subsequently provided the requested information. Based on this information, FDA estimated that the average time to prepare a submission for final consultation under the 1996 procedures is 150 hours (69 FR 68379 at 68381). The availability of the form, and the opportunity to provide the information in electronic format, could reduce this estimate. However, as a conservative approach for the purpose of this analysis, FDA is assuming that the availability of the form and the opportunity to submit the information in electronic format will have no effect on the average time to prepare a submission for final consultation under the 1996 procedures.

Dated: February 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3028 Filed 2–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0070]

Agency Information Collection Activities; Proposed Collection; Comment Request; Agreement for Shipment of Devices for Sterilization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements relating to shipment of nonsterile devices that are to be sterilized elsewhere or are shipped to other establishments for further processing, labeling, or repacking.

DATES: Submit written or electronic comments on the collection of information by April 19, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Agreement for Shipment of Devices for Sterilization—21 CFR 801.150(e) (OMB Control Number 0910–0131)—Extension

Under sections 501(c) and 502(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(c) and 352(a)), nonsterile devices that are labeled as sterile but are in interstate transit to a facility to be sterilized are adulterated and misbranded. FDA regulations in § 801.150(e) (21 CFR 801.150(e)) establish a control mechanism by which firms may manufacture and label medical devices as sterile at one establishment and ship the devices in interstate commerce for sterilization at another establishment, a practice that facilitates the processing of devices and is economically necessary for some firms. Under § 801.150(e)(1), manufacturers and sterilizers may sign an agreement containing the following: (1) Instructions for maintaining accountability of the number of units in each shipment; (2) acknowledgment that the devices that are nonsterile are being shipped for further processing; and (3) specifications for sterilization processing.

This agreement allows the manufacturer to ship misbranded products to be sterilized without initiating regulatory action and provides FDA with a means to protect consumers from use of nonsterile products.

During routine plant inspections, FDA normally reviews agreements that must be kept for 2 years after final shipment or delivery of devices (§ 801.150(a)(2)).

The respondents to this collection of information are device manufacturers and contact sterilizers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801.150(e)	90	20	1,800	4	7,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours	Total Operating & Maintenance Costs
801.150(a)(2)	90	20	1,800	0.5	900	$55,800

[1] There are no capital costs associated with this collection of information.

FDA's estimate of the reporting burden is based on actual data obtained from industry over the past several years where there are approximately 90 firms subject to this requirement. It is estimated that each of these firms on the average prepares 20 written agreements each year. This estimate varies greatly, from 1 to 100, because some firms provide sterilization services on a part time basis for only one customer while others are large facilities with many customers. The average time required to prepare each written agreement is estimated to be four hours. This estimate varies depending on whether the agreement is the initial agreement or an annual renewal, on the format each firm elects to use, and on the length of time required to reach agreement. The estimate applies only to those portions of the written agreement that pertain to the requirements imposed by this regulation. The written agreement generally also includes contractual agreements that are a customary and usual business practice. On the average, the total annual recordkeeping burden is 7,200 hours (90 firms x 20 agreements x 4 hours).

The recordkeeping requirements of § 801.150(a)(2) consist of making copies and maintaining the actual reporting requests which were required under the reporting section of this collection. To fulfill this requirement, FDA estimates it will take about 30 minutes to copy each package, for a total of 900 recordkeeping hours and includes $55,800 operating and maintenance costs.

Dated: February 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3027 Filed 2–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0055]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on How to Submit a Protocol Without Data in Electronic Format to the Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for the information collection activity "Guidance for Industry on How to Submit a Protocol Without Data in Electronic Format to the Center for Veterinary Medicine."

DATES: Submit written or electronic comments on the collection of information by April 19, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on "How to Submit a Protocol Without Data in Electronic Format to the Center for Veterinary Medicine"—21 CFR 58.120 and 514.117(b) (OMB Control Number 0910–0524—Extension)

Protocols for nonclinical laboratory studies (safety studies), are required under 21 CFR 58.120 for approval of new animal drugs. Protocols for adequate and well-controlled effectiveness studies are required under 21 CFR 514.117(b). Upon request by the animal drug sponsors, the Center for Veterinary Medicine (CVM) reviews protocols for safety and effectiveness studies. CVM and the sponsor consider this to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application. The establishment of a process for acceptance of the electronic submission of protocols for studies conducted by sponsors in support of new animal drug applications is part of CVM's ongoing initiative to provide a method for paperless submissions. Sponsors may submit protocols to CVM in paper format. CVM's guidance on how to submit a study protocol permits sponsors to submit a protocol without data as an e-mail attachment via the Internet. Further, this guidance also electronically implements provisions of the Government Paperwork Elimination Act (GPEA). The GPEA required Federal agencies, by October 21, 2003, to provide the following: (1) The option of electronic maintenance, submission, or disclosure of information, if practicable, as a substitution for paper and (2) the use and acceptance of electronic signatures, where applicable. FDA Form 3536 is used to facilitate the use of electronic submission of protocols. This collection of information is for the benefit of animal drug sponsors, giving them the flexibility to submit data for review via the Internet.

The likely respondents are sponsors of new animal drug applications.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/FDA Form 3536	No. of Respondents	Annual Frequency per Response	Total Annual Responses[2]	Hours per Response	Total Hours
514.117(b) and 58.120	40	1.8	72	.20	14.4

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Electronic submissions received between January 1, 2008, and December 31, 2008.

The number of respondents in table 1 of this document is the number of sponsors registered to make electronic submissions (40). The number of total annual responses is based on a review of the actual number of such submissions made between July 1, 2005, and June 30, 2006, (72 x .20 hours per response = 14.4 total hours).

Dated: February 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3026 Filed 2–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0062]

Agency Information Collection Activities; Proposed Collection; Comment Request; Exception From General Requirements for Informed Consent

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a new exception from the general requirements for informed consent to permit the use of investigational in vitro diagnostic devices to identify chemical, biological, radiological, or nuclear agents without informed consent in certain circumstances.

DATES: Submit written or electronic comments on the collection of information by April 19, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Exception From General Requirements for Informed Consent—21 CFR 50.23 (OMB Control Number 0910–0586)—Extension

In the **Federal Register** of June 7, 2006 (71 FR 32827), FDA issued an interim final rule (hereinafter referred to as the June 7, 2006, interim final rule) to amend its regulations to establish a new exception from the general requirements for informed consent, to permit the use of investigational in vitro diagnostic devices to identify chemical, biological, radiological, or nuclear agents without informed consent in certain circumstances. The agency took this action because it was concerned that, during a potential terrorism event or other potential public health emergency, delaying the testing of specimens to obtain informed consent may threaten the life of the subject. In many instances, there may also be others who have been exposed to, or who may be at risk of exposure to, a dangerous chemical, biological, radiological, or nuclear agent, thus necessitating identification of the agent as soon as possible. FDA created this exception to help ensure that individuals who may have been exposed to a chemical, biological, radiological, or nuclear agent are able to benefit from the timely use of the most appropriate diagnostic devices, including those that are investigational.

Section 50.23(e)(1) (21 CFR 50.23(e)(1)) provides an exception to the general rule that informed consent is required for the use of an investigational in vitro diagnostic device. This exception will apply to those situations in which the in vitro investigational diagnostic device is used to prepare for and respond to a chemical, biological, radiological, or nuclear terrorism event or other public health emergency, if the investigator and an independent licensed physician make the determination and later certify in writing that: (1) There is a life-threatening situation necessitating the use of the investigational device; (2) obtaining informed consent from the subject is not feasible because there was no way to predict the need to use the investigational device when the specimen was collected and there is not sufficient time to obtain consent from the subject or the subject's legally authorized representative; and (3) no satisfactory alternative device is available. Under the June 7, 2006, interim final rule these determinations are made before the device is used, and the written certifications are made within 5 working days after the use of the device. If use of the device is necessary to preserve the life of the subject and there is not sufficient time to obtain the determination of the independent licensed physician in advance of using the investigational device, § 50.23(e)(2) provides that the certifications must be made within 5 working days of use of the device. In either case, the certifications are submitted to the Institutional Review Board (IRB) within 5 working days of the use of the device.

Section 50.23(e)(4) provides that an investigator must disclose the investigational status of the device and what is known about the performance characteristics of the device at the time test results are reported to the subject's health care provider and public health authorities, as applicable. Under the June 7, 2006, interim final rule, the investigator provides the IRB with the information required by § 50.25 (21 CFR 50.25) (except for the information described in § 50.25(a)(8)) and the procedures that will be used to provide this information to each subject or the subject's legally authorized representative.

FDA estimates the burden of the collection of information as follows:

TABLE 1.—ESTIMATED AVERAGE ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency of Responses	Total Annual Responses	Hours per response	Total hours
50.23(e)(1)(2)	150	3	450	2	900
50.23(e)(4)	150	3	450	1	450
Total					1350

[1] There are no capital costs or operating and maintenance costs associated with this collection of information

From its knowledge of the industry, FDA estimates that there are approximately 150 laboratories that could perform testing that uses investigational in vitro diagnostic devices to identify chemical, biological, radiological, or nuclear agents. FDA estimates that in the United States each year there are approximately 450 naturally occurring cases of diseases or conditions that are identified in Centers for Disease Controls's list of category "A" biological threat agents. The number of cases that would result from a terrorist event or other public health emergency is uncertain. Based on its knowledge of similar types of submissions, FDA estimates that it will take about 2 hours to prepare each certification.

Based on its knowledge of similar types of submissions, FDA estimates that it will take about 1 hour to prepare a report disclosing the investigational status of the in vitro diagnostic device and what is known about the performance characteristics of the device and submit it to the health care provider and, where appropriate, to public health authorities.

This interim final rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 50.25 have been approved under 0910–0130.

Dated: February 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3025 Filed 2–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0496]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Tobacco Product Standard on Flavored Cigarettes

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 22, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0647. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Tobacco Product Standard on Flavored Cigarettes—(OMB Control Number 0910–0647)—Extension

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Public Law 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the act) by adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

FDA is requesting an extension of an existing collection of information pertaining to section 907(a)(1)(A) of the act (21 U.S.C. 397(a)(1)(A), as amended by the Tobacco Control Act, which provides a general tobacco standard special rule for cigarettes that became effective on September 22, 2009. This special rule for cigarettes states in part that "* * * a cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke."

As part of our enforcement strategy, FDA created a Tobacco Call Center (with a toll-free number) to accept information from the public about violations of this provision, known as the cigarette flavor ban. Callers are able to report violations of the cigarette flavor ban and FDA will determine whether to conduct targeted followup investigations based on information the agency receives. Members of the public who wish to report a violation will be asked for certain information: Name and contact information, which are optional, date that the caller observed or purchased the alleged violative product, description of the tobacco product, and address of the retail outlet or Internet address where the violative product was available. FDA developed a form (FDA Form 3734) that Tobacco Call Center representatives use to record this information. Additionally, this form is posted on FDA's Internet at *http://www.accessdata.fda.gov/scripts/email/TobaccoProducts/flavoredCigarettes.cfm)* which allows the public to report violations of the cigarette flavor ban by filling out the form online. Others may simply choose to send a letter to FDA. (Information about how to contact FDA's Center for Tobacco Products is posted at *http://www.fda.gov/TobaccoProducts/default.htm)*.

FDA described how to report information about possible violations in a **Federal Register** notice reminding regulated industry of the effective date of the ban on certain flavored cigarettes (74 FR 48974, September 25, 2009). FDA also included this information in the following outreach materials:

- Letter to our tobacco control partners announcing the cigarette flavor ban and soliciting information on possible violations,
- Press release announcing the effective date of the cigarette flavor ban,
- Flavored tobacco products fact sheet, and
- Flavored tobacco products parental advisory.

In the **Federal Register** of October 26, 2009 (74 FR 55050), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment in response to the 60-day notice soliciting public comment on the extension of OMB approval for this information collection generally supporting "the extension of this collection of information regarding the enforcement of the cigarette flavor ban and submits that the extension of data collection is critical to the 'proper performance of FDA's functions' and that it will have great 'practical utility'." Although FDA did not receive comment on the estimated number of respondents, FDA is adjusting this estimate based on current reporting experience to 170 respondents.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity and Form FDA 3734	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Minutes Per Response	Total Hours
Reporting violations of section 907(a)(1)(A) of the act	170	1	170	10 (0.167 hours)	28

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 12, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3036 Filed 2–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Translating Research Into Action for Diabetes (TRIAD) Legacy Study, Funding Opportunity Announcement (FOA) DP 10–005, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11 a.m.–5 p.m., March 31, 2010 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "TRIAD Legacy Study, FOA DP 10–005."

Contact Person for More Information: Don Blackman, PhD, Scientific Review Officer, National Center for Chronic Disease and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341, telephone: (770) 488–3023, e-mail: *DBlackman@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 10, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–3064 Filed 2–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control/Initial Review Group, (NCIPC/IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned review group:

Time and Date: 12:30 p.m.–4 p.m., March 3, 2010 (closed).

Place: Teleconference.

Status: The meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct research that will build the scientific base for the prevention of unintentional poisonings from drug overdoses in the adult population.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications intended to encourage exploratory/developmental research in unintentional childhood injury. Requests for Applications are related to the following individual research announcement: CE10–002 Unintentional Poisoning from Prescription Drug Overdoses in Adults (R21).

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: J. Felix Rogers, PhD, M.P.H., Telephone (770) 488–4334, NCIPC, CDC, 4770 Buford Highway, NE., Mail Stop F63, Atlanta, Georgia 30341–3724. The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 4, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–3047 Filed 2–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Pediatric 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: Pediatric 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 Monday, March 22, 2010, from 8 a.m. to 6 p.m.

Location: Bethesda Marriott Hotel, 5151 Pooks Hill Rd., Bethesda, MD., 20814.

Contact Person: Doreen Kezer, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane (HF–33), rm. 14–65, Rockville, MD 20857, 301–827–1249, e-mail: *Doreen.Kezer@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. 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: The Pediatric Advisory Committee will meet to discuss pediatric-focused safety reviews, as mandated by the Best Pharmaceuticals for Children Act and the Pediatric Research Equity Act, for: Anthelios 40, Cardiolite (technetium Tc-99), Nasacort AQ (triamcinolone), Viramune

(nevirapine), Valtrex (valacyclovir), Zmax (azithromycin), Rotarix (rotavirus vaccine, live, oral), Kinrix (Diphtheria and Tetanus Toxoids and Acellular Pertussis Adsorbed and Inactivated Poliovirus Vaccine), Pentacel [Diphtheria and Tetanus Toxoids and Acellular Pertussis Adsorbed, Inactivated Poliovirus and Haemophilus b Conjugate (Tetanus Toxoid Conjugate) Vaccine], and Daptacel (Diphtheria and Tetanus Toxoids and Acellular Pertussis Vaccine Adsorbed vaccine). The committee will also receive an update on Topical Calcineurin Inhibitors: Elidel (pimecrolimus) and Protopic (tacrolimus). Also, the committee will receive a brief followup on the FDA Early Communication about reports of liver-related adverse events in patients taking orlistat (marketed as Alli and Xenical).

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 8, 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 February 28, 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 1, 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 Doreen Kezer, 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: February 4, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–3024 Filed 2–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Times and Dates: 12 p.m.–5 p.m., March 15, 2010. 8:30 a.m.–5 p.m., March 16, 2010. 8:30 a.m.–3 p.m., March 17, 2010.

Place: Crowne Plaza Atlanta Perimeter at Ravinia, 4355 Ashford Dunwoody Road, Atlanta, GA 30346, *Telephone:* 770–395–7700.

Status: Open to the public, limited only by the number of seats available.

Purpose: The committee is charged with advising the Secretary, Department of Health and Human Services, and the Director, CDC, regarding the early detection and control of breast and cervical cancer. The committee makes recommendations regarding national program goals and objectives; implementation strategies; and program priorities including surveillance, epidemiologic investigations, education and training, information dissemination, professional interactions and collaborations, and policy.

Matters To Be Discussed: The agenda will include discussion and review of U.S. Preventive Services Task Force guidelines for breast and cervical cancer screening; Impact of the revised clinical screening recommendations for both breast and cervical cancer on the National Breast and Cervical Cancer Early Detection Program; Discussion of what, if any, modifications should be made to the NBCCEDP's current screening policies based on revised recommendations.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dr. Chastity Walker, Designated Federal Officer, BCCEDCAC, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop K–57, Chamblee, Georgia 30316, *Telephone:* 770–488–3013.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 3, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–3143 Filed 2–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Circulatory System Devices Panel of the Medical Devices 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: Circulatory System Devices Panel of the Medical Devices 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 18 and 19, 2010, from 8 a.m. to 6 p.m.

Location: College Park Holiday Inn, Grand Ballroom, 10000 Baltimore Ave., College Park, MD.

Contact Person: James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD

20993, 301–796–6313, e-mail: *James.Swink@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512625. 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 18, 2010, the committee will discuss, make recommendations, and vote on the premarket approval application (PMA) for the Cardiac Resynchronization Therapy Defibrillators (CRT–Ds) sponsored by Boston Scientific. The sponsor is seeking expanded indications for the their CRT–Ds to include patients with low left ventricular ejection fraction (≤30%) and wide QRS (≥130 ms) who are NYHA Class II (ischemic or non-ischemic etiology) or NYHA Class I (ischemic etiology).

On March 19, 2010, the committee will discuss, make recommendations and vote on a PMA for the REVO MRI Pacemaker System sponsored by Medtronic. The REVO MRI Pacing System is a pacemaker (with a standard pacing indication) that has been specifically designed to be safe for the MRI environment under certain MR scanning conditions.

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 11, 2010. Oral presentations from the public will be scheduled immediately following lunch. 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 3, 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 4, 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 AnnMarie Williams at 301–796–5966 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: February 4, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–3032 Filed 2–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Strengthening Global Human-Animal Interface Activities for Avian Influenza and Other Zoonotic Diseases, Funding Opportunity Announcement (FOA) CK10–001, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 12 p.m.–2 p.m., April 7, 2010 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Strengthening Global Human-Animal Interface Activities for Avian Influenza and other Zoonotic Diseases, FOA CK10–001."

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, GA 30333, Telephone: (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 11, 2010.

Andre Tyler,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–3141 Filed 2–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Coordinating Center for Infectious Diseases, (BSC, CCID)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date: 10 a.m.–11 a.m., March 2, 2010.

Place: Teleconference.

Status: Open to the public, the toll free dial in number is 1–866–880–0098 with a pass code of 9887280.

Purpose: The BSC, CCID shall advise the Secretary, HHS, and the Director, CDC concerning strategies and goals for the programs and research within the national centers; will administer and oversee peer review of scientific programs; and monitor the overall strategic direction and focus of the national centers.

Matters To Be Discussed: Agenda items will include:

1. Update from Dr. Khabbaz.
2. Update on H1N1 response.
3. Update from National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention.

4. Update from National Center for Immunization and Respiratory Diseases.

5. Update from National Center for Emerging and Zoonotic Infectious Diseases.

6. Plan the May meeting.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

For More Information Contact: Leola Mitchell, Office of the Director, CCID, CDC, Mailstop E06, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone (404) 639–6405, e-mail: *fvp9@cdc.gov.*

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 8, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–3056 Filed 2–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control/Initial Review Group, (NCIPC/IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned review group:

Times and Dates: 8 a.m.–5 p.m., March 11, 2010 (Closed).

8 a.m.–5 p.m., March 12, 2010 (Closed).

Place: JW Marriott Hotel Buckhead, 3300 Lenox Road, Atlanta, Georgia 30326, Telephone: (404) 262–3344.

Status: The meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct research that will expand and advance the understanding of violence, its causes, and prevention strategies.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications intended to expand and advance the understanding of violence, its causes, and prevention strategies. Requests for Applications are related to the following individual research announcement: CE10–005, Research Grants for Preventing Violence and Violence–Related Injury.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: J. Felix Rogers, PhD, M.P.H., NCIPC, CDC, 4770 Buford Highway, NE., MailStop F63, Atlanta, Georgia 30341, Telephone: (770) 488–4334.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 10, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–3048 Filed 2–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Institutional Collaboration Between Liverpool School of Tropical Medicine and the Centers for Disease Control and Prevention on Malaria, Funding Opportunity Announcement (FOA) CK10–002, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 12 p.m.—2 p.m., April 12, 2010 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Institutional Collaboration between Liverpool School of Tropical Medicine and the Centers for Disease Control and Prevention on Malaria, FOA CK10–002."

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, GA 30333, Telephone: (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 10, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–3049 Filed 2–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH 099–C]

NIOSH Current Intelligence Bulletin—Asbestos Fibers and Other Elongate Mineral Particles: State of the Science and Roadmap for Research, Version 4

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Draft Document Available for Public Comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following revised draft document available for public comment entitled "NIOSH Current Intelligence Bulletin—Asbestos Fibers and Other Elongate Mineral Particles: State of the Science and Roadmap for Research, Version 4." The document and instructions for submitting comments can be found at *http://www.cdc.gov/niosh/review/public/099–C/.*

Public Comment Period: February 18, 2010 through April 16, 2010.

Status: Written comments may be mailed to the attention of the NIOSH Docket Officer, NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway (M/S C34), Cincinnati, Ohio 45226, telephone (513)

533–8611, facsimile (513) 533–8285. Comments may also be submitted by e-mail to *nioshdocket@cdc.gov.* All material submitted to the Agency should reference the NIOSH Docket number 099–C. All electronic comments should be formatted as Microsoft Word.

All information received, including any personal information provided, will be posted without change and will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To obtain comments from the public on the revised draft document entitled, "NIOSH Current Intelligence Bulletin—Asbestos Fibers and Other Elongate Mineral Particles: State of the Science and Roadmap for Research," referred to as *Roadmap.* Asbestos has been a highly visible issue in public health for over three decades. Many advances have been made in the scientific understanding of worker health effects from exposure to asbestos and other elongate mineral particles (EMPs), and it is now well documented that fibers of asbestos minerals, when inhaled, can cause serious diseases in exposed workers. Yet, many questions and areas of scientific uncertainty remain.

Background: As the Federal agency responsible for conducting research and making recommendations for the prevention of worker injury and illness, NIOSH is undertaking a reappraisal of how to ensure appropriate protection of workers from exposure to asbestos fibers and other EMPs. The purpose of the draft *Roadmap* is to outline major areas of controversy and to recommend a research framework that can serve as a guide for the development of specific research programs within and across disciplines. Ultimately, the intended goal of the research is to provide answers to current scientific questions, reduce scientific uncertainties, and provide a sound scientific foundation for future policy development so that optimal health protection can be assured.

NIOSH has prepared several drafts of the document and invited comments on the occupational health issues identified and the framework for research. The drafts are summarized below.

In February 2007 a draft entitled "*Asbestos and Other Mineral Fibers: A Roadmap for Scientific Research*" was disseminated for public comment and scientific peer review.

The February 2007 draft, public comments, peer review comments, and the responses to peer reviewers' comments can be found at: *http://www.cdc.gov/niosh/docket/NIOSHdocket0099.html.*

In June 2008 a draft entitled "*Revised Draft NIOSH CURRENT INTELLIGENCE BULLETIN—Asbestos Fibers and Other Elongate Mineral Particles: State of the Science and Roadmap for Research*" was disseminated for public comment. The June 2008 draft, public comments, and the responses to public comments can be found at: *http://www.cdc.gov/niosh/docket/NIOSHdocket0099A.html.*

In January 2009 a draft entitled "Revised Draft NIOSH CURRENT INTELLIGENCE BULLETIN—Asbestos Fibers and Other Elongated Mineral Particles: State of the Science and Roadmap for Research" was submitted to the Institute of Medicine and the National Research Council of the National Academies (NA) for scientific review.

The NA review, titled "A Review of the NIOSH Roadmap for Research on Asbestos Fibers and Other Elongate Mineral Particles," can be found at: *http://www.nap.edu/catalog.php?record_id=12697.*

The January 2009 draft and the responses to the NA review can be found at: *http://www.cdc.gov/niosh/docket/NIOSHdocket0099B.html.*

As a result of comments received during each review, NIOSH revised previous drafts and is now inviting comments on a fourth version of the draft of the document.

NIOSH continues to be interested in available and forthcoming research results that can help answer the questions set forth in the *Roadmap,* as well as information on existing workplace exposure data, health effects, and control technologies.

Submitted comments on the revised draft *Roadmap* should indicate the pertinent page(s) and line(s) in the draft document being addressed.

FOR FURTHER INFORMATION CONTACT: Paul Middendorf, Office of the Director, NIOSH, telephone (513) 533–8606, e-mail *pmiddendorf@cdc.gov.*

Dated: February 3, 2010.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2010–3055 Filed 2–17–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Acquisition of Trust Land

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is seeking comments on renewal of Office of Management and Budget (OMB) approval, pursuant to the Paperwork Reduction Act, for the collection of information for the acquisition of land into trust status pursuant to 25 CFR part 151, Land Acquisitions. The information collection is currently authorized by OMB Control Number 1076–0100, which expires April 30, 2010. The information collection allows BIA to ensure compliance with regulatory and statutory requirements for taking land into trust on behalf of individual Indians or Indian tribes.

DATES: Interested persons are invited to submit comments on or before *April 19, 2010.*

ADDRESSES: You may submit comments on the information collection to Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639–MIB, 1849 C Street, NW., Washington, DC 20240; *facsimile:* (202) 208–7737; *e-mail: Ben.Burshia@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ben Burshia (202) 208–7737.

SUPPLEMENTARY INFORMATION:

I. Abstract

BIA is seeking renewal of the approval for the information collection conducted under 25 CFR 151, Land Acquisitions, for the United States to take land into trust for individual Indians and Indian tribes. This information collection allows BIA to review applications for compliance with regulatory and statutory requirements. Approval for this collection expires April 30, 2010. No specific form is used. No third party notification or public disclosure burden is associated with this collection. There is no change to the approved burden hours for this information collection.

II. Request for Comments

The BIA requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the

information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. This information collection expires April 30, 2010.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0100.

Title: Acquisition of Trust Land, 25 CFR 151.

Brief Description of Collection: Submission of this information allows BIA to review applications for the acquisition of land into trust status by the United States on behalf of individual Indians and Indian tribes, pursuant to 25 CFR 151. The information also allows the Secretary to comply with the National Environmental Policy Act and to determine if title to the subject property is marketable and unencumbered. No specific form is used, but respondents supply information and data in accordance with 25 CFR 151, so that BIA may make an evaluation and determination on the application.

Response is required to obtain a benefit.

Type of Review: Extension without change of a currently approved collection.

Respondents: Individual Indians and Indian tribes seeking acquisition of land into trust status.

Number of Respondents: 1,000.

Total Number of Responses: 1,000.

Frequency of Response: Once per each tract of land to be acquired.

Estimated Time per Response: Ranges from 60 to 110 hours.

Estimated Total Annual Burden: 67,800 hours.

Dated: February 3, 2010.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2010–3144 Filed 2–17–10; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2009–N203; BAC–4311–K9–S3]

Rappahannock River Valley National Wildlife Refuge, Caroline, Essex, King George, Lancaster, Middlesex, Richmond, and Westmoreland Counties, VA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final comprehensive conservation plan and finding of no significant impact for environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment (EA) for Rappahannock River Valley National Wildlife Refuge (NWR). In this final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI by any of the following methods. You may request a hard copy or CD–ROM.

Agency Web Site: Download a copy of the document(s) at *http://www.fws.gov/northeast/planning/Rappahannock/ccphome.html.*

Electronic mail: northeastplanning@fws.gov. Include "Rappahannock final CCP" in the subject line of the message.

U.S. Postal Service: Joseph McCauley, Refuge Manager, Rappahannock River NWR Complex, 336 Wilna Road, Warsaw, VA 22572–1030.

In-Person Viewing or Pickup: Call 804–333–1470 to make an appointment during regular business hours at refuge headquarters in Warsaw, VA.

FOR FURTHER INFORMATION CONTACT: Joseph McCauley, Refuge Manager, Rappahannock River Valley NWR, 336 Wilna Road, Warsaw, VA 22572–1030; 804–333–1470 (phone); *joseph_mccauley@fws.gov* (electronic mail).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Rappahannock River Valley NWR. We started this plan's development through a notice in the **Federal Register** (70 FR 65931) on November 1, 2005. We released the draft CCP/EA to the public, announcing and requesting comments in a notice of availability in the **Federal Register** (74 FR 36500) on July 23, 2009.

Rappahannock River Valley NWR, consisting of more than 7,700 acres, was established in 1996 to conserve and protect fish and wildlife resources, including endangered and threatened species, and wetlands. Refuge habitats include freshwater tidal marsh, forested swamp, upland deciduous forest, mixed pine forest, and managed grassland. One federally listed species, the threatened sensitive joint-vetch (*Aeschynomene virginica*), is found on the refuge. The State of Virginia's largest wintering population of bald eagles is located within the refuge boundary. Neotropical migratory songbirds, shorebirds, raptors, and marsh birds also rely on the Rappahannock River corridor during their spring and fall migrations. With help from partners and volunteers, we are restoring native grasslands and riparian forests along the river and its tributary streams to provide additional habitat for these important species.

Although wildlife and habitat conservation is the refuge's first priority, the public can observe and photograph wildlife, fish, hunt, or participate in environmental education and interpretation on several units of the refuge. The refuge contains three sites on the Virginia Birding and Wildlife Trail. The Wilna Unit, located in Richmond County, offers accessible fishing, excellent wildlife observation opportunities, and accessible nature trails. Other units of the refuge are open for visits by reservation.

We announce our decision and the availability of the FONSI for the final CCP for Rappahannock River Valley NWR in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft CCP/EA.

The CCP will guide us in managing and administering Rappahannock River Valley NWR for the next 15 years. Alternative B, as we described in the draft CCP/EA, is the foundation for the final CCP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C.

668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

CCP Alternatives, Including Selected Alternative

Our draft CCP/EA (74 FR 36500) addressed several key issues, including the amount of grasslands to manage, other priority habitat types to conserve, land protection and conservation priorities, improving the visibility of the Service and refuge, providing desired facilities and activities, and ways to improve opportunities for public use while ensuring the restoration and protection of priority resources.

To address these issues and develop a plan based on the purposes for establishing the refuge, and the vision and goals we identified, three alternatives were evaluated in the EA. The alternatives have some actions in common, such as protecting and monitoring federally listed species and the regionally significant bald eagle population, controlling invasive plants and wildlife diseases, encouraging research that benefits our resource decisions, protecting cultural resources, continuing to acquire land from willing sellers within our approved refuge boundary, and distributing refuge revenue-sharing payments to counties.

Other actions distinguish the alternatives. Alternative A, or the "No Action Alternative," is defined by our current management activities. It serves as the baseline against which to compare the other two alternatives. Our habitat management and visitor services programs would not change under this alternative. We would continue to use the same tools and techniques, and not expand existing facilities.

Alternative B, the "Service-Preferred Alternative," reflects a management emphasis on enhancing habitat diversity. Priorities under this alternative are protecting and restoring riparian and wetlands habitat, slightly expanding our grasslands management program on up to 1,200 acres, and improving the habitat quality in planted pine stands. Our public-use programs would improve and expand as a result of engaging partners to help us implement them. New trails would be constructed, fishing access would increase, and we would evaluate new opportunities for hunting waterfowl and wild turkey. A new refuge headquarters and visitor contact facility would also be constructed on refuge lands.

Alternative C resembles Alternative B in its proposal for facilities and public-use programs, but differs in its upland habitat management. Under Alternative C, we would allow the existing 700 acres of grasslands and old fields to revert to shrub and forest. Tree plantings, applying herbicides, and cutting or brush-hogging (mowing) would occur as necessary to achieve the desired results. Riparian and wetlands protection and restoration would be similar to Alternative B.

Comments

We solicited comments on the draft CCP/EA for Rappahannock River Valley NWR from July 23, 2009, to August 24, 2009 (74 FR 36500). We received comments from 47 individuals, organizations, and State and Federal agencies on our draft plan via electronic mail, phone, and letters. All comments we received were evaluated. A summary of those comments and our responses to them is included as Appendix G in the CCP.

Selected Alternative

After considering the comments we received on our draft CCP/EA, we have selected Alternative B for implementation for several reasons. Alternative B comprises the mix of actions that, in our professional judgment, works best towards achieving refuge purposes, our vision and goals, and the goals of other State and regional conservation plans. We also believe it most effectively addresses the key issues raised during the planning process. The basis of our decision is detailed in Appendix H of the CCP.

Public Availability of Documents

You can view or obtain documents as indicated under **ADDRESSES**.

Dated: December 30, 2009.

Dawn Comish,

Acting Regional Director, Northeast Region, U.S. Fish and Wildlife Service, Hadley, MA 01035.

[FR Doc. 2010–3051 Filed 2–17–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2009–N183; BAC–4311–K9–S3]

John Hay National Wildlife Refuge, Merrimack County, NH

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the draft comprehensive conservation plan (CCP) and draft environmental assessment (EA) for John Hay National Wildlife Refuge (NWR) for a 30-day public review and comment period. In this draft CCP/EA, we describe three alternatives, including our Service-preferred Alternative B, for managing this refuge for the next 15 years. Also available for public review and comment are the draft compatibility determinations, which are included as Appendix B in the draft CCP/EA.

DATES: To ensure our consideration of your written comments, please send them by March 22, 2010. We will also hold at least one public meeting in Newbury, New Hampshire, during the 30-day review period to receive comments and provide information on the draft plan. We will announce and post details about the public meeting in local news media via our project mailing list, and on our regional planning Web site, *http://www.fws.gov/northeast/planning/johnhay/ccphome.html.*

ADDRESSES: Send your comments or requests for more information by one of the following methods.

Electronic mail: northeastplanning@fws.gov. Include "John Hay NWR CCP/EA" in the subject line of the message.

U.S. Postal Service: Eastern Massachusetts NWR Complex, 73 Weir Hill Road, Sudbury, MA 01776.

In-person drop-off, viewing, or pickup: Call 978–443–4661 to make an appointment during regular business hours at the above address.

Facsimile: Attn: Carl Melberg, 978–443–2898.

FOR FURTHER INFORMATION CONTACT: Barry Parrish, Deputy Refuge Manager, Silvio O. Conte NFWR, 103 East Plumtree Road, Sunderland, MA 01375; phone: 413–548–8002 extension 113; or Carl Melberg, Planning Team Leader, at 978–443–4661, extension 32.

Agency Web site: View or download the draft document at *http://www.fws.gov/northeast/planning/JohnHay/ccphome.html.*

FOR FURTHER INFORMATION CONTACT: Barry Parrish, Deputy Refuge Manager, Silvio O. Conte NFWR, 103 East Plumtree Road, Sunderland, MA 01375; phone: 413–548–8002, extension 113; facsimile: 413–548–9725.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for John Hay NWR in Merrimack County, New Hampshire, which we started with the notice of intent we published in the **Federal Register** (73 FR 76376) on December 16, 2008. We prepared the draft CCP in compliance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and the National Wildlife Refuge System Administration Act of 1966 (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act), which requires us to develop a CCP for each national wildlife refuge. This refuge is a satellite station of the Silvio O. Conte National Fish and Wildlife Refuge.

John Hay NWR was the former summer estate of historic figure John Hay. It was donated to the Service in 1972 by Alice Hay to be used as a migratory bird and wildlife reservation. Currently, the refuge consists of approximately 80 acres on the shores of Lake Sunapee in Newbury, New Hampshire, and consists of upland northern forest, small meadows, and several wetland habitats, including a long, undeveloped lake shoreline, brook, fens, and vernal pools. The area serves the habitat needs of migrating birds as well as a diversity of other wildlife. No listed species are known to occur on the refuge. Although small in area, the refuge contains some of the largest-diameter white pine (and other northern forest tree species) in the regional landscape and provides habitat for Canada warbler and other priority forest birds and wildlife.

Although wildlife and habitat conservation is the refuge's first priority, the public can observe and photograph wildlife and participate in environmental education and interpretation on the refuge. Adjacent partner lands also accommodate these uses with a connected network of accessible nature trails. Some adjacent partner lands also allow hunting.

Background

The CCP Process

The Improvement Act requires us to develop a CCP for each national wildlife refuge. The purpose for developing CCPs is to provide refuge managers with 15-year plans for achieving refuge purposes and the mission of the National Wildlife Refuge System, in conformance with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify priority wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, photography, and environmental education and interpretation. We will review and update each CCP at least every 15 years, in accordance with the Administration Act.

Public Outreach

In October 2008, we initiated intra-agency, State agency, stakeholder, and public scoping to obtain input on current and future management of the refuge. We held a morning and an afternoon public and partner meeting on October 9, 2008, at the Newbury Town Hall. During these meetings, we asked attendees specific questions about their views on the refuge's wildlife and habitat values, how they use and access the refuge, their preferences for future wildlife-dependent recreation, and whether they knew about other refuge opportunities. Our scoping process lasted until November 7, 2008.

Some of the key issues we identified include forest management, other priority habitat types to conserve, wetlands protection, improving the visibility of the Service and refuge, providing desired facilities and visitor activities, and ways to improve opportunities for public use while ensuring the restoration and protection of priority resources.

CCP Actions We Are Considering

We developed three management alternatives based on the purposes for establishing the refuge, its vision and goals, and the issues and concerns the public, State agencies, and the Service identified during the planning process. The alternatives have some actions in common, such as protecting and monitoring fish and wildlife species and the unique large white pines, controlling invasive plants and wildlife diseases, encouraging research that benefits our resource decisions, protecting cultural resources like the Hay Estate house and the view to the lake, updating the memorandum of understanding with our neighboring partner, The Fells, and distributing refuge revenue sharing payments to the Town of Newbury.

Other actions distinguish the alternatives. The draft CCP/EA describes the alternatives in detail, and relates them to the issues and concerns identified. Highlights are as follows:

Alternative A (Current Management)

This alternative is the "No Action" alternative required by the NEPA Act of 1969. Alternative A defines our current management activities, and serves as the baseline against which to compare the other alternatives. Our habitat management focuses on allowing natural processes to shape the almost 80 acres of mature upland forest to maintain the cultural legacy, encourage natural regeneration, and diversify the forest structure that supports migratory and nesting birds of conservation concern in Bird Conservation Region 14 and the New Hampshire Wildlife Action Plan (NHWAP) (including the Canada warbler and wood thrush). Natural processes would also shape the fens, vernal pools, and other wetland habitats on the refuge that provide important breeding habitat for amphibian and reptile species of conservation concern identified in the NHWAP.

We would continue to maintain the instream habitat and riparian corridor along the approximately 1,750 feet of Beech Brook on the refuge for species identified as conservation priorities by the Eastern Brook Trout Joint Venture and NHWAP plans, and we would continue to protect the 3,100 feet of undeveloped refuge shoreline and 0.1-acre Minute Island by preventing public use activities that may pose risks to the biological integrity of these habitats.

We would continue to work with our partners to monitor our forests and wetlands for invasive plants and disease, and we would treat the forests to fight invasive species and diseases if we have available funding and staffing. Our biological monitoring and inventory program and habitat and trail management would continue at its current minimal level, and would focus on safety and hazard tree removal only when necessary.

Our visitor services programs would not change, as most activities are conducted by The Fells. Wildlife

observation and photography are the most popular activities. Our staffing and facilities would remain the same. Seven staff positions for the refuge complex would remain in place, and the headquarters would remain at the Sunderland Office.

Alternative B (Enhanced Visitor Services and Habitat Diversity—the Service-Preferred Alternative)

This alternative is the one we propose as the best way to manage this refuge over the next 15 years. It includes an array of management actions that, in our professional judgment, works best toward achieving the refuge purposes, our vision and goals, and the goals of other State and regional conservation plans. We also believe it most effectively addresses the key issues that arose during the planning process.

Similar to alternative A, under alternative B we would primarily allow natural processes to shape the refuge's forest habitat and would continue to work with partners to complement the larger landscape for priority species through partnerships. We would conduct forest inventories every 10 to 15 years to determine silvicultural prescriptions to encourage early successional forest habitat and pine regeneration, and to maintain the existing unique character of large-diameter trees. A habitat management plan would be completed within 1 year of CCP approval. The current meadow would be expanded up to approximately 3 acres, but not at the expense of mature forest habitat. A treatment schedule for maintaining the view to the lake from the Hay Estate house would be developed in partnership with The Fells and incorporate both scenic and wildlife habitat aspects that meet biological and cultural objectives for the area.

We would continue to monitor refuge forests and wetlands for invasive plants and disease, and to treat them to the extent our funding allows. Protecting and enhancing riparian and wetlands habitat would be a priority, including the undeveloped Lake Sunapee shoreline, Beech Brook, fens, and vernal pools. We would also continue our monitoring and inventory program, but regularly evaluate the results to help us better understand the implications of our management actions and identify ways to improve their effectiveness.

In addition to enhancing our existing programs in wildlife observation, photography, environmental education, and interpretation, we would open the refuge to fishing. We would also work with partners to accommodate hunting on their lands as part of a regional recreational program offering a diversity of wildlife-dependent public use opportunities. We would seek partnerships to help us achieve our enhanced and new programs, including assistance on interpretive trail construction and enhancements, and environmental education programs using the refuge as a living laboratory. The refuge would remain closed to hunting due to its small size and staffing constraints. We would also improve and expand access to the lake for freshwater fishing and enhance trails for environmentally sensitive stream crossings and access to additional habitats. If we can secure permanent funding, we would fill one new visitor services staff position to provide depth to our programs and achieve our goals and objectives. We also propose to collaborate with neighboring partner, The Fells, at their visitor contact facilities at the adjacent Fells gatehouse and parking lot to increase our visibility and improve public access to refuge land.

Alternative C (Forest Management Emphasis)

This alternative resembles Alternative B in its refuge administration and facilities, but differs in its habitat management intensity and visitor services programs.

Under Alternative C, we would actively manage for mature upland forest, including silvicultural prescriptions such as thinning or soil scarification to promote regeneration success. Additional early successional forest habitat would be provided by expanding the existing meadow and creating new meadows, but not at the expense of mature forest habitat. The width of The Fells view to the lake would be expanded to provide additional habitat for wildlife dependent upon early successional habitat, and increase the view from the estate house.

As in Alternative B, we would protect and enhance riparian and wetlands habitats as a priority. As in Alternative B, we would monitor and inventory our forests and wetlands for invasive plants and disease and treat them to the extent funding allows. Protecting and enhancing riparian and wetland habitats would also be a priority. Compared to Alternative B, we would conduct a more intensive, focused monitoring and inventory program designed to address more-specific questions about habitat quality and the response of wildlife populations. In the near-term, inventory and monitoring would be aimed specifically at documenting the species and habitat baseline conditions.

Under Alternative C, our public use programs would accommodate additional access with enhanced trail conditions to allow people of all abilities to access and view the lake. This Alternative explores the possibility of accommodating hunting by determining the feasibility of a very limited hunt program in collaboration with our State partners.

Public Meetings

The public will have the opportunity to provide input at one public meeting in Newbury, New Hampshire. We will release mailings, news releases, and announcements electronically and provide information about opportunities for public review and comment on our Web site and in local newspapers, along with the contact information below. You can obtain the schedule from the planning team leader or project leader (*see* **ADDRESSES**).

You may also submit comments anytime during the planning process by mail, electronic mail, or facsimile (*see* **ADDRESSES**). For specific information, including dates, times, and locations, contact the project leader (*see* **ADDRESSES**) or visit our Web site at *http://www.fws.gov/northeast/planning/johnhay/ccphome.html.*

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made available to the public at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 8, 2010.

Wendi Weber,

Acting Regional Director, Northeast Region, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 2010–3053 Filed 2–17–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2009–N243; 30136–1265–0000–S3]

Boyer Chute National Wildlife Refuge, NE; Hamden Slough National Wildlife Refuge, MN; and Iowa Wetland Management District, IA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a comprehensive conservation plan (CCP) and associated environmental documents for the Boyer Chute and Hamden Slough National Wildlife Refuges (NWRs) and the Iowa Wetland Management District (WMD). We furnish this notice in compliance with our CCP policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

We also invite comments on archeological, historic, and traditional cultural sites in accordance with the National Historic Preservation Act.

In addition, special mailings, newspaper articles, Internet postings, and other media announcements will inform people of the opportunities for written comments.

ADDRESSES: Comments or requests for more information can be sent to the appropriate refuge at the following addresses:

1. *Attention:* Refuge Manager, Boyer Chute National Wildlife Refuge, 3720 Rivers Way, Fort Calhoun, NE 68023;

2. *Attention:* Refuge Manager, Hamden Slough National Wildlife Refuge, 26624 N. Tower Road, Detroit Lakes, MN 56501;

3. *Attention:* Refuge Manager, Iowa Wetland Management District, 1710 360th Street, Titonka, IA 50480.

You may also find information on the CCP planning process and submit comments electronically on the planning Web site *http://www.fws.gov/midwest/planning* or you may e-mail comments to *r3planning@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Tom Cox, DeSoto NWR, 712–642–4121; Scott Kahan, Hamden Slough NWR, 218–847–4431; or George Maze, Iowa WMD, 515–928–2523.

SUPPLEMENTARY INFORMATION: With this notice, we initiate the CCP for the Boyer Chute NWR, with headquarters in Fort Calhoun, NE; the CCP for the Hamden Slough NWR, with headquarters in Detroit Lakes, MN; and the CCP for the Iowa WMD, with headquarters in Titonka, IA.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires us to develop a comprehensive conservation plan for each national wildlife refuge. Land parcels we manage within a Wetland Management District are also units of the National Wildlife Refuge System. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

Each unit of the National Wildlife Refuge System, including each of these NWRs, is established with specific purposes. We use these purposes to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on these Refuges. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the Refuges' establishing purposes and the mission of the National Wildlife Refuge System.

We will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment for the future management of Boyer Chute NWR, Hamden Slough NWR, and Iowa WMD. We invite anyone interested to respond to the following two questions:

1. What issues do you want to see addressed in the CCP?

2. What improvements would you recommend for the Refuges or Wetland District?

Responding to these two questions is optional; you are not required to provide information to us. Our Planning Team developed the questions to gather information about individual issues and ideas concerning these Refuges and Wetland District. Comments we receive will be used as part of the planning process; however, we will not reference individual comments in our reports or directly respond to them.

We also invite comments on archeological, historic, and traditional cultural sites in accordance with the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*).

We will also give the public an opportunity to provide input at open houses. You can obtain a schedule of the open house events by contacting the Refuge Managers listed in the **ADDRESSES** section of this notice.

The environmental review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those regulations.

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.

Dated: December 14, 2009.

Charles M. Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota.

[FR Doc. 2010–3154 Filed 2–17–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDC00000.L16400000.BF0000.241A.0; 4500012112]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council Meeting and Recreation Subcommittee Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council

(RAC) and Recreation RAC Subcommittee will meet as indicated below.

DATES: April 6–7, 2010. The meeting will start at 8 a.m. on April 6 and end around 12 p.m. on April 7. The public comment period will be from 1 p.m. to 1:30 p.m. on April 6. The meeting will be held at the Bureau of Land Management Office, 3815 Schreiber Way, Coeur d'Alene, Idaho.

FOR FURTHER INFORMATION CONTACT: Lisa Wagner, RAC Coordinator, BLM Coeur d'Alene District, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815 or telephone at (208) 769–5014.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda will include the following topics: Election of Officers, project update by the field offices, presentation by the Forest Service on recreation fees (Recreation RAC Subcommittee) and field trip of BLM recreation site—Blue Creek Bay and Mineral Ridge. Additional topics may be added and will be included in local media announcements. More information is available at *http://www.blm.gov/rac/id/id_index.htm.* All meetings are open to the public. The public may present written comments to the RAC in advance of or at the meeting. Each formal RAC meeting will also have time allocated for receiving 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, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: February 8, 2010.

Gary D. Cooper,

District Manager.

[FR Doc. 2010–3125 Filed 2–17–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000 L16400000.PH0000.LXSS006F0000 261A; MO# 4500012129; 10–08807; TAS:14X1109]

Northeastern 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) Nevada Northeastern 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: March 4 at the BLM Elko District Office, 3900 E. Idaho St., Elko, Nevada; June 17 and 18 at the Eureka Opera House, 31 S. Main St., Eureka, Nevada; and September 30, at the BLM Ely District Office, 702 N. Industrial Way, Ely, Nevada. Approximate meeting times are 8 a.m. to 4 p.m. However, meetings could end earlier if discussions and presentations conclude before 4 p.m. All meetings will include a public comment period at approximately 10 a.m.

FOR FURTHER INFORMATION CONTACT: Schirete Zick, Public Affairs Officer, Battle Mountain District Office, 50 Bastian Road, Battle Mountain, NV 89820. Telephone: (775) 635–4067. E-mail: *schirete_zick@blm.gov*.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management (BLM), on a variety of planning and management issues associated with public land management in Nevada. Topics for discussion at each meeting will include, but are not limited to:

- March 4 (Elko)—Southern Nevada Public Lands Management Act nominations, cooperative monitoring, grazing permits, and Battle Mountain Resource Management Plan;
- June 17 and 18 (Eureka)—field tour to 3–Bars Project area;
- September 30 (Ely)—minerals, grazing, energy, and sustainable development Managers' reports of field office activities will be given at each meeting. The Council may raise other topics at any of the three planned meetings.

Final agendas will be posted on-line at the BLM Northeastern Great Basin Resource Advisory Council Web site at *http://www.blm.gov/nv/st/en/res/resource_advisory.html* and will be published in local and regional media sources 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, may contact Schirete Zick no later than 10 days prior to each meeting.

Dated: February 9, 2010.

Doran Sanchez,

Chief of Communications, Nevada.

[FR Doc. 2010–3052 Filed 2–17–10; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–10–002]

Government in the Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

ORIGINAL DATE AND TIME: February 12, 2010 at 11 a.m.

NEW DATE AND TIME: February 19, 2010 at 11 a.m.

PLACE: 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

In accordance with 19 CFR 201.35(d)(1), the Commission has determined to reschedule the meeting of 11 a.m., February 12, 2010 to 11 a.m., February 19, 2010. Earlier announcement of this rescheduling was not possible.

By order of the Commission.

Issued: February 9, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–3247 Filed 2–16–10; 4:15 pm]

BILLING CODE 7020–02–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 Reimbursement—Assisted Reemployment (CA–2231). 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 April 19, 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, email *Alvarez.Vincent@dol.gov*. Please use only one method of transmission for comments (mail, fax, or email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) under 5 U.S.C. 8101 *et seq.* Section 8104(a) of the FECA provides vocational rehabilitation services to eligible injured workers to facilitate their return to work. The costs of providing these vocational rehabilitation services are paid from the Employees' Compensation Fund. Annual appropriations language (currently in Pub. L. 109–289), provides OWCP with legal authority to use amounts from the Fund to reimburse private sector employers for a portion of the salary of reemployed disabled Federal workers they have hired through OWCP's assisted reemployment program. Information collected on Form CA–2231 provides OWCP with the necessary remittance information for the employer, documents the hours of work, certifies the payment of wages to the claimant for which reimbursement is sought, and summarizes the nature and costs of the wage reimbursement program for a prompt decision by OWCP. This information collection is currently approved for use through June 30, 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 to ensure timely and accurate payments to eligible employers for reimbursement claims.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Claim for Reimbursement-Assisted Reemployment.

OMB Number: 1215–0178.

Agency Number: CA–2231.

Affected Public: Business or other for-profit, not-for-profit institutions.

Total Respondents: 25.

Total Annual Responses: 100.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 50.

Frequency: Quarterly.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $47.

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: February 12, 2010.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2010–3043 Filed 2–17–10; 8:45 am]

BILLING CODE 4510–CH–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 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: Medical Travel Refund Request (OWCP–957). 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 April 19, 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 Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require that OWCP reimburse beneficiaries for travel expenses for covered medical treatment. In order to determine whether amounts requested as travel expenses are appropriate, OWCP must receive certain data elements, including the signature of the physician for medical expenses claimed under the BLBA. Form OWCP–957 is the standard format for the collection of these data elements. The regulations implementing these three statutes allow for the collection of information needed to enable OWCP to determine if reimbursement requests for travel expenses should be paid. This information collection is currently approved for use through August 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 approval for the extension of this information collection in order to carry out its responsibility to determine if requests for reimbursement for out-of-pocket expenses incurred when traveling to medical providers for covered medical testing or treatment should be paid.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Medical Travel Refund Request.

OMB Number: 1215–0054.

Agency Number: CM–957.

Affected Public: Individual or households.

Total Respondents: 182,535.

Total Responses: 182,535.

Time per Response: 10 minutes.

Estimated Total Burden Hours: 30,301.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $85,791.

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.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2010–3046 Filed 2–17–10; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Temporary Agricultural Employment of H–2A Workers in the United States: 2010 Adverse Effect Wage Rates, Allowable Charges for Agricultural Workers' Meals, and Maximum Travel Subsistence Reimbursement

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor (Department) is issuing this Notice to announce the new 2010 Adverse Effect Wage Rates (AEWRs) and the 2010 maximum allowable meal and travel subsistence charges applicable to employers seeking to employ H–2A nonimmigrant workers to perform agricultural labor in the United States (U.S.) on a temporary or seasonal basis.

DATES: *Effective Date:* March 15, 2010.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, Room C–4312, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. Citizenship and Immigration Services of the Department of Homeland Security may not approve an employer's petition for the admission of H–2A nonimmigrant temporary agricultural workers in the U.S. unless the petitioner has received from the Department, an H–2A temporary labor certification. Approved labor certifications attest that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5).

To ensure that the two preconditions to certification are met, the Department's H–2A regulations require, among other things, that employers offer and pay their H–2A and U.S. workers the highest of the AEWR, the prevailing hourly wage rate, the prevailing piece rate, the agreed-upon collective bargaining rate, or the Federal or State minimum wage rate, in effect at the time work is performed, whichever is highest. 20 CFR 655.122(l).

B. Adverse Effect Wage Rates for 2010

The AEWR serves as the floor for the agricultural wage rates in the H–2A program and is designed to prevent the potential wage-depressive impact the agricultural employment of nonimmigrant foreign workers may have on the domestic agricultural workforce.

Since 1953, the Department has computed and published AEWRs for the temporary employment of nonimmigrant foreign workers for agricultural employment under various admission programs. Between 1963 and 1987, the Department applied a variety of methodologies to determine how AEWR should be set. In 1989, the Department promulgated an Interim Final Rule (IFR) reaffirming the AEWR calculation methodology it initially established in the 1987 IFR that promulgated the first H–2A program regulations. 54 FR 28037, Jul. 5, 1989 and 52 FR 20496, Jun. 1, 1987. In the 1989 IFR, the Department retained the methodology that based the AEWRs on the level of actual average hourly agricultural wages for each State, as surveyed by the U.S. Department of Agriculture (USDA). This methodology set the AEWRs in each year for the H–2A program at a level equal to the previous year's annual regional average hourly wage rates for field and livestock workers (combined), as computed by USDA quarterly wage surveys. 54 FR 28037–28039, Jul. 5, 1989. The USDA-based methodology for calculating the AEWRs remained in place until January 17, 2009, the effective date of the Department's Final Rule on the Temporary Agricultural Employment of H–2A Aliens in the United States; Modernizing the Labor Certification Process and Enforcement, in which the Department adopted a different methodology that set the AEWRs at prevailing wage rates by relying on the Bureau of Labor Statistics Occupational Employment Statistics survey. 73 FR 77110, 77167, Dec. 18, 2008.

However, the Department has now published a Final Rule addressing the Temporary Agricultural Employment of H–2A Aliens in the United States, 75 FR 6884, February 12, 2010 (2010 Final Rule). In the 2010 Final Rule, the Department announced that the H–2A AEWR will once again be based on the USDA data compiled through its Farm Labor Survey (FLS) Reports.

Therefore, unless otherwise provided in 20 CFR part 655, subpart B, the AEWRs applicable to all agricultural employment subject to the 2010 Final Rule (except those occupations for

which special procedures for wages have been established pursuant to 8 U.S.C. 1188 and 20 CFR 655.102) for which temporary H–2A certifications are being sought will be the annual average of combined crop and livestock workers' wages applicable for each State as reported by the USDA FLS reports.

The Department's regulations at 20 CFR 655.120(c) require the Office of Foreign Labor Certification (OFLC) to publish at least once in each calendar year the AEWR for each State as a Notice in the **Federal Register**. Accordingly, the 2010 AEWRs for agricultural work performed by U.S. and H–2A workers hired pursuant to an H–2A application subject to the 2010 Rule on and/or after the effective date of this Notice are set forth in the table below:

TABLE—2010 ADVERSE EFFECT WAGE RATES

State	2010 AEWR
Alabama	$9.11
Arizona	9.71
Arkansas	9.10
California	10.25
Colorado	10.06
Connecticut	10.16
Delaware	9.94
Florida	9.20
Georgia	9.11
Hawaii	11.45
Idaho	9.90
Illinois	10.51
Indiana	10.51
Iowa	10.86
Kansas	10.66
Kentucky	9.71
Louisiana	9.10
Maine	10.16
Maryland	9.94
Massachusetts	10.16
Michigan	10.57
Minnesota	10.57
Mississippi	9.10
Missouri	10.86
Montana	9.90
Nebraska	10.66
Nevada	10.06
New Hampshire	10.16
New Jersey	9.94
New Mexico	9.71
New York	10.16
North Carolina	9.59
North Dakota	10.66
Ohio	10.51
Oklahoma	9.78
Oregon	10.85
Pennsylvania	9.94
Rhode Island	10.16
South Carolina	9.11
South Dakota	10.66
Tennessee	9.71
Texas	9.78
Utah	10.06
Vermont	10.16
Virginia	9.59
Washington	10.85
West Virginia	9.71
Wisconsin	10.57
Wyoming	9.90

C. Allowable Meal Charges

The Department's regulations at 20 CFR 655.122(g) require the employer to provide each worker with three meals a day (for which it is permitted to charge the workers) or free and convenient cooking and kitchen facilities. When the employer provides meals to its workers, it must state in the job offer the meal charge, if any, the employer will impose on the workers for the meals provided. The amount of the meal charges, if any, is governed by 20 CFR 655.173.

The 2010 Final Rule at 20 CFR 655.173 sets the maximum allowable amount that an H–2A agricultural employer may charge its U.S. and foreign workers for providing three meals per day. This section of the 2010 Final Rule also provides for annual adjustments of the previous year's allowable charges based upon the 12-month percentage change for the Consumer Price Index for Urban Consumers for Food (CPI–U for Food) between December of the year just concluded and December of the year prior to that.

Under 20 CFR 655.173(a) an H–2A employer may charge workers no more than the maximum amount set forth in that paragraph, unless the employer petitions the Certifying Officer and receives a favorable decision under 20 CFR 655.173(b) to charge a higher amount. The Department's H–2A regulations require the OFLC Administrator to publish a Notice in the **Federal Register** each calendar year, announcing annual adjustments in allowable meal charges applicable to H–2A employers who provide three meals per day to their U.S. and nonimmigrant foreign workers. The 2009 rates were published in the **Federal Register** at 74 FR 26016, May 29, 2009.

The Department has determined the percentage change between December of 2008 and December of 2009 for the CPI–U for Food was 1.8 percent. Accordingly, the maximum allowable charge under 20 CFR 655.173 was adjusted using this percentage change, and the new permissible charge for 2010 will be no more than $10.64 per day.

D. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.122(h) establish that the minimum daily travel subsistence expense, for which a worker is entitled to reimbursement, is equivalent to the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.173. The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department based the maximum meals component on the standard Continental United States (CONUS) per diem rate established by the General Services Administration (GSA) and published at 41 CFR part 301, Appendix A. The CONUS meal component is now $46.00 per day.

Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement at 75 percent of the subsistence for the first partial day of travel and 75 percent of the subsistence for the last partial day.

If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.173(a) as specified above.

Signed in Washington, DC, this 12th day of February 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–3078 Filed 2–17–10; 8:45 am]

BILLING CODE 4510–FP–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, February 18, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Board Briefing. Interim Final Rule—Section 701.34 of NCUA's Rules and Regulations, Secondary Capital Accounts for Low-Income Credit Unions.

2. Insurance Fund Report.

RECESS: 11 a.m.

TIME AND DATE: 11:15 a.m., Thursday, February 18, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of Supervisory Activities. Closed pursuant to Exemptions (8), (9)(A)(ii) and 9(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–3131 Filed 2–16–10; 11:15 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: March 4, 2010, 12 p.m.–2 p.m. EST.

Place: Teleconference. National Science Foundation, Room 320, Stafford I Building, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Craig B. Foltz, Acting Division Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4908.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To discuss the Committee's draft annual report due 15 March 2009.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 2010–3035 Filed 2–17–10; 8:45 am]

BILLING CODE 7555–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Administrative Appeals

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information under Part 4003 of its regulations relating to Administrative Appeals (OMB control number 1212–0061, expires February 28, 2010). This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by March 22, 2010.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974. A copy of PBGC's request may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The request is also available at *http://www.reginfo.gov*.

FOR FURTHER INFORMATION CONTACT: Donald F. McCabe, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Certain types of initial determinations are subject to administrative appeals, which are covered in subpart D of the regulation. Subpart D prescribes rules on who may file appeals, when and where to file appeals, contents of appeals, and other matters relating to appeals.

Most appeals filed with PBGC are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts. A small number of appeals are filed by employers in connection with other matters, such as plan coverage under ERISA section 4021 or employer liability under ERISA sections 4062(b)(1), 4063, or 4064. Appeals may be filed by hand, mail, commercial delivery service, fax or e-mail. For appeals of benefit determinations, PBGC has optional forms for filing appeals and requests for extensions of time to appeal.

OMB has approved the administrative appeals collection of information under control number 1212–0061 through February 28, 2010. PBGC is requesting that OMB extend its approval of this collection of information for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that an average of 900 appellants per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information is 0.71 hours and $52 per appellant, with an average total annual burden of 643 hours and $46,680.

Issued in Washington, DC, this 12th day of February 2010.

Catherine B. Klion,

Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–3130 Filed 2–17–10; 8:45 am]

BILLING CODE 7709–01–P

OFFICE OF PERSONNEL MANAGEMENT

National Council on Federal Labor-Management Relations Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The National Council on Federal Labor-Management Relations will hold its initial meeting on February 26, 2010, at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations, Federal management organizations and senior government officials. The Council was established by Executive Order 13522, entitled, "Creating Labor-Management Forums to Improve Delivery of Government Services," which was signed by the President on November 9, 2009. Along with its other responsibilities, the Council will assist in the implementation of Labor Management Forums throughout the government and will make recommendations to the President on innovative ways to improve delivery of services and products to the public while cutting costs and advancing

employee interests. The Council is co-chaired by the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget.

Please note that we are providing a slightly shortened notice period for this meeting, as permitted under 41 CFR 102–3.150 in "exceptional circumstances." The record snowfall and resulting closure of Federal Government agencies in the National Capital Area in the previous 4½ days forced a postponement of the originally planned notice date. Deadlines imposed by the executive order are pending-agencies are required to submit draft implementation plans to OPM by March 9, and OPM believes that a timely first meeting is necessary to hear comments from the agencies and the public about the process to create Labor-Management Forums in each agency throughout the Federal Government. A further postponement of the meeting may hinder agencies' compliance with the March 9 deadline. Therefore, we believe that these conditions constitute "exceptional circumstances" within the meaning of the regulation, and that the shortened notice period is permitted.

At the February 26 meeting, the Council will discuss the functions and operating procedures of the Council and training opportunities for managers and employees' representatives. The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: February 26, 2010, at 10 a.m.

Location: U.S. Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Wachter, Acting Deputy Associate Director for Partnership and Labor Relations, Office of Personnel Management, 1900 E Street NW., Room 7H28–E, Washington, DC 20415. Phone (202) 606–2930; FAX (202) 606–2613; or e-mail at *PLR@opm.gov*.

For the National Council.

John Berry,

Director.

[FR Doc. 2010–3149 Filed 2–16–10; 11:15 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2010–23; Order No. 405]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a Global Expedited Package Services 2 contract to the Competitive Product List. This notice addresses procedural steps associated with this filing.

DATES: Comments are due: February 19, 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:

Table of Contents

I. Introduction

On February 9, 2010, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 2 (GEPS 2) contract.[1] The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS 2 contracts, and is supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 2. The Notice also explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1. In Order No. 290, the Commission approved the GEPS 2 product.[2]

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. 86. The Postal Service submitted the contract and supporting material under seal along with an application for non-public treatment as Attachment 1, and attached a certified statement required by 39 CFR 3015.5(c)(2) and a redacted copy of the contract to the Notice as Attachments 2 and 3, respectively. *Id.* at 1–2. The term of the contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.

The Notice advances reasons why the instant GEPS 2 contract fits within the Mail Classification Schedule language for GEPS 2. The Postal Service contends that the instant contract is functionally equivalent to the GEPS 2 contracts filed previously, despite minor differences in both the general language and for customer-specific information, all of which are highlighted in the Notice. *Id.* at 3–8.

The Postal Service contends that several factors demonstrate the contract's functional equivalence with previous GEPS 2 contracts, including the general terms of the contract, the market to which it is being offered, and its cost characteristics. *Id.* at 3. The Postal Service concludes that because the "GEPS agreements incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same..." despite any incidental differences. *Id.* at 8.

The Postal Service contends that its filings demonstrate that this new GEPS 2 contract is established in compliance with the requirements of 39 U.S.C. 3633, is functionally equivalent to previous GEPS 2 contracts, and requests that this contract be included within the GEPS 2 product. *Id.*

II. Notice of Filing

The Commission establishes Docket No. CP2010–23 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, 3622 or 3642. Comments are due no later than February 19, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul Harrington to serve as Public Representative in the captioned filings.

[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, February 9, 2010 (Notice).

[2] 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).

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2010–23 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than February 19, 2010.

3. Pursuant to 39 U.S.C. 505, Paul Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–3061 Filed 2–17–10; 8:45 am]

BILLING CODE 7710–FW–S

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 18, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, February 18, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

An adjudicatory matter;

Amicus consideration; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: February 12, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3138 Filed 2–16–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold an Open Meeting on Monday, February 22, 2010, in the Multipurpose Room, L–006. The meeting will begin at 9 a.m. and will be open to the public, with seating on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks.

On February 2, 2010, the Commission published notice of the Committee meeting (Release No. 33–9104), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes consideration of a Committee recusal policy, a report from the Education Subcommittee, including a presentation on the National Financial Capability Survey, a report from the Investor as Purchaser Subcommittee, including a discussion of fiduciary duty and mandatory arbitration, a report from the Investor as Owner Subcommittee, including recommendations for the Committee on Regulation FD and proxy voting transparency, as well as reports on a work plan for environmental, social, and governance disclosure and on financial reform legislation, and discussion of next steps and closing comments.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: February 12, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–3196 Filed 2–16–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61505; File No. SR–FINRA–2009–075]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Postponement Fee and Hearing Session Fee Rules of the Codes of Arbitration Procedure for Customer and Industry Disputes

February 4, 2010.

I. Introduction

On November 4, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 12601(b) and 12902(a) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rules 13601(b) and 13902(a) of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") (together, the "Codes") to clarify the applicability of the fee waiver provision of the postponement rule and to codify the hearing session fee for an unspecified damages claim heard by one arbitrator. The proposed rule change was published for comment in the **Federal Register** on December 1, 2009.[3] The Commission received two comment letters on the proposal.[4] FINRA submitted a response to these comments on January 29, 2010.[5] This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61057 (Nov. 24, 2009), 74 FR 62855 ("Notice").

[4] *See* letter from William A. Jacobson, Esq. and Kelly Cardin, Cornell Law School, to Elizabeth M. Murphy, Secretary, Commission, dated December 16, 2009 ("Cornell Letter"); letter from Scott R. Shewan, President, Public Investors Arbitration Bar Association, to Elizabeth M. Murphy, Secretary, Commission, dated December 21, 2009 ("PIABA Letter").

[5] *See* letter from Mignon McLemore, FINRA Dispute Resolution, to Elizabeth M. Murphy, Secretary, Commission, dated January 29, 2010 ("FINRA Response").

II. Description of the Proposal

Proposed Amendment to Rules 12601(b)(3) and 13601(b)(3)

The rules of the Codes require arbitration hearings to be postponed if the parties agree.[6] Hearings may also be postponed by the Director of FINRA Dispute Resolution ("Director"), by the arbitration panel in its own discretion, or by the panel on a motion of a party.[7] If a hearing is postponed, the panel will assess a postponement fee against one or more of the parties, which is typically equivalent to the applicable hearing session fee that would have been assessed had the hearing been held.[8] If parties request and are granted a hearing postponement within three business days of a scheduled hearing session (*i.e.,* a late postponement request), the Director will assess a late postponement fee of $100 per arbitrator.[9]

While the Codes provide for instances in which a postponement fee is not assessed against the parties, such as if the parties agree to submit a matter to mediation at FINRA,[10] such provisions do not apply to late postponement fees. Nevertheless, FINRA has received complaints from arbitrators that parties are misusing the fee waiver provisions. Specifically, parties who have made late postponement requests contend that, if they agree to mediate their dispute through FINRA, they should not be assessed a late postponement fee because Rules 12601(b)(3) and 12601(b)(3) waive the postponement fee if the parties agree to mediate through FINRA.

The proposed rule change amends Rules 12601(b)(3) and 13601(b)(3) of the Codes to provide that no postponement fee will be charged if a hearing is postponed because the parties agree to submit the matter to mediation administered through FINRA, except that the parties shall pay the additional fees described in Rule 12601(b)(2) or 13601(b)(2), respectively, for late postponement requests.

Proposed Amendment to Rules 12902(a)(1) and 13902(a)(1)

In FINRA's arbitration forum, if the parties and the arbitrator(s) meet to discuss the issues giving rise to the arbitration dispute, the meeting is called a "hearing session."[11] The Codes authorize FINRA to assess hearing session fees against the parties for each hearing session.[12] The total amount charged for each hearing session is based on the amount in dispute.[13] For claims that do not request or specify money damages (*i.e.,* an unspecified damages claim), however, the Codes give the Director the discretion to determine the amount of the hearing session fee, not to exceed $1,200.[14]

Currently, the hearing session fee charged for each hearing session in an unspecified damages claim heard by three arbitrators is $1,000.[15] However, for an unspecified damages claim heard by one arbitrator, the rules list the hearing session fee as not applicable ("N/A").[16] While the Codes give the Director the discretion to determine the amount of the hearing session fee for an unspecified damages claim, FINRA's current practice is to charge parties $450 per hearing session for an unspecified damages claim heard by one arbitrator.

The proposed rule change amends Rules 12902(a)(1) and 13902(a)(1) of the Codes to codify FINRA's current practice of charging $450 per hearing session for an unspecified damages claim heard by one arbitrator by changing the current amount for an unspecified damages claim heard by one arbitrator from N/A to $450. However, while the proposal would codify a fee for an unspecified damages claim heard by one arbitrator, the Codes would continue to authorize the Director to determine whether the hearing session fee should be more or less than the amount specified in the fee schedule of the rule.[17]

III. Summary of Comments

The Commission received two comments on the proposed rule change.[18] The comments, as well as FINRA's response, are discussed below.

The Cornell Letter supported the proposed amendments to Rules 12601(b)(3) and 12902(a)(1) of the Customer Code. With respect to the proposed amendments to Rule 12601(b)(3), the Cornell Letter stated that the fee would compensate arbitrators for their time and any inconvenience resulting from a late hearing postponement, and could also provide an incentive for parties to resolve or settle their claims earlier in the process.[19] With respect to the proposed amendment to Rule 12902(a)(1), the Cornell Letter stated that codifying the hearing session fee for unspecified damage claims heard by one arbitrator will assist customers in understanding the fee structure prior to filing a claim.[20]

In contrast, the PIABA Letter generally opposed both of the proposed amendments to the Codes. Specifically, the PIABA Letter argued that the amendments to the fee waiver provisions of the postponement rules (Rules 12601(b)(3) and 13601(b)(3)) would improperly link the amounts arbitrators are paid with whether the litigants comply with FINRA timelines.[21] The PIABA Letter further contended that the amendments would create an impediment to settlement, stating that if late postponement fees are imposed at all, they should be assessed against the industry respondent.[22] Additionally, the PIABA Letter maintained that postponement fees in general impose an unfair burden on the parties to a proceeding and should be abolished altogether.[23]

In response, FINRA noted that the fee waiver provision amendments are necessary to achieve the purposes of the late postponement fee rule, which are to both provide arbitrators with compensation in the event that a scheduled hearing is postponed at the last minute, and to curtail delays in arbitration proceedings by minimizing late postponement requests through the imposition of additional fees for such requests.[24] With respect to assessing the fees against the industry respondent, FINRA explained that the Codes allow arbitrators to allocate all or a portion of the late postponement fee to the non-requesting party or parties if it is determined the party or parties caused or contributed to the need for the postponement.[25] FINRA also stated that the arbitrators are in the best position to determine how the fee should be allocated.[26]

With respect to the proposed amendments regarding the hearing session fees, the PIABA Letter challenged the reasonableness of the fee charged for an unspecified damages claim before one arbitrator compared to

[6] *See* Rules 12601(a)(1) and 13601(a)(1).

[7] *See* Rules 12601(a)(2) and 13601(a)(2).

[8] *See* Rules 12601(b)(1) and 13601(b)(1).

[9] *See* Rules 12601(b)(2) and 13601(b)(2).

[10] *See* Rules 12601(b)(3) and 13601(b)(3).

[11] A hearing session can either be an arbitration hearing or a prehearing conference. Rule 12100(n) and Rule 13100(n).

[12] *See* Rules 12902(a)(1) and Rule 13902(a)(1).

[13] *Id.*

[14] *See* Rules 12902(a)(2) and 13902(a)(2).

[15] For hearing sessions involving three arbitrators in which parties request damages ranging from $25,000.01 to over $500,000, the amount for each hearing session can range from $600 to $1200.

[16] *See* Rules 12902(a)(1) and Rule 13902(a)(1).

[17] *See* Rules 12902(a)(2) and 13902(a)(2).

[18] *See supra,* note 4.

[19] *See* Cornell Letter at 2.

[20] *Id.*

[21] *See* PIABA Letter at 1.

[22] *See* PIABA Letter at 2.

[23] *Id.*

[24] *See* FINRA Response at 2–3.

[25] *Id.* at 3.

[26] *Id.*

the fee charged for an unspecified damages claim before three arbitrators.[27]

FINRA disagreed with this assertion, explaining that the hearing session fee is used to not only cover arbitrator honoraria, but also to address certain fixed costs that are incurred in scheduling a hearing, regardless of the amount in dispute or the number of arbitrators.[28] Moreover, FINRA noted that the Codes authorize the Director to determine whether the hearing session fee for an unspecified damages claim should be more or less than the amount specified in the fee schedule.[29] Therefore, FINRA indicated that the proposed amendments would not change its practice of reducing or waiving the fees in documented cases of financial hardship.[30] FINRA also noted that the proposed fee for such unspecified damage claims is the same as the fee charged for hearing sessions heard by one arbitrator involving claims of $10,000.01 to over $500,000, thus providing case administration with a uniform fee structure that is easy to apply.[31]

Finally, the PIABA Letter also asserted that both of the proposed amendments would result in higher fees to the customer in a FINRA arbitration proceeding.[32] In its response, FINRA noted that the fees contemplated by the proposed amendments are not new and do not represent an increase in the fees currently charged.[33] FINRA stated that the proposed amendments clarify the fees applicable in these situations.[34]

IV. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the comments and FINRA's response, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[35] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[36] which requires, among other things, that FINRA rules 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.

More specifically, the Commission believes clarifying the applicability of the fee waiver provision of the postponement rule will assist in FINRA's efficient administration of the arbitration process by ensuring that arbitrators receive some compensation in the event that a scheduled hearing session is postponed as a result of a late postponement request, and may serve as an incentive to parties to settle their disputes earlier to avoid the imposition of additional fees.

The Commission also believes codifying the hearing session fee for an unspecified damages claim heard by one arbitrator will ensure consistent assessment of fees in FINRA's arbitration forum, will provide more transparency in FINRA's fee structure, and will enhance the efficiency of the forum by making the rules easier to understand and apply.

Further, the Commission believes that the proposed amendments are consistent with Section 15A(b)(5) of the Act, which requires that a national securities association have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.[37]

For the reasons discussed above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (SR–FINRA–2009–075) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3075 Filed 2–17–10; 8:45 am]

BILLING CODE 8011–01–P

[27] *See* PIABA Letter at 2 (noting that if the proposed amendments were adopted, a hearing session fee of $450 would be charged for an unspecified damage claim heard by one arbitrator, but that a hearing session fee of $1,000 would apply for an unspecified damage claim heard by three arbitrators).

[28] *See* FINRA Response at 3–4.

[29] *Id.* at 4.

[30] *Id.*

[31] *Id.*

[32] *See* PIABA Letter at 1.

[33] *See* FINRA Response at 4.

[34] *Id.*

[35] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78*o*–3(b)(6).

[37] 15 U.S.C. 78*o*–3(b)(5).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61498; File No. SR–ISE–2009–90]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Relating to Changes to the U.S. Exchange Holdings, Inc. Corporate Documents and International Securities Exchange Trust Agreement

February 4, 2010.

On November 9, 2009, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to the U.S. Exchange Holdings, Inc. ("U.S. Exchange Holdings") Corporate Documents (as defined below) and the ISE Trust Agreement (as defined below). The proposed rule change was published for comment in the **Federal Register** on November 24, 2009.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

I. Background

U.S. Exchange Holdings wholly owns ISE Holdings, Inc. ("ISE Holdings"). ISE Holdings wholly owns ISE, as well as a 31.54% interest in Direct Edge Holdings, LLC ("Direct Edge"). Direct Edge currently owns and operates a facility of the Exchange.[4] In addition, on May 7, 2009, Direct Edge's direct subsidiaries, EDGA Exchange, Inc. ("EDGA") and EDGX Exchange, Inc. ("EDGX"), each filed a Form 1 Application [5] (as amended, the "Form 1 Applications") with the Commission, to own and operate a registered national securities exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61005 (November 16, 2009), 74 FR 61398 ("Notice").

[4] *See* Securities and Exchange Act Release No. 59135 (December 22, 2008); 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85) (relating to a corporate transaction in which: (1) ISE Holdings purchased an ownership interest in Direct Edge by contributing cash and the marketplace then operated by ISE Stock Exchange, LLC for the trading of U.S. cash equity securities; and (2) Direct Edge's wholly-owned subsidiary, Maple Merger Sub LLC became the operator of the marketplace as a facility of ISE.

[5] The Commission published the Form 1 Applications, as modified by Amendment No. 1, on September 17, 2009. *See* Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 179 (File No. 10–193 and 10–194).

U.S. Exchange Holdings is a wholly-owned subsidiary of Eurex Frankfurt AG (Eurex Frankfurt). Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich AG ("Eurex Zürich"), which in turn is jointly owned by Deutsche Börse AG ("Deutsche Börse") and SIX Swiss Exchange ("SIX"). SIX is owned by SIX Group (Eurex Frankfurt, Eurex Zürich, Deutsche Börse, SIX, SIX Group, and U.S. Exchange Holdings, Inc. are collectively referred to herein as the "Upstream Owners").

In connection with the acquisition of ISE Holdings by the Upstream Owners in December 2007,[6] ISE Holdings, U.S. Exchange Holdings, Wilmington Trust Company, as Delaware trustee, and Sharon Brown-Hruska, Robert Schwartz and Heinz Zimmermann, as trustees, entered into a Trust Agreement, dated as of December 19, 2007 (the "ISE Trust Agreement"). As discussed in the Eurex Acquisition Order, the ISE Trust Agreement is designed to enable the Exchange to operate in a manner that complies with the federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,[7] and to facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.[8]

II. Description of the Proposal

In the instant filing, the Exchange, on behalf of the U.S. Exchange Holdings, proposed amendments to (i) the Certificate of Incorporation and Bylaws of U.S. Exchange Holdings (the "Corporate Documents"); and (ii) the ISE Trust Agreement, to provide that the Regulatory Provisions (as defined below) in the Corporate Documents and the ISE Trust Agreement, which currently apply only to ISE, also shall apply to any "Controlled National Securities Exchange," defined to any mean national securities exchange, or facility thereof, that U.S. Exchange Holdings may control, directly or indirectly.

Specifically, and as more fully described in the Notice, the Exchange proposed to replace certain references to "ISE" in the Corporate Documents with the term "each Controlled National Securities Exchange." These references appear in the ownership and voting limitations sections of the Corporate Documents, as well as other miscellaneous sections, including, but not limited to, the confidentiality section, the books and records section, the compliance with laws section, the jurisdiction section, and the amendments section (the "Regulatory Provisions"). Similarly, the Exchange proposed to amend certain provisions of the ISE Trust Agreement to replace certain references to "ISE" that appear in Articles II through VIII of the ISE Trust Agreement with references to "each Controlled National Securities Exchange."

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[10] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and the rules and regulation thereunder, and Section 6(b)(5) of the Act [11] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

Section 19(b) [12] of the Act and Rule 19b–4 [13] thereunder require a self-regulatory organization to file proposed rule changes with the Commission. Although U.S. Exchange Holdings and the ISE Trust are not self-regulatory organizations, the Corporate Documents and certain provisions of the ISE Trust Agreement are rules of an exchange if they are stated policies, practices, or interpretations (as defined in Rule 19b–4 under the Act) of the exchange, and must therefore be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder.[14] Accordingly, the Exchange filed the Corporate Documents and the ISE Trust Agreement with the Commission.

The Corporate Documents currently include Regulatory Provisions designed to maintain the independence of the regulatory functions of the Exchange, the sole national securities exchange controlled, directly or indirectly, by U.S. Exchange Holdings.[15] However, the Regulatory Provisions, by their terms, currently do not apply to additional national securities exchanges that U.S. Exchange Holdings might control, directly or indirectly, as a result of a subsequent transaction. The Exchange notes that EDGA and EDGX have filed the Form 1 Applications with the Commission that, if approved, would result in U.S. Exchange Holdings, indirectly controlling two additional national securities exchanges.[16] Accordingly, the Exchange proposes to amend the Corporate Documents to apply the Regulatory Provisions to any national securities exchange, or facility thereof, that U.S. Exchange Holdings may control, directly or indirectly. The Commission believes that the amended Corporate Documents are designed to assist any national securities exchange, or facility thereof, that U.S. Exchange Holdings may control, directly or indirectly, in fulfilling their self-regulatory obligations and in administering and complying with the requirements of the Act.[17]

The ISE Trust Agreement contains provisions that are designed to enable the Exchange to operate in a manner that complies with the federal securities laws, and to facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.[18] These provisions, however, are limited solely to the Exchange and not to any other national securities exchange that ISE Holdings might control, directly or indirectly. The Exchange proposes that the ISE Trust Agreement be amended and restated to replace references to ISE with references to any national securities exchange controlled, directly or indirectly, by ISE Holdings, or facility thereof. The Commission believes that amending and restating the ISE Trust Agreement to reference any national securities exchange, or facility thereof, that ISE Holdings may control, directly or indirectly, is designed to facilitate the ability of those national securities exchanges to comply with the requirements of the Act.[19]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the

[6] *See* Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (File No. SR–ISE–2007–101) ("Eurex Acquisition Order").

[7] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[8] ISE Trust Agreement, Articles V, VI, and VIII.

[9] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(1).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(1).

[13] 17 CFR 240.19b–4.

[14] *See* Eurex Acquisition Order, *supra* note 6.

[15] *See* Eurex Acquisition Order, *supra* note 6.

[16] *See* Notice, *supra* note 3. Approval of this proposed rule change in no way prejudges or determines what actions the Commission may take with respect to the Form 1 Applications.

[17] *See* Eurex Acquisition Order, *supra* note 6, for an additional discussion of specific provisions in the Corporate Documents.

[18] ISE Trust Agreement, Articles V, VI, and VIII.

[19] *See* Eurex Acquisition Order, *supra* note 6, for an additional discussion of specific provisions in the ISE Trust Agreement.

proposed rule change (SR–ISE–2008–90), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3076 Filed 2–17–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61500; File No. SR–CBOE–2010–010)]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

February 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 29, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (i) the monthly access fee for persons granted temporary CBOE membership status ("Temporary Members") pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 ("Rule 3.19.02") and (ii) the monthly access fee for Interim Trading Permit ("ITP") holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02[2] and the current access fee for ITP holders under Rule 3.27[3] are both $7,928 per month. Both access fees are currently set at the indicative lease rate (as defined below) for January 2010. The Exchange proposes to adjust both access fees effective at the beginning of February 2010 to be equal to the indicative lease rate for February 2010 (which is $5,433). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be $5,433 per month commencing on February 1, 2010.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate[4] of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.[5] The Exchange determined the indicative lease rate for February 2010 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of February 2010 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of January 2010 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of February 2010.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 with respect to the original Temporary Member access fee.[6] Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–77 with respect to the original ITP access fee.[7]

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] to modify the applicable access fee or the applicable status (*i.e.*, the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may, and likely will, further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[3] *See* Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR–CBOE–2008–40) for a description of the Interim Trading Permits under Rule 3.27.

[4] Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

[5] The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

[6] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

[7] *See* Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR–CBOE–2008–77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

other charges among persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 [12] thereunder. 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–CBOE–2010–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–010. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2010–010 and should be submitted on or before March 11, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3077 Filed 2–17–10; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 248X)]

Union Pacific Railroad Company—Abandonment Exemption—in Polk County, IA

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a portion of its line of railroad known as the Bondurant Industrial Lead, extending from milepost 225.56 near Berwick to milepost 232.80 near Bondurant, a distance of 7.24 miles, in Polk County, IA. The line traverses United States Postal Service Zip Codes 50317, 50032, 50021, 50009, and 50035.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 20, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 1, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 10, 2010, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

UP has filed a combined environmental and historic report addressing the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by February 23, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by February 18, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 12, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–3070 Filed 2–17–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 279X)]

Union Pacific Railroad Company—Abandonment Exemption—in Polk County, IA

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon .20 miles of a line of railroad on the Ankeny Industrial Lead from milepost 10.50 in Ankeny to milepost 10.70 in Ankeny, in Polk County, IA. The line traverses United States Postal Service Zip Code 50021.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 20, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 1, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 10, 2010,[3] with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed a combined environmental and historic report, which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by February 23, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by February 18, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 12, 2010.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–3068 Filed 2–17–10; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

[3] UP notes that the property proposed for abandonment is not suitable for public purposes.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35350]

Drake Cement, LLC—Acquisition Exemption—Clarkdale Arizona Central Railroad, LLC

Drake Cement, LLC (DC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 for DC to acquire from Clarkdale Arizona Central Railroad, LLC, approximately 4.12 miles of rail lines, located near Drake, Yavapai County, AZ, as follows: (1) A railroad yard consisting of six tracks (Tracks A–F) totaling approximately 3.46 miles (the Yard); and (2) two tracks (Track G and H) that extend approximately 0.66-miles, between Track C in the Yard and

facilities to be owned and operated by DC.[1]

DC certifies that the projected annual revenues as a result of the proposed transaction will not exceed those that would qualify it as a Class III carrier.

DC states that it expects the transaction to be consummated no earlier than 30 days after the filing of the notice. The earliest this transaction may be consummated is March 4, 2010, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than February 25, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35350, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, #1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 12, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–3060 Filed 2–17–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 16, 2009, vol. 74, no. 199, page 53316. FAR Part 157 requires that each person who intends to construct, deactivate, or change the status of an airport, runway, or taxiway must notify the FAA of such activity.

DATES: Please submit comments by March 22, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Notice of Landing Area Proposal.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0036.

Forms(s) Form 7480–1.

Affected Public: An estimated 1,500 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 45 minutes per response.

Estimated Annual Burden Hours: An estimated 1,125 hours annually.

Abstract: FAR Part 157 requires that anyone who intends to construct, deactivate, or change the status of an airport, runway, or taxiway must notify the FAA. The information collected provides the basis for determining the effect the proposed action would have on existing airports and on the safe and efficient use of airspace by aircraft, on existing or contemplated traffic patterns of neighboring airports, on the existing airspace structure and projected programs of the FAA, and the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal.

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 the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates 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.

Issued in Washington, DC, on February 4, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–3157 Filed 2–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Statute of Limitations on Claims; Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans and other Federal agencies, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed Physical Suicide Deterrent System on the Golden Gate Bridge on US Route 101 at the San Francisco/Marin County line, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 17, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Haiyan Zhang, Senior Environmental Planner, California Department of Transportation (Caltrans), 111 Grand Avenue, Oakland, CA 94612; Weekdays 8 a.m. to 5 p.m. (Pacific time); telephone: (510) 286–5235 (please note office closed first through third Fridays

[1] Drake Switching Company, LLC filed a verified notice of exemption to operate these tracks in STB Finance Docket No. 35351, *Drake Switching Company, LLC —Operation Exemption— Drake Cement, LLC.*

due to State furloughs); e-mail: *haiyan_zhang@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The Golden Gate Bridge Physical Suicide Deterrent System on US Route 101 at the San Francisco/Marin County line. The purpose of the project is to consider a physical suicide deterrent system on the Golden Gate Bridge (Bridge) that reduces the number of injuries and deaths associated with individuals jumping off the Bridge. The specific need for the project stems from the fact that the 4-foot height of the outside handrail does not sufficiently deter individuals, who are not using the sidewalk for its intended purposes, from climbing over the outside handrail. There is no other physical barrier beyond the outside handrail preventing an individual from jumping once the outside handrail is scaled.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA)/Finding of No Significant Effect (FONSI) for the project, approved on January 19th, 2010. The EA/FONSI and other documents are available by contacting Caltrans at the addresses provided above. The EA/FONSI and other documents can also be viewed and downloaded from the project Web site at: *http://www.ggbsuicidebarrier.org.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321–4351];
2. Federal Aid Highway Act [23 U.S.C. 109 & 128];
3. Section 4(f) of the Department of Transportation Act of 1966 [23 CFR, 774];
4. Air Quality Conformity Determination [40 CFR 93.126];
5. Federal Endangered Species Act of 1973 [16 U.S.C. 1531–1544]; and
6. National Historic Preservation Act of 1966 [16 U.S.C. 470].

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: February 10, 2010.

William Forrester, Jr.,

Director of Structures, Federal Highway Administration, Sacramento, California.

[FR Doc. 2010–3095 Filed 2–17–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee (ATMAC) Revised Agenda—Rescheduled Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee (ATMAC) revised agenda—rescheduled meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Government/Industry Air Traffic Management Advisory Committee (ATMAC) revised agenda—rescheduled meeting.

DATES: The meeting will be held March 3, 2010, from 10 a.m. to 1 p.m. This meeting is the rescheduled date for the ATMAC meeting originally scheduled for February 11, 2010 and cancelled due to inclement weather.

This meeting is being scheduled with less than 15 days calendar notice since it is a rescheduled meeting, due to the pressing need to continue the work on NextGen implementation, and the use of RTCA Web site and email communications to advise the public about the February 11, 2010 cancellation and March 3, 2010 rescheduling.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., FAA Auditorium (3rd Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org. Metro:* L'Enfant Plaza Station (Use 7th & Maryland Exit).

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee (ATMAC) Revised Agenda—Rescheduled Meeting meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions).
- Trajectory Operations (TOps) Work Group Status Report.
- ADS–B Work Group Update.
- Airspace Work Group Annual Report and Recommendations.
- FAA Response to RTCA NextGen Implementation Task Force Recommendations.
- NextGen Implementation Work Group (NGIWG) Report, Discussion, and Next Steps.
- Closing Plenary (Other Business, Adjourn).

Note: Please arrive in the FAA lobby by 9:30 a.m. to allow ample time for security and check in procedures.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FUTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 12, 2010.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–3156 Filed 2–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35351]

Drake Switching Company, LLC—Operation Exemption— Drake Cement, LLC

Drake Switching Company, LLC (DSC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 4.12 miles of rail lines, located near Drake, Yavapai County, AZ, as follows: (1) A railroad yard consisting of six tracks (Tracks A–F) totaling approximately 3.46 miles (the Yard); and (2) two tracks (Track G and H) that extend approximately 0.66-miles, between Track C in the Yard and the facilities to be owned and operated by Drake Cement, LLC.[1]

[1] Drake Cement, LLC filed a verified notice of exemption to acquire these track in STB Finance Docket No. 35350, *Drake Cement, LLC—Acquisition Exemption—Clarkdale Arizona Central Railroad, LLC.*

DSC certifies that the projected annual revenues as a result of the proposed transaction will not exceed those that would qualify it as a Class III carrier.

DSC states that it expects the transaction to be consummated no earlier than 30 days after the filing of the notice. The earliest this transaction can be consummated is March 4, 2010, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than February 25, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35351, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, #1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http:www.stb.dot.gov.*

Decided: February 12, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–3059 Filed 2–17–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2010–0109]

Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport

ACTION: Notice of a petition for waiver and solicitation of comments on grant of petition with conditions.

SUMMARY: Delta Air Lines and US Airways submitted a joint waiver request from the prohibition on purchasing operating authorizations ("slots" or "slot interests") at LaGuardia Airport (LGA). The carriers requested the waiver to allow them to consummate a transaction in which Delta would transfer 42 pairs of slot interests to US Airways at Ronald Reagan Washington National Airport (DCA), international route authorities to São Paulo and Tokyo; and terminal space at the Marine Air Terminal at LGA. US Airways would transfer 125 pairs of slot interests to Delta at LGA, and would lease an additional 15 pairs of LGA slot interests with a purchase option, together with terminal space in LGA's Terminal C. We have evaluated the proposed transaction and tentatively determined that, while the proposed transaction has a number of benefits, a grant of the waiver in its entirety would result in a substantial increase in market concentration that would harm consumers. Accordingly, while we have tentatively decided to grant Delta Air Lines' and US Airways' joint waiver request in part, we have tentatively determined that the public interest would best be served by creating new and additional competition at the airports to counterbalance the potential harm to consumers. To achieve that goal, our proposed waiver would require the divestiture of 14 pairs of slot interests at DCA and 20 pairs of slot interests at LGA to new entrant and limited incumbent carriers.

DATES: Comments on the FAA's proposed grant of the petition for waiver with conditions must clearly identify the docket number and must be received on or before March 22, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0109 using any of the following methods:

- *Government-wide docketing system:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; US Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at (202) 493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Considerations: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc*). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** at 65 FR 19,477–78 (Apr. 11, 2000).

Reviewing the Docket: To read background documents or comments received in this matter, go to *http://www.regulations.gov* at any time or go to the Docket Management Facility in Room W12–140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rebecca MacPherson, Assistant Chief Counsel for Regulations, by telephone at (202) 267–3073 or by electronic mail at *Rebecca.macpherson@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA currently limits the number of scheduled and unscheduled operations during peak hours at LaGuardia Airport by virtue of an order that the FAA published in December 2006 and subsequently amended (Order).[1] The High Density Rule (HDR)[2] limits scheduled and unscheduled operations at Ronald Reagan Washington National Airport. Because of the operating limitations, slots at LaGuardia and at Reagan National Airports are a scarce resource.

Two air carriers, Delta and US Airways, have proposed an exchange of slot interests at these two airports.[3] This exchange, which could potentially impact as many as 182 round-trip operations[4] at the two airports, would qualify as a purchase under both the Order and the HDR.[5] The carriers consider the slot interest exchanges to be part of an integrated transaction because the sale of US Airways' slot interests to Delta at LGA is conditioned upon the purchase by US Airways of Delta's slot interests at DCA.

The Order currently does not allow for the purchase and sale of slot interests at LaGuardia. Instead, it contains a provision that limits carriers

[1] Operating Limitations at New York LaGuardia Airport, 71 FR 77,854 (Dec. 27, 2006); 72 FR 63,224 (Nov. 8, 2007) (transfer, minimum usage, and withdrawal amendments); 72 FR 48,428 (Aug. 19, 2008) (reducing the reservations available for unscheduled operations); 74 FR 845 (Jan. 8, 2009) (extending the expiration date through Oct. 24, 2009); 74 FR 2,646 (Jan. 15, 2009) (reducing the peak-hour cap on scheduled operations to 71); 74 FR. 51,653 (Oct. 7, 2009) (extending the expiration date through Oct. 29, 2011).

[2] 14 CFR part 93, subparts K and S.

[3] The parties would also exchange terminal facilities at LaGuardia, and Delta would transfer two foreign route authorities to US Airways.

[4] 280 operating authorizations at LaGuardia and 84 slots at Reagan National.

[5] 14 CFR Section 93.221.

to leases and trades to another carrier for the duration of the Order, which presently expires October 29, 2011.[6] The only way for a carrier to sell or purchase a slot interest at LaGuardia is through a waiver of the Order.

We reviewed this transaction as a result of the request by the parties for a waiver to the Order. Our ultimate decision with respect to the waiver request will be limited in scope. Our proposed grant of the waiver would transfer to Delta the same interests in the transferred US Airways' slots at LaGuardia that US Airways currently holds, under the terms of the Order. The waiver will not grant either carrier, or any transferee of divested slots, an interest in the slots that will extend beyond the term of the existing Order. Our proposed waiver does not limit the existing rights of any other carrier to dispose of its interests in slots at either affected airport.

The proposed transaction is unique in scope and scale. We have evaluated the competitive impact of the transaction in this case because of its size and scope and its anticipated impact on two of our country's most congested and prominent airports. We are proposing conditional divestitures in this case because of the unusual size of the transaction, which dramatically enhances the respective market position of Delta at LaGuardia and US Airways at Reagan National Airport, the reduced competitive incentives that the carriers would have at the respective airports, and the potential for use of the transferred slot interests in an anticompetitive manner. We have not determined that an analysis of the impact of a transaction on competition or the imposition of targeted remedies is appropriate or necessary for future transfers of slot interests, and our tentative conclusions in this matter should not be interpreted to impose such a requirement. Our tentative waiver should not be read to prejudice or predetermine any long-term policy decisions relating to congestion management at either of the affected airports.

The FAA is authorized to grant an exemption from the Order when the Administrator determines the "exemption is in the public interest." 49 U.S.C. 40109. *See Starr* v. *Federal Aviation Administration,* 589 F.2d 307, 311 (7th Cir. 1978). The Order (as well as the HDR) was issued pursuant to the FAA's authority to "develop plans for the use of the navigable airspace" and "assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace." 49 U.S.C. 40103(b)(1). Further, the Administrator is authorized to "modify or revoke an assignment when required in the public interest." *Id.* The FAA has tentatively decided to grant the carriers' waiver request, subject to the conditions described in this Notice.

In considering what is in the public interest in this instance, the FAA is guided by the policy goals prescribed for the Secretary in 49 U.S.C. 40101(a)(4), (6), (10–13) and the pro-competition policies followed by Congress in adopting legislation on matters such as slot exemptions and airport grant programs. *See, e.g., Delta Air Lines* v. *CAB,* 674 F2d 1 (D.C. Cir. 1982); *Congestion and Delay Reduction Rule at Chicago O'Hare International Airport,* 71 FR 51,382, 51,388–90 (Aug. 29, 2006) (O'Hare Rule). These pro-competitive policies derive from the Airline Deregulation Act of 1978 and direct the Secretary to consider, as in the public interest, placing maximum reliance on airline competition and opportunities for new entrant airlines. In our O'Hare Rule, we relied on these pro-competitive policies in granting preferential treatment to new entrant and limited incumbent airlines in assigning new or withdrawn slots (termed "arrival authorizations"). *Id.;* 14 CFR 93.30. We noted that the "courts have approved the Secretary's reliance on the pro-competition policies in allocating slots under the HDR. *Northwest Airlines* v. *Goldschmidt,* 645 F.2d 1309, 1315 (8th Cir. 1980)." And, in response to the congestion caused by AIR–21 slot exemptions at LaGuardia, we issued orders that allocated those slot exemptions and "took into account the need to promote competition." See 66 FR 41,294 (Aug. 7, 2001) and 67 FR 65,826 (Oct. 28, 2002).

The pro-competitive policies of the Airline Deregulation Act emphasize the interests of the traveling public in having available "low-priced services," "entry into air transportation markets by new and existing air carriers," "actual and potential competition," and in avoiding "unfair * * * or anticompetitive practices in air transportation," and "unreasonable industry concentration, excessive market domination [or] monopoly powers * * * in air transportation," 49 U.S.C. 40101(a)(4), (6), (9), (10), (11), (12) and (13). *See Morales* v. *Trans World Airlines, Inc.,* 504 U.S. 374, 378 (1992) (Congress enacted the Airline Deregulation Act in 1978, which loosened its economic regulation of the airline industry after determining that " maximum reliance on competitive market forces' would best further 'efficiency, innovation, and low prices' as well as 'variety [and] quality * * * of air transportation.' "); *American Airlines* v. *Wolens,* 513 U.S. 219, 230 (1995); *Air Transport Ass'n of America, Inc.* v. *Cuomo,* 520 F.3d 218, 222 (2d Cir. 2008).

In addition to the pro-competitive policies of the Airline Deregulation Act, Congress also directed the Secretary to consider, as being in the public interest, matters that maintain and improve the health of the aviation industry such as "[encouraging] efficient and well-managed air carriers to earn adequate profits and attract capital," "developing and maintaining a sound regulatory system that is responsive to the needs of the public," and "promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry." 49 U.S.C. 40101(a)(6)(B), (7), and (14). Furthermore, service to small communities is another important public interest factor. 49 U.S.C. 40101(a)(11) and (16).

The carriers assert that their petition should be granted because it would benefit each of the carriers (e.g., it would facilitate Delta building a domestic hub at LGA and US Airways enhancing its network at DCA), would produce more efficiencies at LGA (e.g., Delta plans to use jet aircraft in place of US Airways' turboprops), would provide new and enhanced service to small communities, and would benefit consumers through enhanced network connectivity by Delta at LGA and US Airways at DCA. The FAA has evaluated the potential impact on air traffic operations at the respective airports, and it believes there will be little to no impact on the agency's ability to manage traffic at either airport. Based on our review of the petition, we tentatively find that much of the request meets the public interest standards of ensuring the efficiency of use of the navigable airspace and warrants a waiver. Additionally, the transaction would satisfy the public interest objectives related to promoting a viable domestic airline industry, encouraging well-managed carriers, and attracting capital and protecting service to small communities.

We also tentatively find that it would further the pro-competitive public interest factors to condition the waiver on making certain slot interests available to new entrant and limited incumbent carriers, as explained more fully below. Our waiver would require Delta and US Airways, respectively, to divest 14 pairs of slot interests at DCA and 20 pairs of slot interests at LGA.

[6] 74 FR at 51,654 (ordering paragraph A.5).

The divestiture of the respective DCA and LGA slot interests would occur through sales to U.S. or Canadian carriers that have, as of the date of any final decision granting a waiver, less than five percent of the total slot interest holdings at DCA or LGA respectively, do not code share on flights to or from DCA or LGA with any carrier that has five percent or more slot interest holdings, and are not subsidiaries, either partially or wholly-owned, of a company whose combined slot interest holdings are equal to or greater than five percent at DCA or LGA, respectively. Thus, a carrier having less than five percent of slot interest holdings at DCA and not involved in a code-share relationship at DCA with a carrier holding five percent or more of the DCA slot interests as of the date of any final decision granting a waiver would be eligible to purchase divested DCA slots, even though that carrier has five percent or more of the LGA slot interest holdings, and *vice versa*.

We are including both Canadian and U.S. air carriers in the class of new entrant and limited incumbent carriers eligible to purchase the divested slots. The Air Transport Agreement between the U.S. and Canada provides generally that the U.S. Government treats Canadian airlines in the same way as it treats U.S. airlines, for purposes of slot allocation at slot-regulated airports.

The "public interest" standard provides the Administrator with broad powers to condition waivers. The Administrator is expressly authorized to "take action [he] considers necessary to carry out [the Air Commerce and Safety part of Title 49 U.S.C.]" and to prescribe orders as appropriate. 49 U.S.C. 40113(a), 46105(a). It is not uncommon for federal agencies to condition grants of waivers or exemptions upon meeting certain public interest requirements. *Winter* v. *Natural Resources Defense Council,* 129 S.Ct. 365, 371 (2008) (Navy granted an exemption from the Marine Mammal Protection Act for training exercises conditioned on adopting mitigation procedures); *Clifford* v. *Peña,* 77 F.3d 1414, 1416 (D.C. Cir. 1996) (waiver of Merchant Marine Act for domestic ship operator to operate new foreign flag vessels conditioned on certain operating requirements); *National Small Shipments Traffic Conference, Inc.* v. *C.A.B.,* 618 F.2d 819 (D.C. Cir. 1980) (CAB has broad discretion to grant exemptions to promote price competition).

Furthermore, in carrying out the Secretary's airline economic regulatory oversight, the Department previously has found that the public interest may require conditions upon the approval of a transaction, including divestitures of slots and/or other assets, such as route authority. *See, e.g., U.S.-U.K. Alliance Case,* DOT Order 2002–1–12 (January 25, 2002) (tentative grant of conditional approval and antitrust immunity to an alliance of domestic and foreign air carriers, based in part on a finding that the divestiture by American Airlines and British Airways of London Heathrow Airport slots and access to necessary ground facilities to U.S. competitors, was required in the "public interest"); *Joint Application of American Airlines, Inc. and Trans World Airlines, Inc. for Approval of Transfer of Certificates (U.S.-London Routes*), DOT Order 91–4–46 (April 24, 1991) (finding that the "public interest" permits the approval of the transfer of certain TWA route authority, by sale, to American and requires the disapproval of other route authority transfers contemplated by TWA's agreement with American); *Pacific Division Transfer Case,* DOT Order 85–11–67 (October 31, 1985) (approval of United's acquisition of Pan American's Pacific route authority on the condition that the "public interest" may require that United surrender its Seattle/Portland-Tokyo/Osaka authority should the Department so order in a future proceeding).

Further, the Department has amended route certificates to delete authority upon a finding that the "public convenience and necessity" so requires. *See Central Zone-Caracas/Maracaibo Venezuela Service Case,* DOT Order 83–4–49 (March 9, 1983); *American-Eastern/Continental Route Transfer,* DOT Order 90–5–5 (April 26, 1990). The conditions we tentatively adopt on our waiver of the slot transaction are based on our concerns that approving the waiver in full would hinder competition at the two airports and disadvantage the traveling public.

Entry is constrained at both DCA and LGA. The HDR adopted at DCA limits hourly instrument flight operations by air carriers, commuters and other airlines, as prescribed in 14 CFR part 93, subpart K; allocation of DCA slots is governed by 14 CFR part 93, subpart S; and nonstop flight operations at DCA are limited by a 1,250 mile perimeter under 49 U.S.C. 49109 and 14 CFR part 93, subpart T. *See City of Houston* v. *Federal Aviation Administration, et al.,* 679 F.2d 1184 (5th Cir. 1982). The HDR notes that "slots do not represent a property right but represent an operating privilege subject to absolute FAA control. Slots may be withdrawn at any time to fulfill the Department's operational needs * * *." 14 CFR 93.223. As noted, the FAA Order addressing congestion at LGA also caps flights at that airport; LaGuardia is also constrained by a locally imposed 1,500 mile perimeter. *See Western Air Lines* v. *Port Authority of N.Y. and N.J.,* 817 F.2d 222 (2d Cir. 1987).

It is well-accepted that the secondary slot market at the slot-controlled airports has not resulted in robust entry by new entrants or expansion by limited incumbents. *See Airport Business Practices and Their Impact on Airline Competition,* FAA/OST Task Force Study, at 32 (Oct. 1999); *Secretary's Task Force on Competition in the U.S. Domestic Airline Industry* (1990) at 2–27 noting incumbent carriers have the potential to exert market power in slot pricing, creating a barrier to entry. The Government Accountability Office (GAO) also found that new entrant air carriers were unable to gain access to the slot-controlled airports in a predictable manner and with sufficient slots to provide meaningful competitive service and that incumbent carriers tended to hoard excess slots which they may lease to related airlines. *Airline Competition: Industry Operating and Marketing Practices Limit Market Entry,* GAO/RCED–90–147 (Aug. 29, 1990). The congressionally-created National Commission to Ensure a Strong Competitive Airline Industry also found that the HDR limited competition. *A Report to the President: Change, Challenge and Competition* (Aug. 1993). Congress attempted to redress the problems faced by new entrants in accessing slots at reasonable prices by directing the Department to grant exemptions from the HDR (but not at DCA) to new entrant airlines and only "when in the public interest, and the circumstances exceptional." 49 U.S.C. 41714(c). The GAO subsequently expressed concern that the HDR limited competition and erected barriers to entry, even given the "exceptional circumstances" criteria for slot exemptions. *Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets* (GAO/RCED 97–4, Oct. 1996). Congress directed a study by the National Academy of Sciences, National Research Council's Transportation Research Board that found "many fundamental concerns" with the slot rules including slot-hoarding by incumbent airlines (who use the slots to build networks and realize economies of scope) to restrict entry and expansion by competitors, and it found that the slot-controlled airports are among the highest-priced in the country. *Entry and Competition in the U.S. Airline Industry: Issues and Opportunities* at 11, 113 (TRB, 1999). In 2000, Congress directed a multi-year

phase out of the HDR at John F. Kennedy International, LaGuardia, and O'Hare International Airports. 49 U.S.C. 41715. It found that the HDR constituted a barrier to improved service particularly by new entrant airlines and for service to smaller airports, harmed the traveling public by reducing competition, and inflated prices. H.R. Rep. No. 106–167 (1999). However, as noted in the LGA Order, it was necessary to impose quotas on flights there to reduce delays and congestion. And, although Congress, in 2000 and 2003, loosened the slot controls slightly at DCA (by directing the Secretary to grant "beyond-perimeter" and "within-perimeter" exemptions, 49 U.S.C. 41718), the number of slot exemptions operated by new entrant low-cost carriers pales in comparison to those operated by the dominant incumbent airlines.

If the proposed transaction were approved as presented to the Department, the transaction would lead to significantly increased concentration at DCA for US Airways and at LGA for Delta, regardless of whether the measure is calculated in numbers of departures or slots. Based on February 2010 schedules, US Airways would raise its share of departures at DCA from 47 to 58 percent. US Airways' share of slot interests at DCA (including regional affiliates) would increase from 44 percent to 54 percent, making it by far the dominant carrier. American, with its affiliates, would be a distant second at 14.5 percent.

As a result of the transaction, Delta would ascend to a dominant position at LGA, raising its share of departures from 26 percent to 51 percent. Delta's share of slot interests at LGA would more than double, growing from 24 percent to 49 percent.[7] LGA would transition from an airport with three competing carriers of similar size to one dominant carrier (Delta).

Stated another way, US Airways and its affiliates at DCA and Delta at LGA would become three times, and almost two-and-one-half times, respectively, the size of their closest competitor, a factor that limits the extent to which other incumbent competitors can exert competitive pressure and discipline fares. That limitation is further compounded here by the fact that low-cost carriers—those creating the most competitive impact—have only a 3.3 percent share of slot interest holdings at DCA and a 6.8 percent share of slot interest holdings at LGA. Studies of the domestic U.S. airline industry demonstrate that entry by low-fare carriers dramatically lowers fares and increases the volume of passengers carried in a market.[8]

Overall, consumers at these airports may be harmed by the loss of nonstop service, the loss of a nonstop competitor, or the transfer of nonstop monopoly service to a more dominant carrier. While the carriers have made public some of their new intended services, including new service to small communities, they have not released all intended service changes.

However, it is apparent that if the proposed transaction is approved, the carriers will increase the number of markets they serve on a monopoly or dominant basis. As the two carriers reposition at LGA and DCA, there is no assurance that all markets currently being served by the departing carrier will be maintained by the new carrier. Further, in a number of instances the departing carrier served a market on a monopoly or dominant basis—so that if the new carrier opts to serve that market it will similarly be on a monopoly or dominant basis. Here, to argue that simply replacing one carrier in a specific market with another has a neutral overall impact ignores the greater economic dominance that would result from the transaction.

The Department tentatively concludes that the proposed transaction is likely to result in higher fares for consumers in certain domestic markets subject to the perimeter rules at both DCA and LGA. Numerous economic studies of the domestic U.S. airline industry have shown that reducing the number of nonstop carriers in a market, especially in short-haul markets like those here, directly affects the level of fares.[9] If the slot transaction was to be approved as proposed and US Airways and Delta were to increase their presence at DCA and LGA respectively, the competitive environment would become significantly more concentrated. The carriers would likely rely on their increased dominance to maintain or enhance their premium fare structure in markets served at both airports. Furthermore, slot restrictions at both airports substantially hinder proportional increases in competition by other carriers, and higher fares will be sustainable due to the carriers' increased market power at both airports. This tentative conclusion is supported by an analysis of the carriers' past behavior in similar markets at both airports.

Even today, before the transaction is implemented, US Airways and Delta charge higher relative fares where they operate monopoly or dominant routes from airports where they have a strong presence. This is especially true at DCA and LGA. US Airways, holding the highest current share of slot interests and departures at DCA, charged on average 124 percent of the Standard Industry Fare Level (SIFL), a cost-based index that the Department has used historically to assist in its evaluation of pricing. However, in markets where it held a 95 to 100 percent share of nonstop departures, US Airways charged substantially more. Delta, having a less strong position at LGA than US Airways at DCA, tends to price more competitively, averaging only 89 percent of the index figures with its current slot interest holdings. While we anticipate that Delta's increased market share after the transaction would permit it to increase the percent of SIFL associated with its service at LGA, our findings of relatively higher existing levels of competition at LGA influenced our tentative determination to require fewer divestitures proportionately at LGA than at DCA.

In comparison, at Washington Dulles International Airport (IAD), the average of all carriers' fares vs. SIFL is 77 percent, and at Thurgood Marshall Baltimore-Washington Airport (BWI) the figure is 65 percent. The fares of the largest carrier at IAD, United Airlines, average 90 percent of SIFL, while those of the largest carrier at BWI, Southwest Airlines, average 65 percent.

At Newark Liberty International (EWR), the average of all carriers' fares vs. SIFL is 71 percent, and at JFK the figure is 57 percent. The fares of the largest carrier at EWR, Continental Airlines, average 71 percent of SIFL, while those of the largest carrier at JFK, JetBlue, average 57 percent. The NYC/

[7] Includes Northwest and Comair.

[8] See, *e.g.,* Oster, Jr., Clinton V. & Strong, John S. (2001) at 24. "Predatory practices in the U.S. Airline Industry." Working Paper, US DOT.

[9] See, *e.g.,* Kamita, "Analyzing the Effects of Temporary Antitrust Immunity: The Aloha-Hawaiian Immunity Agreement," *Journal of Law and Economics* (2009); Peters, "Evaluating the Performance of Merger Simulation: Evidence from the U.S. Airline Industry," 49 *Journal of Law and Economics* at 627 (2006); Joskow, Werden, and Johnson, "Entry, Exit and Performance in Airline Markets, 12 *International Journal of Industrial Organization* at 457 (1994); Borenstein, "The Evolution of U.S. Airline Competition," 6 *Journal of Economic Perspectives* at 45 (1992); Borenstein, "Hubs and High Fares: Airport Dominance and Market Power in the U.S. Airline Industry," 20 *Rand Journal of Economics* at 344 (1989); Brueckner, Dyer and Spiller, "Fare Determination in Hub and Spoke Networks," 23 *Rand Journal of Economics* at 309 (1992); Morrison and Winston, "Enhancing Performance in the Deregulated Air Transportation System," 1989 *Brookings Papers: Microeconomics* at 61 (1989); Oster, Jr., Clinton V. & Strong, John S., "Predatory practices in the U.S. Airline Industry." At Working Paper, US DOT at 6 (January 2001); Gimeno, 20(2) "Reciprocal Threats in Multimarket Rivalry: Staking out 'Spheres of Influence' in the U.S. Airline Industry," *Strategic Management Journal* 101 at 110.

Washington airports that have the largest proportion of low-cost carriers consistently provide lower fares.

The Department also considered whether the three airports in the New York area, and the three in the Washington area, effectively constitute the same market for all passengers, such that if fares are perceived to be rising too high at one airport, the harm would be mitigated by consumers simply shifting to the other two. Department analysts, evaluating passenger ticket data that contained actual fare information, looked at whether the three airports at New York and the three in Washington were effective substitutes for each other, and concluded that they were not. In analyzing both overlap and all markets at the airports, they found that yields (i.e., revenue per passenger mile) were substantially different among the airports. Specifically, they found that the average yield in all markets at BWI is 48 percent less than DCA, and the average yield in all markets at Dulles is 37 percent less than DCA. (Yield at DCA is 27 cents per mile, vs.17 cents at Dulles and 14 cents at BWI.) Similarly, the average yield at JFK is 28 percent less than at LGA, and Newark is 9 percent less than at LGA. (Yield at LGA is 20.5 cents per mile, vs. 18.7 cents at EWR and 14.7 cents at JFK.) If the airports were effective economic substitutes for all passengers, we would expect to see a greater self-equalizing of yields and the yield spreads would not differ so significantly.

The Department also found that the differences in the level of yields at area airports tended to correlate with the level of low cost carrier operations. Thus, passengers pay more for nonstop service of equivalent distance at DCA and LGA than at alternative airports that have sizable LCC competition. For example, for trips out to 1000 miles, passengers at LGA pay 23% more on average than those at JFK ($147 vs. $120 each way). Passengers at DCA pay 64% on average more than those at BWI ($184 vs. $113 each way).

Under their proposal, Delta and US Airways are not committing to any particular markets for defined periods. They would be free, as is any other carrier, to discontinue routes that are being proposed and to initiate new routes elsewhere. Thus, they could, if they so chose, use their added slot interests to target smaller competitors, for example by increasing their roundtrips in competitive markets and "sandwiching" competitor flights. With relatively few slot interests of their own, competitors—especially the low-cost carriers at DCA that are tied to specific markets through slot exemption awards—may be unable to successfully respond.

The competitive harm resulting from this transaction as proposed would occur not just at the city-pair level, but at the network or airport level as well, especially given our conclusion that alternative airports are not perfect substitutes for service at DCA and LGA. An appropriate remedy for this transaction must address this broader competitive harm, given (1) that Delta and US Airways are currently the number one and number two competitors at DCA and that Delta is the most likely potential carrier to compete with US Airways in any market out of DCA; (2) the absolute regulatory cap on operations/entry at both airports; and (3) the dramatic increase in dominance of US Airways at DCA and Delta at LGA that would result from the transaction.

The combination of increased airport concentration, an increase in the number of monopoly or dominant markets in which increased pricing power can be exercised, and the potential for use of transferred slot interests in an anticompetitive manner underlie our proposal here for a limited number of divestitures.

At DCA, we are proposing to require a divestiture of 14 pairs of slot interests. We project that, in the "bundles" (that is, pairs of slot interests) proposed, this would enable new entrant/limited incumbent competitors to initiate and/or increase service in one large market or multiple smaller markets. It would limit the increase in US Airways' share of slot interests at DCA to a total of 50.8 percent, and increase the new entrant/limited incumbent share to 6.5 percent.

At LGA, we are proposing that 20 pairs of slot interests be divested. With the authorization bundles as proposed, we project that these would enable limited incumbents to strengthen their existing presence in up to three markets and/or allow new entrants to initiate new service in up to four new markets. Such a divestiture would limit the increase in Delta's share of slot interests to 45.3 percent, and increase the new entrant/limited incumbent share to 10.3 percent. The proposed slot interest divestitures at LGA and at DCA would allow the parties to realize almost all of their purported benefits while providing opportunities for greater competition at those airports and reducing the likelihood that increased concentration of slot interests will reduce competition at those airports.

Our proposed divestiture of 14 pairs of slot interests at DCA would be a condition of our waiver of the LGA Order and is not an amendment to the HDR that is effective at DCA. We are tentatively requiring this divestiture to address our concerns with the merits of the waiver application before us. The waiver application itself conditions a sale of Delta's DCA slot interests with a sale of US Airways' LGA slot interests. The waiver request states:

> The transfer of the [280 LaGuardia Operating Authorizations to Delta] is an integral part of a beneficial and efficiency-enhancing transaction * * *. For its part, US Airways will acquire 84 Delta slots at DCA * * *. (at 1).

Proposed Remedies

The FAA proposes to remedy the anticompetitive effects of the proposed slot interest exchange waiver request by requiring Delta and US Airways to dispose of 14 pairs of slot interests at DCA and 20 pairs of slot interests at LGA to U.S. or Canadian air carriers having fewer than five percent of total slot holdings at DCA and/or LGA, do not code share to or from DCA or LGA with any carrier that has five percent or more slot holdings, and are not subsidiaries, either partially or wholly-owned, of a company whose combined slot interest holdings are equal to or greater than five percent at LGA and/or DCA. Carriers that would not qualify include those who are involved in a code-share relationship at DCA/LGA with carrier(s) that also would not qualify as of the date of the Notice.

Use of a five percent standard for purposes of this transaction is proposed because carriers having slot interest holding shares above that point have a minimum level of competitive service sufficient to affect pricing in the market.[10] Restricting eligibility to these "less than 5 percent" carriers would assist new or small non-aligned carriers in defending themselves against increasingly dominant competitors, which, with the benefit of additional slot interests, could pursue anticompetitive strategies such as significantly increasing existing services in any new entrant/limited incumbent/low-cost/non-aligned carrier market. These new or limited incumbent carriers offer the prospect of increased efficiencies and innovations to the markets, such as through better utilization of ground staff, equipment, and facilities. They could also increase throughput at these constrained airports by adding more seats per departure than proposed by US Airways and Delta, which are relying on regional affiliates for a large proportion of their proposed new flying at DCA and LGA. Moreover,

[10] See, *e.g.,* Gimeno, 20(2) "Reciprocal Threats in Multimarket Rivalry: Staking out 'Spheres of Influence' in the U.S. Airline Industry," *Strategic Management Journal* 101 at 110.

new entrants and those limited incumbents at the respective airports could bring alternative business models and new competition to the slot constrained airports so long as they have a sufficient number of slot interests to establish sustainable patterns of service.[11]

Based on FAA slot holding data, incumbent carriers at DCA that would qualify under these limitations are AirTran and Spirit. At LGA, incumbent carriers that would qualify are AirTran, JetBlue, Southwest, and Spirit. In addition, of course, any U.S. or Canadian carrier not currently holding slot interests at the respective airports and otherwise meeting the criteria would be eligible under our proposal.

We propose that the slot interests be sold by the carriers and that the proceeds of the sales be collected and retained by the carriers. We are tentatively selecting this method, rather than one whereby the FAA would withdraw the slots and reallocate them by lottery (or similar means) to new entrant and limited incumbent carriers. Through a sale, the petitioning carriers may maximize the value of the slot interests as they initially intended. The carriers at LGA hold a possessory slot interest that may be leased in a secondary market for a period of time, and at DCA they may sell their slot interests also in the secondary market. By proposing to allow divestitures of the slot interests through sales, we are permitting the carriers to monetize their interests.

In order to achieve our goal of affording consumers the opportunity to realize new competitive service at LGA and DCA, we propose to place a 60-day time limit on US Airways' and Delta's sales of the slot interests. Should the carriers not succeed in selling those slot interests within the 60-day time period, we propose to withdraw them from Delta and US Airways and hold them in abeyance while we consider options for their future use.

We also propose precluding the carriers purchasing the slot interests acquired pursuant to this proceeding from re-selling, or leasing, them to any carriers that are not eligible under the terms of the final action we take in this proceeding. This restriction will help to ensure that the traveling public will receive the benefits of the service and price competition provided by the new entrant/limited incumbent carrier that purchased the slot interests. Additionally, these slot interests will be subject to the same minimum usage requirements as provided in the LGA Order and HDR, however, we propose to waive the use or lose requirements for a period of up to six months in order for the new entrant/limited incumbent to start up service at new markets or add service to existing markets. Our waiver would assure an eligible purchaser of a slot interest at LGA that we would waive the LGA Order prohibition against a purchase of a slot interest at the time of the sale, in order to facilitate the completion of the transaction. We would entertain requests by the purchaser to accommodate slides to assist the carrier's schedule. We seek comment on the conditions described above.

We also seek comment on the means by which the carriers may sell the slot interests to the new entrant/limited incumbent carriers described above. One option is for the carriers to engage in private sales of the slot interests. Under this option, the FAA would require biweekly reports of the efforts to sell the slot interests, the identity of carriers contacted, the prices offered, and the terms (if any) reached.

Another option would be to permit the sale of the slot interests to the new entrant/limited incumbent carriers on a cash-only basis, through a website managed by the FAA, in which the FAA would specify a bid closing date and time and the purchasers' identities would not be revealed. The FAA would forward the highest qualifying bid to the selling carrier. The FAA would require the selling carrier to accept the forwarded bid or to reject it within three business days.

A third option would allow the carriers to provide notice of the availability of the slot interests to the new entrant/limited incumbent carriers through a website managed by the FAA. The FAA would provide an opening date, closing date and time by which offers for the slot interests must be received. US Airways and Delta would be able to negotiate the consideration and other terms of the sale with the eligible purchaser. Once the sale was consummated, the carriers would provide the FAA with information concerning the terms of the sale as well as other offers received and names of bidders.

We request comments on these variations of the "bulletin board" approach.

We also propose to bundle the package of slot interests for sale so as to enable an eligible carrier to purchase sufficient slots to operate competitive service, with times spread across the day. The slot interests to be divested must be air carrier slot interests, and slot times at DCA were chosen based on the divested slot interests as a total percentage relative to the transaction. Fourteen pairs of slot interests constitute 33.3 percent of slots involved in the transaction, and that percentage was spread amongst Delta's planned slot divestitures (by hour) to US Airways as evenly as possible across the hours between 0700 and 2159. Slot interests in the 0600, 2200, and 2300 hours are currently available from the FAA and therefore were not included in the list of slots to be divested. At DCA, we propose that the carriers bundle the pairs of slot interests as follows:

Bundle	Number of slots
A	8 pairs.
Bundle A slot times: 0700 (2), 0800 (1), 1000 (2), 1100 (1), 1200 (1), 1300 (1), 1400 (2), 1500 (1), 1600 (2), 1900 (1), 2000 (1) 2100 (1)	
B	6 pairs.
Bundle B slot times: 0700 (1), 0900 (2), 1100 (1), 1200 (1), 1300 (2), 1700 (1), 1800 (1) 1900 (1); 2000 (1), 2100 (1)	

Slot interest times at LGA were chosen based on the divested slot interests as a total percentage relative to the transaction. Twenty pairs of slot interests constitute 14.29 percent of slots involved in the transaction, and that percentage was spread across US Airways' planned slot divestitures (by hour) to Delta as evenly as possible across the hours between 0600 and 2159.

At LGA we propose the following bundling of 20 pairs of slot interests:

Bundle	Number of slots
A	8 pairs.
Bundle A slot interests: 0600D (1), 0700D (1), 0800A, 0800D (total of 2 in 0800), 0900A (1), 1000D (1), 1100A (1), 1200D (1), 1300A (1), 1400D (1), 1500A (1), 1600D (1), 1700A (1), 1800D (1), 2000A (1), 2100A (1)	
B	4 pairs.
Bundle B slot interests: 0700D (1); 0900A (1); 1000D (1); 1300A (1), 1400D (1), 1700A, 1700D (total of 2 in 1700), 2000A	
C	4 pairs.
Bundle C slot interests: 0600D (1), 0800A (1), 0900D (1), 1100A (1), 1200D (1), 1500A (1), 1600D (1), and 2000A (1)	
D	4 pairs.

[11] See, *e.g.,* Oster, Jr., Clinton V. & Strong, John S. (2001). "Predatory practices in the U.S. Airline Industry." Working Paper, US DOT.

Bundle	Number of slots
Bundle D slot interests: 0700D (1), 1000A (1), 1100D (1), 1300A (1), 1400D (1), 1800A (1), 1900D (1), and 2100A (1)	

Operating authorizations at LGA are designated as arrivals (A) or departures (D), and defined on the half hour at LGA (e.g., 0700 to 0729; 0730 to 0759), but information on the transaction provided by Delta was specific only to hourly increments.

The bundles are structured so as to permit eligible carriers to enter or add frequencies in markets with sufficient operations to effectively compete. We do not propose to require the purchasers of the slot interests to operate in specific markets or types of markets, as this would deprive the acquiring carriers of the flexibility to deploy their assets based on prevailing market conditions. However, we would propose to prohibit purchasers from alienating slot interests acquired pursuant to this proceeding to any carriers who are not eligible under the terms of our final action in this proceeding.

The agency has placed a copy of the waiver request and the January 29, 2010 letter from Delta's senior vice president and general counsel in the docket along with other public correspondence on this matter. The FAA invites all interested members of the public to comment on the waiver request, the proposed grant of the waiver, the proposed conditions to the waiver, and the proposed divestiture remedies. We also seek comment on alternative divestiture remedies to ensure value to the selling carriers and expedited sale so that the traveling public may realize the benefits of the competition to be produced by the new entrant/limited incumbent carriers.

Issued in Washington, DC, on February 9th, 2010.

James W. Whitlow,

Acting Chief Counsel.

[FR Doc. 2010–3109 Filed 2–12–10; 4:15 pm]

BILLING CODE 4910–13–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on Thursday, March 4, and Friday, March 5, 2010, to consider various matters.

The RRSC was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The management of the Tennessee Valley reservoirs and the lands adjacent to them has long been integral components of TVA's mission. As part of implementing the TVA Environmental Policy, TVA is developing a Natural Resource Plan (NRP) and Environmental Impact Study (EIS) under the process established by the National Environmental Policy Act (NEPA) that will help prioritize techniques for the management of TVA's sustainable land use activities, natural resource management activities, recreation and water resource protection and improvement activities. TVA would like to utilize the RRSC as a key stakeholder group throughout the EIS period to advise TVA on the issues, tradeoffs, and focus of environmental stewardship activities. At the March meeting, TVA will be seeking advice from the Council on issues regarding the scope of the study and the preliminary draft alternatives that will support the Draft EIS and direction of the study. TVA will also be seeking recommendations and advice on the NRP objectives and activities that complement the use of public lands with the protection of these natural resources.

The meeting agenda includes the following:

1. Introductions.

2. Natural Resource Plan Background, Components of the Plan, Preliminary Draft Alternatives.

3. RRSC Discussion Topic: Natural Resource Plan scope, preliminary draft alternatives included in the components of the NRP (*e.g.,* Natural Resource Management, Reservoir Lands Planning, Water Resources, and Recreation) and uncertainties impacting the development of various portfolios and scenarios.

4. Public Comments.

5. Council Discussion and Advice.

The TVA RRSC will hear opinions and views of citizens by providing a public comment session. The public comment session will be held at 10 a.m., EST, on Friday, March 5. Persons wishing to speak are requested to register at the door by 9 a.m. on Friday, March 5 and will be called on during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT–11 B, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Thursday, March 4 from 8:30 a.m. to 4:30 p.m., and Friday, March 5, from 8 a.m. to 12 noon, EST.

ADDRESSES: The meeting will be held at the Auditorium of the TVA Headquarters at 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Beth Keel, 400 West Summit Hill Drive, WT–11 B, Knoxville, Tennessee 37902, (865) 632–6113.

Dated: February 10, 2010.

Original signed by:

Anda A. Ray,

Senior Vice President and Environmental Executive, Environment and Technology, Tennessee Valley Authority.

[FR Doc. 2010–3050 Filed 2–17–10; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

No FEAR Act Notice

Summary: 5 CFR part 724.202 requires that each Federal agency provide notice to its employees, former employees, and applicants for employment about the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws applicable to them within 60 calendar days after September 18, 2006, and annually thereafter. Each agency must publish the initial notice in the **Federal Register.**

No FEAR Act Notice

On May 15, 2002, Congress enacted the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, which is now known as the No FEAR Act. One purpose of the Act is to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws. Public Law 107–174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under

Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, or genetic information. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791, 42 U.S.C. 2000e–16, and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), 42 U.S.C. 2000ff *et seq.*

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, disability, or genetic information, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See, e.g.,* 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of a disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505, or online through the OSC Web site—*http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercised his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If Office of Special Counsel has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within the Tennessee Valley Authority (*e.g.,* Equal Opportunity Compliance, Human Resources, the Office of the Inspector General, or TVA's Ombudsman). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to Section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States.

For Further Information Contact: Linda J. Sales-Long, 865–632–2515.

Dated: February 8, 2010.

Linda J. Sales-Long,

Director, Equal Opportunity Compliance.

[FR Doc. 2010–3054 Filed 2–17–10; 8:45 am]

BILLING CODE 8120–08–P

Federal Register

Thursday,
February 18, 2010

Part II

Office of Management and Budget

2 CFR Subtitle A, Chapter I, Parts 25, 27, 35, et al.

Guidance for Reporting and Use of Information Concerning Recipient Integrity and Performance; Proposed Rule

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Subtitle A, Chapter I, Parts 25, 27, 35, 77, and 180

Guidance for Reporting and Use of Information Concerning Recipient Integrity and Performance

AGENCY: Office of Management and Budget, Office of Federal Financial Management.

ACTION: Proposed guidance.

SUMMARY: The Office of Management and Budget (OMB) is proposing guidance to Federal agencies to implement Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) (hereafter referred to as "section 872"), as it relates to grants. Section 872 requires: establishment of a Governmentwide data system to contain specified information related to the integrity and performance of certain entities awarded Federal grants and contracts; and use of the information by Federal officials making awards. The proposed implementing guidance for grants also would apply to cooperative agreements, as a matter of Governmentwide policy.

DATES: Comments are due on or before April 19, 2010.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Comments may be sent via *http://www.regulations.gov,* a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type "guidance on recipient integrity and performance matters" (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–7844.

SUPPLEMENTARY INFORMATION:

Executive Summary

Under the proposed guidance, the information that section 872 requires the data system to contain about each entity either would be reported by Federal officials or self-reported by the entity. The guidance would require appropriate Federal officials to report on: Terminations of awards due to material failure to comply with award terms and conditions; administrative agreements with entities to resolve suspension or debarment proceedings; and findings that entities were not qualified to receive awards. Through a new award term, the guidance would require each recipient that has Federal awards with a cumulative total value greater than $10,000,000 to provide information about certain civil, criminal, and administrative proceedings that reached final disposition within the most recent 5-year period and were connected with the award or performance of a Federal or State award. The award term also requires those recipients to report at least semiannually to maintain the currency of the information. As section 872 requires, an entity also would be able to submit comments to the data system about any information that the system contains about the entity.

Prior to making a decision to award a grant or cooperative agreement to an entity, the Federal agency official authorized to make the award would be required to determine whether the entity is qualified to receive an award, taking into consideration any information about the entity that is in the data system.

In support of the data system, the proposed guidance also would establish requirements for program announcements and award terms to require that applicants, recipients, and first-tier subrecipients obtain Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) numbers and register in the Central Contractor Registration (CCR). This is a modification of a previous OMB proposal.

The proposed guidance is in amendments to 2 CFR, chapter I, that would add four new parts, amend one existing part, and create subchapters to provide organizational structure for the chapter. The amendments relocate some existing OMB guidance into 2 CFR, chapter I, to provide needed context for the proposed new guidance.

Requirements in Section 872 that are related to Federal procurement contracts are being implemented separately from the proposed guidance in this action, through proposed amendments to the Federal Acquisition Regulation [74 FR 45579]. Data elements and Paperwork Reduction Act clearance for non-Federal entities' reporting to the Governmentwide data system will be proposed for comment separately.

In the future, OMB may broaden the scope of the data system to include recipient information from authoritative data sources not described in this guidance and information on each entity receiving an award below the $500,000 threshold. In response to this notice, we are seeking input on the possible impact such scope changes could have on the affected recipients.

I. Purposes of 2 CFR Amendments Proposed in This Document

Following this **Federal Register** preamble are 12 proposed amendments to chapter I of title 2 of the Code of Federal Regulations (CFR). Chapter I is the location of OMB policy and procedural guidance to Federal agencies for the award and administration of grants and agreements.

The twelve proposed amendments would make various kinds of changes to 2 CFR. Some of the changes would create new OMB guidance needed to implement section 872. Other changes would update guidance that currently exists elsewhere and must be relocated into 2 CFR to provide a context in that title for the new guidance needed to implement section 872. The new and updated guidance would be in four new parts of Chapter I that the amendments would add—2 CFR parts 25, 27, 35, and 77—and in amendments to the existing 2 CFR part 180. Each part states its applicability to types of financial assistance awards and types of entities because the applicability varies depending upon the requirements that the part implements.

The remaining changes are administrative in nature. We are proposing these changes primarily to create seven subchapters in 2 CFR, Chapter I. The intent is to provide a better organizational framework for parts that already are located in the chapter, parts that the twelve proposed amendments would add, and other parts to be added in the future. The first of the proposed administrative changes, which is amendment 1 following this preamble, would transfer parts 2–99 into Chapter I, so that the chapter would be comprised of parts 2–199. Changes made by amendments 2, 4, and 6 through 8, as well as portions of amendments 3 and 5, would create the new subchapters. The subchapters would be:

- Subchapter A, "General Matters."
- Subchapter B, "Pre-Award Responsibilities."
- Subchapter C, "Award Content and Format."

• Subchapter D, "Post-Award Responsibilities."
• Subchapter E, "Cost Principles."
• Subchapter F, "Audit Requirements."
• Subchapter G, "National Policy Requirements."

The remainder of this **SUPPLEMENTARY INFORMATION** section is organized into 6 sections. Section II describes the statutory requirements of section 872. Section III describes proposed amendments that would add new OMB guidance needed to implement section 872 for grants and cooperative agreements. Section IV describes proposed amendments that would update and relocate into 2 CFR existing guidance, in order to provide needed context for the new guidance described in Section III. Section V explains the relationship of one of the proposed amendments to a proposal that OMB made in June 2008. Section VI is an invitation to comment and Section VII describes next steps.

II. Statutory Requirements of Section 872

A. What Information Must Be Reported and Compiled

Section 872 requires the Administrator of General Services to establish by October 14, 2009 (one year after enactment of Pub. L. 110–417) "a database of information regarding the integrity and performance of certain persons awarded Federal agency contracts and grants for use by Federal agency officials having authority over contracts and grants." The implementation of the "database" required by section 872 is expected to be a data system comprised of multiple Federal databases. In accordance with paragraph (b) of section 872, the data system must cover at least each entity awarded a Federal contract or grant in excess of $500,000, to the extent that there exists information regarding the entity in any of the categories that the law delineates (note that "person," the term used in the statute, as well as the term "entity" used in the proposed guidance to implement the statute, are properly understood to include both organizations and individuals that apply for and receive Federal awards). Those categories include information, in the form of a brief description, for the most recent 5-year period regarding the following:

1. Each civil or criminal proceeding, or any administrative proceeding, in connection with the award or performance of a contract or grant with the Federal Government with respect to the entity during the period to the extent that such proceeding results in the following:

a. In a criminal proceeding, a conviction.

b. In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

c. In an administrative proceeding, a finding of fault and liability that results in either: (i) The payment of a monetary fine or penalty of $5,000 or more; or (ii) the payment of a reimbursement, restitution, or damages in excess of $100,000.

d. To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the entity if the proceeding could have led to any of the outcomes specified in the preceding paragraphs a, b, or c.

2. Each Federal contract and grant awarded to the entity that was terminated in such period due to default.

3. Each Federal suspension and debarment of the entity in that period.

4. Each Federal administrative agreement entered into by the entity and the Federal Government in that period to resolve a suspension or debarment proceeding.

5. Each final finding by a Federal official in that period that the entity has been determined not to be a responsible source under subparagraph (C) or (D) of section 4(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(7)).

6. Such other information as shall be provided for purposes of this section in the Federal Acquisition Regulation.

7. To the maximum extent practical, information similar to the information covered by paragraphs 1 through 4 in connection with the award or performance of a contract or grant with a State government.

B. Who Reports the Information

Section 872 requires that the data system permit appropriate Federal officials to directly enter and update information about actions they have taken with respect to recipients or contractors. It also requires issuance of regulations to require recipients and contractors who receive more than $10,000,000 in Federal grants and contracts to provide current information about themselves and update the information on a semiannual basis.

Section 872 also provides recipients and contractors an option for additional comment. An entity must receive timely notification when information relevant to it is entered into the data system and given an opportunity to submit comments about the information, for inclusion in the data system.

C. How the Data System Is Being Designed

Even though the specific data elements to be reported will be addressed separately from the policy guidance proposed in this **Federal Register** notice, it is important to note that one objective of OMB and the Federal agencies working to implement section 872 is to integrate the policies and procedures for financial assistance and acquisition with the information technology aspects of the implementation in a way that minimizes the burdens on entities that receive Federal grants, cooperative agreements, and procurement contracts, as well as burdens on Federal agencies. Therefore, we are striving to implement the statute in a manner that, to the extent possible—

• Reduces reporting of information by non-Federal entities by relying on Federal officials for as much of the information as possible;
• Provides for use of the same data system for both contracts and grants; and
• Uses existing databases and information systems, such as the Excluded Parties List System, both as a source of information and a place to store new information for Federal officials' reporting of required information.

We currently anticipate that the data system, which will be known as the Federal Awardee Performance and Integrity Information System (FAPIIS), will involve several business rules to increase the usefulness, accuracy, and confidentiality of information in the system. We expect that:

• Only Federal Government officials will be able to view the information in FAPIIS, with the exception that an entity will be able to view its own information.
• FAPIIS will be designed to automatically notify an entity when new information about itself is posted, in addition to the notification provided by the Federal official who entered the information.
• There will be a point of contact for system errors and a point of contact for each Federal information entry, so that any errors in information in FAPIIS can be brought to the attention of the appropriate Government official.
• Data accessible for a period of 5 years, as section 872 requires, will be archived for an additional period of 1

year to allow for resolution of issues related to the information.

• There will be only a modest amount of space for an entity's comments about each past event reported to FAPIIS, as the purpose is for the entity to provide any additional information it may have about its present qualification to receive awards and not to dispute the past event. The comments will be retained in FAPIIS as long as the associated information is retained (*i.e.,* accessible for a period of 5 years and archived for an additional year). An entity may revise its comments in FAPIIS, but version control will be maintained.

D. How the Information Is To Be Used

Section 872 specifies that before awarding a contract or grant in excess of the simplified acquisition threshold (currently $100,000), the Federal agency official responsible for making the award must consider the information in the data system with respect to the entity to which the award would be made.

III. Amendments Establishing New Guidance To Implement Section 872

The implementation of section 872 requires OMB guidance to establish some new policies and procedures. The new requirements resulting from this guidance for non-Federal and Federal entities are described in the following sections III.A and III.B.

Section 872 applies to grants and procurement contracts. As a matter of Federal Government policy, the proposed new guidance in 2 CFR would apply the requirements of section 872 to cooperative agreements, as well as grants. Implementation of the statute as it applies to procurement contracts is being addressed through a separate **Federal Register** document proposing changes to the Federal Acquisition Regulation (74 FR 45579, September 3, 2009).

The proposed new 2 CFR guidance does not address data elements or, other than the broad outlines described in Section II.C of this notice, other specifics of the data system that section 872 requires the General Services Administration to establish. It does establish the underlying policy framework, including requirements for recipients and their direct (*i.e.,* first-tier) subrecipients, Federal agency officials who award and administer grants and cooperative agreements, and Federal agency suspending and debarring officials.

A. Proposed New Requirements for Recipients and Subrecipients

Agencies would communicate requirements applicable to non-Federal entities through two new award terms included in the proposed guidance.

The first award term is included in the proposed new part 25, which would be added by amendment 3 following this preamble. It would require recipients and first-tier subrecipients to obtain and provide DUNS numbers to Federal awarding agencies and to maintain current registrations in the CCR. These requirements support the implementation of section 872. They are needed to help correctly identify a recipient or contractor entity, so that information about the entity that resides in multiple Federal Government databases can be properly linked together and provided through an integrating data system to Federal agency awarding officials, as section 872 requires.

The second award term is included in the proposed part 35, which also would be added by amendment 3 following this preamble. It implements for grants and cooperative agreements the requirement in paragraph (f) of section 872. It does so by requiring a recipient to provide information about itself for inclusion in the data system if it has currently active Federal grants, cooperative agreements, and contracts with a cumulative total value (including any options not yet exercised) greater than $10 million. Specifically, it requires each recipient to: (1) Provide information about any criminal convictions, civil judgments, and outcomes of administrative proceedings that are listed in section II.A.1 of this **SUPPLEMENTARY INFORMATION** section; and (2) maintain the currency of that information by reviewing it at least semiannually and making any needed updates. The award term requires the recipient to report convictions and outcomes of proceedings associated with both Federal and State awards because section 872 requires inclusion of information about those associated with State awards, to the maximum extent practicable (*see* paragraph II.A.7 of this **SUPPLEMENTARY INFORMATION** section).

The award term in the proposed part 35 would not require non-Federal entities to provide information about Federal suspensions or debarments, terminations of awards, or other actions for which section 872 requires the data system to have information. The reason is that the needed information about those Federal actions can readily be obtained from the Federal awarding, administering, and suspending and debarring officials who take the actions.

B. Proposed New Requirements for Federal Officials

Most of the proposed guidance addresses responsibilities of Federal officials, including those who award and administer grants and cooperative agreements and Federal agency suspending and debarring officials.

The new responsibilities proposed for suspending and debarring officials are in amendments 10 through 12 following this preamble, which revise 2 CFR part 180. The new responsibilities are to:

• Report information to the data system established under section 872 about each administrative agreement entered into with an entity to resolve a suspension or debarment action and, if needed, subsequently correct or update the information. A suspending or debarring official sometimes negotiates an administrative agreement because he or she determines that it is a better way for the Government to resolve the matter than suspending or debarring the entity.

• Include additional wording in each administrative agreement, as well as in each notice a suspending or debarring official sends to notify an entity that it has been suspended or debarred. The purpose of the additional wording is to inform the entity that information about the action will be available through the new data system established under section 872, how Federal awarding officials will use the information, that the entity may comment about the information in the system, and other related matters.

There are a number of proposed new responsibilities for officials who make awards. Those new pre-award responsibilities would be to:

• Include wording in each program announcement, program regulation, or other issuance containing instructions for applicants, to require each applicant to register in the CCR and provide its DUNS number in each application it submits, unless the applicant is an individual or is otherwise excepted from those requirements (*see* subpart B of the proposed part 25 and Appendix A of the proposed part 27, subdivision II, paragraph II.C.3).

• Include wording in the section of each program announcement describing the review and selection process, to inform potential applicants that, prior to making an award to an entity, the Federal agency awarding official must consider information about the entity that is contained in FAPIIS. The wording also would inform a potential applicant about its right to review information about itself in FAPIIS and

provide comments that the awarding official also would consider in making a determination about the entity's qualification to receive an award. (*See* Appendix A of the proposed part 27, subdivision II, paragraph II.E.2.b.)

• Determine before making an award to an entity whether the entity is qualified. If the official determined that an entity was not qualified, he or she still would be able to make the award in some cases. However, if the official did not make an award expected to exceed the simplified acquisition threshold (currently $100,000) because he or she disqualified the entity based on its integrity and business ethics and prior performance under Federal awards, the official would be required under the proposed guidance to report information about the disqualification to FAPIIS. The official would be required to notify the disqualified entity about the reporting of the information to the data system, how Federal awarding officials will use the information, that the entity may comment about the information in the system, and related matters. The official also would be required to make timely corrections to any information submitted about the disqualification that he or she later learned to be erroneous. (*See* subpart A of the proposed part 35.)

• Include in the award the two proposed new award terms—one for DUNS number and CCR registration requirements (*see* Subpart B of the proposed part 25 and Appendix A to that part) and one for recipient reporting requirements to the FAPIIS data system (see subpart B of the proposed part 35 and Appendix A to that part).

The proposed guidance also would establish new post-award responsibilities for officials who administer awards. Subpart B of the proposed part 77 contains requirements for those officials to report terminations of awards to FAPIIS; notify the affected non-Federal entities about the reporting of the information, its use, and opportunities for the entities to comment; and correct any submitted information later learned to be erroneous.

IV. Amendments That Update and Relocate Existing OMB Guidance

As discussed in Section I of this **SUPPLEMENTARY INFORMATION** section, some of the proposed amendments following this preamble would update existing OMB guidance and relocate it into 2 CFR to provide needed context for the new guidance that was described in the preceding Section III. The following sections IV.A, IV.B, and IV.C, respectively, describe aspects of the proposed 2 CFR parts 25, 27, and 35 that relate to existing OMB guidance.

A. Aspects of the Proposed Part 25 That Relate to Policies and Procedures Currently in Effect

1. DUNS Numbers

The proposed part 25 implements and relocates into 2 CFR existing OMB guidance on the use of the DUNS number as a universal identifier. That guidance is in two OMB policy memoranda that require Federal agencies to obtain DUNS numbers from applicants and use them in the award and administration of Federal financial assistance awards. The details are that:

• The policy initially was established by the July 15, 2003, OMB memorandum M–03–16, "OMB Issues Grants Management Policies," which applied to grants and cooperative agreements. That memorandum is available at *http://www.whitehouse.gov/omb/memoranda/m03-16.pdf* and the full text of the policy is available in the **Federal Register** [68 FR 38402, June 27, 2003].

• On May 30, 2008, OMB broadened that policy to include other forms of Federal financial assistance when it issued memorandum M–08–19, "Authority to Collect DUNS Number to Meet Requirements of the Federal Funding Accountability and Transparency Act of 2006." Specifically, the memorandum broadened the 2003 policy to include loans and other forms of financial assistance that are subject to the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, hereafter referred to as "the Transparency Act"). The memorandum is available at *http://www.whitehouse.gov/omb/assets/omb/memoranda/fy2008/m08-19.pdf*.

As proposed, part 25 would implement the existing policy on DUNS numbers as it applies to prime recipients (*i.e.,* those that receive awards directly from Federal agencies) and their direct or "first-tier" subrecipients. Implementing the policy for recipients and first-tier subrecipients parallels the approach used in OMB guidance implementing requirements to track use of funds under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, hereafter referred to as "the Recovery Act"). That guidance is available at *http://www.recovery.gov* and *http://www.omb.gov*.

2. CCR Registration

With respect to requirements for CCR registration, the proposed part 25 would establish as policy in 2 CFR what already is a requirement for any applicant who uses Grants.gov to electronically submit its application to a Federal agency. The proposed policy would apply to first-tier subrecipients, in addition to applicants and prime recipients, which is a broadening of the current Grants.gov requirement. Again, this inclusion of first-tier subrecipients parallels the recent OMB implementation of the Recovery Act.

B. Aspects of the Proposed Part 27 That Relate to Policies and Procedures Currently in Effect

Given that the proposed part 27 would require program announcements to include specific content related to section 872, as described in section III.B of this **SUPPLEMENTARY INFORMATION** section, we also are proposing that the part include the more general OMB policies related to program announcements. These include the OMB directives to use the standard format and to electronically post announcements and synopses of them, as described in the following sections IV.B.1 and IV.B.2.

1. Governmentwide Standard Format for Program Announcements

Subpart B of the proposed part 27 specifies that agencies must use the standard format for program announcements, thereby incorporating into 2 CFR the policy originally established by OMB memorandum M–03–16, "OMB Issues Grants Management Policies." The memorandum is available at *http://www.whitehouse.gov/omb/assets/omb/memoranda/m03-16.pdf*. The full text of the policy was in a directive that OMB published in the **Federal Register** [68 FR 37370, June 23, 2003].

We are proposing that the format itself, which OMB published with the policy directive in that 2003 **Federal Register** document, be incorporated as Appendix A to the proposed part 27. Incorporating it into the CFR will enable it to be more easily updated in the future. In incorporating it, we made the following changes:

• We assigned letters and numbers to every paragraph in the format, many of which had none in the 2003 issuance. Doing so required changes to designations that many paragraphs had in that earlier format. While we regret any near-term inconvenience that this transition in paragraph designations may cause for users of the format, it is needed to enable us to efficiently amend individual paragraphs of the text in the future. In making this change, we did incorporate suggestions we heard from users, based on their experiences with

the 2003 format, by using a standard outlining schema.

• We merged the content of the lead-in material from the portion of the 2003 format entitled "Full text of Announcement," into a new Subdivision 1, "How to Use this Appendix." The editing of the material to accommodate the change is not intended to be substantive.

• The only two substantive changes are in Subdivision 2 of the appendix, "The Announcement Format," and are part of the implementation of section 872. First, we added a new paragraph II.C.3, which agencies are required to include in their announcements, to address the DUNS number and CCR requirements stated in the proposed 2 CFR part 25. Second, we added a required paragraph II.E.3, "Recipient Qualification," to subsection II.E on application review, to require agencies to inform potential applicants about the standards used to determine that a recipient is qualified and the related uses of the new FAPIIS data system to be established under section 872.

2. Electronic Posting of Program Announcements and Synopses

Subpart C of the proposed part 27, "Issuance," incorporates into 2 CFR, without substantive change, existing policies on electronic issuance of program announcements and synopses of them. The details are that:

• Section 27.305 includes the requirement for an agency to electronically post each program announcement. That requirement was originally established by OMB memorandum M–03–16, "OMB Issues Grants Management Policies." The full text of the policy was in a directive that OMB published in the **Federal Register** with the announcement format [68 FR 37370, June 23, 2003].

• Section 27.310 includes the requirement for an agency to electronically post each synopsis of an announcement of a funding opportunity that OMB originally established on October 15, 2003, in memorandum M–04–01, "OMB Issues Grants.gov FIND Policy." The memorandum is available at *http://www.whitehouse.gov/omb/memoranda_fy04_m04-01/.* OMB published the full text of the policy in the **Federal Register** [68 FR 58146, October 8, 2003].

C. Aspects of the Proposed Part 35 That Relate to Policies and Procedures Currently in Effect

Most of the requirements in the proposed part 35 are new, as described in section III of this **SUPPLEMENTARY INFORMATION** section. One aspect that is not new is the requirement for an awarding official to check the Excluded Parties List System before making an award to an entity, to ensure that the entity is not debarred, suspended, or otherwise disqualified from receiving the award. That requirement is in 2 CFR part 180, subpart D. Paragraph 35.120(a) in the proposed part 35 refers to that existing requirement because checking the EPLS is a critical step in an awarding official's determination that an entity is qualified (we anticipate that the awarding official ultimately will be able to check the EPLS database through FAPIIS).

Although it has not been explicitly stated in OMB guidance previously, the requirement in paragraph (a) of the proposed section 35.205 for a Federal agency awarding official to ensure that each award includes the appropriate terms and conditions is a practice, if not an explicit formal policy, of all Federal agencies. It serves in the proposed guidance as a basis for identifying Governmentwide award terms that an awarding official must include, pending more comprehensive guidance on the format and content of grants and cooperative agreements that is under development. One of those award terms, which implements a statute on Trafficking in Persons, is in previously established guidance at 2 CFR 175.15.

V. Relationship of Proposed DUNS Number and CCR Requirements to a Proposal Made in June 2008

On June 6, 2008 [73 FR 32417], OMB published in the **Federal Register** a proposed new 2 CFR part 33 with policies and procedures for implementing Transparency Act requirements for Federal financial assistance awards. As it was proposed in June 2008, the new part 33 would have required direct recipients of Federal agency awards and, with some exceptions, subrecipients at all lower tiers (if their subawards were subject to Transparency Act reporting requirements) to have DUNS numbers and register in the CCR.

The proposed part 25 in amendment 3 following this preamble is intended to supersede the DUNS number and CCR elements of the June 2008 proposal. As stated earlier, part 25 includes the requirements for prime recipients and subrecipients at the first tier below the prime award. If future implementation of the Transparency Act or other statute requires extending the requirement for DUNS numbers, CCR registration, or both to subrecipients at lower tiers, as we proposed in June 2008, we would amend part 25 through a **Federal Register** process that afforded an opportunity for public comment.

We appreciate the many thoughtful comments we received from the affected public and Federal agencies on the DUNS number and CCR aspects of the June 2008 proposal. We considered those comments in developing the proposed part 25 following this preamble. The following paragraphs summarize the comments we received in 2008 that are most pertinent to the newly proposed part 25. They also provide responses to those comments as additional background related to the basis for the current proposal.

Comment: Sixteen commenters suggested not using the DUNS number as the means to uniquely identify recipient and subrecipient entities. The Employer Identification Number (EIN) was offered as one alternative. Among reasons the commenters gave for not using DUNS numbers were that: (1) The requirement to have a DUNS number could preclude subawards to small entities that do not have the organizational infrastructure to support DUNS numbers; and (2) the time required to obtain a DUNS number could delay applications from, or awards to, first-time subrecipients, especially as the large number of entities needing to obtain DUNS numbers could strain the system's ability to process their requests; and (3) an entity can have multiple DUNS numbers, even at the same operating location, which is a source of potential confusion. Commenters that offered the EIN as an alternative noted that many States already use EINs as identifiers for subrecipients in their electronic data systems.

Response: The DUNS number still is the only identifier with the advantages that led us to establish it in 2003 as the universal identifier for recipients of grants and cooperative agreements (*see* the preamble to 68 FR 38403, June 27, 2003). Although other numbering systems currently are in use—and will continue because they are used for different purposes—none is adequate to identify family tree relationships or to provide the access and validation capabilities that the DUNS numbers provide.

We agree with the commenters that some entities have multiple DUNS numbers that are not justified but believe the proper solution is for Dun and Bradstreet (D&B) to continue to advise organizations on ways to properly control their DUNS hierarchies, something for which each organization necessarily is responsible. We do not agree that the one-time activity to obtain a DUNS number,

which can be almost immediate and should take no more than 48 hours, will create significant delays in applications or awards. While we appreciate that first-tier subrecipients who are not also prime recipients of other Federal awards may need to adjust their procedures and systems initially to accommodate the DUNS number requirement, we judge that the long-term benefits justify those changes.

Comment: Twenty-nine commenters questioned whether the administrative burden associated with CCR registration of subrecipients was justified by the benefits. Six questioned the value for prime recipients.

Response: We believe the benefits do justify the requirement. For entities applying for Federal assistance awards, CCR registration already is a valuable adjunct to Grants.gov, the central site through which applications may be submitted electronically in a more uniform way to all Federal agencies. For prime recipients, we anticipate that information in CCR will be used in conjunction with all payments under Federal awards (they already are used for payments under some Federal financial assistance awards, as well as procurement contracts). For first-tier subrecipients, CCR registration will help ensure that Federal Government databases correctly identify entities receiving subaward funding that must be reported in compliance with the Transparency or Recovery Act.

Comment: Two commenters suggested that the Federal Government create crosswalks between DUNS numbers and other identifiers. One commenter suggested providing a crosswalk between DUNS numbers and EINs, since some recipients already have EINs for subrecipients in their data bases. Another commenter suggested cross linking organizational data in the D&B files for DUNS numbers with organizational information in files associated with other identifiers that Federal agencies require, such as the Inventory of Substance Abuse Treatment Services (I–SATS) number, and the National Provider Identifier (NPI) that one obtains through the National Provider System. The commenter noted that linking the files could reduce burdens for reporting the same information multiple times and help prevent there being duplicative or even inconsistent information about an organization in files associated with different identifiers.

Response: We appreciate the suggestion but are not aware of any current plans to link data bases of organizational information associated with the identifiers cited, which are used for different purposes.

Comment: One commenter suggested that DUNS numbers apparently were designed for grant recipients and contractors, and not for loan recipients.

Response: The DUNS number is pertinent to loan recipients due to its use as the universal identifier for reporting under the Transparency Act.

Comment: One commenter expressed concern about entities with multiple locations, each doing a limited amount of business, being required to have a DUNS number assigned for each location. The commenter urged OMB to work to minimize burdens on small entities.

Response: An entity with multiple locations would need a DUNS number for each location only if each received awards or subawards of Federal funds. Moreover, D&B maintains DUNS numbers for over one hundred million entities for much broader purposes, so individual locations of many recipient and subrecipient entities likely already have DUNS numbers for business reasons unrelated to Federal awards. We share the commenter's concern about minimizing burdens but note that obtaining a DUNS number is not a very great burden because it is a one-time activity.

Comment: One commenter asked how and when Federal agencies collect and report DUNS information. Three other commenters suggested not requiring an entity to provide its DUNS number or be registered in the CCR until the time at which the Federal agency makes its award, rather than requiring the entity to provide its DUNS number at the time of its application.

Response: Federal agencies collect DUNS information from each applicant at the time of application and use it during the pre-award processing leading to the issuance of the award, as well as in post-award administration. At time of award, an agency reports the DUNS number as a required field in submissions of Transparency Act data for prime award obligations to recipients. An entity that applies electronically through Grants.gov must have a DUNS number prior to applying because Grants.gov requires applicants to be registered in the CCR, which in turn requires a DUNS number.

Comment: One commenter asked whether an applicant for a Federal agency award was required to provide a DUNS number for each entity to which it proposed in its application that it would make a subaward.

Response: An applicant is not required to submit a proposed subrecipient's DUNS number to a Federal agency as part of the application process. However, after receiving a Federal award, a recipient will need to include the subrecipient's DUNS number with the data it submits for each subaward obligation that must be reported under the Transparency or Recovery Act.

Comment: A commenter questioned whether a recipient would have to receive Federal agency permission to change a subrecipient if it: (1) Proposed an entity as a subrecipient in its application to the agency; (2) received an award; and then (3) learned that the entity it had proposed as a subrecipient would not provide a DUNS number.

Response: Both OMB Circular A–110 and the common rule implementing OMB Circular A–102 permit an agency to require a recipient to obtain its prior approval for any subawards of work under the award. If the agency did not waive that requirement, its approval of the application would serve as the prior approval if the recipient made the subaward to the same entity it identified in its application. All of that is unchanged by the new guidance that is proposed following this preamble. However, due to the new guidance prohibiting first-tier subawards to entities that have not provided a DUNS number to the recipient, an applicant who plans to propose in its application that it will make subawards to specific entities may want to consider the benefits of having DUNS numbers for those entities before submitting its application to a Federal agency.

Comment: Two commenters asked if there would be additional guidance to clarify how an agency would exercise the discretion provided (which now is in section 25.205 of the proposed guidance following this preamble) when considering an award to an entity that had not yet complied with the requirement to provide a valid DUNS number or register in the CCR. The proposed section would permit, but not require, an agency to give the entity a period of time to come into compliance before it determined, based on the entity's noncompliance, that the entity was not qualified to receive the award. The section did not specify how long the period of time might be.

Response: The guidance deliberately leaves that matter to agency discretion. A wide variety of Federal programs use grants, cooperative agreements, and other Federal financial assistance awards subject to the DUNS and CCR requirements. Flexibility in the guidance is essential because the programs have differing constraints in their program statutes, the periods of availability of their appropriated funds,

and the criticality of their program schedules. The different constraints necessarily affect how each awarding office will be able to use the discretion provided.

VI. Invitation To Comment

We are requesting comment on all of the proposed new guidance, as well as changes to previously existing guidance, that would be made by in the amendments following this preamble. With respect to portions of the guidance that the amendments are relocating into 2 CFR without substantive change, we are not seeking to revisit substantive issues raised by comments that were resolved when those portions of the guidance originally were issued. However, we invite comments on any unintended changes we have made in those portions of the guidance.

In the future, OMB may expand the scope of the data system to include recipient information from authoritative data sources not described in this guidance and information on recipients receiving awards below the $500,000 threshold. In response to this notice, we are also seeking input on the possible impact that expanding the system scope could have on the affected recipients.

VII. Next Steps

We will finalize the guidance to Federal agencies after resolving any comments we receive on what is proposed following this preamble. When the guidance is final, each Federal agency will implement it, thereby giving it effect for applicants, recipients, and Federal agency officials with responsibilities for carrying out required actions.

List of Subjects

2 CFR Part 25

Administrative practice and procedures, Grants administration, Grant programs, Loan programs.

2 CFR Part 27

Administrative practice and procedures, Grant programs, Information.

2 CFR Part 35

Administrative practice and procedures, Archives and records, Cooperative agreements, Ethical conduct, Grant programs, Reporting and recordkeeping requirements.

2 CFR Part 77

Administrative practice and procedures, Archives and records, Cooperative agreements, Grants administration, Grant programs.

2 CFR Part 180

Administrative practice and procedure, Debarment and suspension, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Danny Werfel,

Controller.

Authority and Issuance

For the reasons set forth above, the Office of Management and Budget amends 2 CFR, subtitle A, as follows:

1. In subtitle A to title 2, parts 2 through 99, which are currently reserved, are transferred to chapter I.

2. Subchapter A to chapter I, consisting of parts 2 through 19, is established and reserved to read as follows:

Subchapter A—General Matters—[Reserved]

PARTS 2–19—[RESERVED]

3. Subchapter B to chapter I, consisting of parts 20 through 39, is established and added to read as follows:

Subchapter B—Pre-Award Responsibilities

PARTS 20–24—[RESERVED]

PART 25—UNIVERSAL IDENTIFIER AND CENTRAL CONTRACTOR REGISTRATION

Sec.

Authority: Pub. L. 109–282; 31 U.S.C. 6102.

Subpart A—General

§ 25.100 Purposes of this part.

This part provides guidance to agencies to establish:

(a) The Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number as a universal identifier for Federal financial assistance applicants, as well as recipients and their direct subrecipients.

(b) The Central Contractor Registration (CCR) as the repository for standard information about those applicants, recipients, and subrecipients.

§ 25.105 Types of awards to which this part applies.

This part applies to an agency's grants, cooperative agreements, loans, and other types of Federal financial assistance included in the definition of "award" in § 25.305.

§ 25.110 Types of recipient and subrecipient entities to which this part applies.

(a) *General.* Through an agency's implementation of the guidance in this part, this part applies to all entities, other than those excepted in paragraphs (b), (c), and (d) of this section, that—

(1) Apply for or receive agency awards; or

(2) Receive subawards directly from recipients of those agency awards.

(b) *Exceptions for individuals.* None of the requirements in this part apply to an individual who applies for or receives Federal financial assistance as a natural person (*i.e.*, unrelated to any business or non-profit organization he or she may own or operate in his or her name).

(c) *Exceptions for Federal agencies.* The requirement in this part to maintain a current registration in the CCR does not apply to an agency of the Federal Government that receives an award from another agency.

(d) *Other exceptions.* (1) Under a condition identified in paragraph (d)(2) of this section, an agency may except an entity from an applicable requirement to obtain a DUNS number, register in the CCR, or both.

(i) In that case, the agency must use a generic DUNS number in any data that it reports for a prime award to the entity, as required by the Federal

Funding Accountability and Transparency Act (Pub. L. 109–282, hereafter cited as "Transparency Act"). The agency must use the generic DUNS number in accordance with the current guidance at the CCR Web site.

(ii) The agency also may provide a generic DUNS number for an entity receiving a subaward to the non-Federal entity that is making the subaward, for use in reporting information about the subaward under the Transparency Act.

(2) The conditions under which an agency may exempt an entity are—

(i) For any entity, if the agency determines that it must protect information about the entity from disclosure, to avoid compromising classified information or national security or jeopardizing the personal safety of the entity's clients.

(ii) For a foreign entity applying for or receiving an award or subaward for a project or program performed outside the United States, if the agency deems it to be impractical for the entity to comply with the requirement(s).

§ 25.115 Deviations.

Deviations from this part require the prior approval of the Office of Management and Budget (OMB).

Subpart B—Policy

§ 25.200 Requirements for program announcements, regulations, and application instructions.

(a) Each agency that awards types of Federal financial assistance included in the definition of "award" in § 25.305 must include the requirements described in paragraph (b) of this section in each program announcement, regulation, or other issuance containing instructions for applicants that either:

(1) Is issued on or after the effective date of this part; or

(2) Has application or plan due dates or anticipated award dates after October 1, 2010.

(b) The program announcement, regulation, or other issuance must require each entity that applies and does not have an exception under § 25.110 to:

(1) Be registered in the CCR prior to submitting an application or plan;

(2) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency; and

(3) Provide its DUNS number in each application or plan it submits to the agency.

(c) For purposes of this policy:

(1) The applicant is the entity that meets the agency's or program's eligibility criteria and has the legal authority to apply and to receive the award. For example, if a consortium applies for an award to be made to the consortium as the recipient, the consortium must have a DUNS number. If a consortium is eligible to receive funding under an agency program but the agency's policy is to make the award to a lead entity for the consortium, the DUNS number of the lead entity will be used.

(2) A "program announcement" is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a "program announcement," "notice of funding availability," "broad agency announcement," "research announcement," "solicitation," or something else.

§ 25.205 Effect of noncompliance with a requirement to obtain a DUNS number or register in the CCR.

(a) An agency may not make an award to an entity until the entity has complied with the requirements described in § 25.200 to provide a valid DUNS number and maintain an active CCR registration with current information (other than any requirement that is not applicable because the entity is excepted under § 25.110).

(b) At the time an agency is ready to make an award, if the intended recipient has not complied with an applicable requirement to provide a DUNS number or maintain an active CCR registration with current information, as specified in the program announcement or other instructions, the agency:

(1) May determine that the applicant is not qualified to receive an award; and

(2) May use that determination as a basis for making an award to another applicant.

§ 25.210 Authority to modify agency application forms or formats.

To implement the policies in §§ 25.200 and 25.205, an agency may add a DUNS number field to application forms or formats previously approved by OMB, without having to obtain further approval to add the field.

§ 25.215 Requirements for agency information systems.

Each agency that makes awards (as defined in § 25.325) must ensure that systems processing information related to the awards, and other systems as appropriate, are able to accept and use the DUNS number as the universal identifier for financial assistance applicants and recipients.

§ 25.220 Use of award term.

(a) To accomplish the purposes described in § 25.100, an agency must include in each award (as defined in § 25.305) the award term in Appendix A to this part.

(b) An agency may use different letters and numbers than those in Appendix A to this part to designate the paragraphs of the award term, if necessary, to conform the system of paragraph designations with the one used in other terms and conditions in the agency's awards.

Subpart C—Definitions

§ 25.300 Agency.

Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

§ 25.305 Award.

(a) *Award* means an award of Federal financial assistance that a non-Federal entity described in § 25.110(a) receives or administers in the form of—

(1) A grant;

(2) A cooperative agreement (which does not include a cooperative research and development agreement pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. (3710(a));

(3) A loan;

(4) A loan guarantee;

(5) A subsidy;

(6) Insurance;

(7) Food commodities;

(8) A direct appropriation;

(9) Assessed or voluntary contributions; or

(10) Any other financial assistance transaction that authorizes the non-Federal entity's expenditure of Federal funds.

(b) An *Award* does not include:

(1) Technical assistance, which provides services in lieu of money; and

(2) A transfer of title to Federally owned property provided in lieu of money, even if the award is called a grant.

§ 25.310 Central Contractor Registration (CCR).

Central Contractor Registration (CCR) has the meaning given in paragraph C.1 of the award term in Appendix A to this part.

§ 25.315 Data Universal Numbering System (DUNS) Number.

Data Universal Numbering System (DUNS) Number has the meaning given in paragraph C.2 of the award term in Appendix A to this part.

§ 25.320 Entity.

Entity, as it is used in this part, has the meaning given in paragraph C.3 of the award term in Appendix A to this part.

§ 25.325 For-profit organization.

For-profit organization means a non-Federal party organized for profit. It includes, but is not limited to:

(a) An "S corporation" incorporated under Subchapter S of the Internal Revenue Code;

(b) A corporation incorporated under another authority;

(c) A partnership;

(d) A limited liability corporation or partnership; and

(e) A sole proprietorship.

§ 25.330 Foreign public entity.

Foreign public entity means:

(a) A foreign government or foreign governmental entity;

(b) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288(f));

(c) An entity owned (in whole or in part) or controlled by a foreign government; and

(d) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

§ 25.335 Indian tribe (or "Federally recognized Indian tribe").

Indian tribe (or "*Federally recognized Indian tribe*") means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*)) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

§ 25.340 Local government.

Local government means a:

(a) County;

(b) Borough;

(c) Municipality;

(d) City;

(e) Town;

(f) Township;

(g) Parish;

(h) Local public authority, including any public housing agency under the United States Housing Act of 1937;

(i) Special district;

(j) School district;

(k) Intrastate district;

(l) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and

(m) Any other instrumentality of a local government.

§ 25.345 Nonprofit organization.

Nonprofit organization—

(a) Means any corporation, trust, association, cooperative, or other organization that—

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

(b) Includes nonprofit—

(1) Institutions of higher education;

(2) Hospitals; and

(3) Tribal organizations other than those included in the definition of "Indian tribe."

§ 25.350 State.

State means—

(a) Any State of the United States;

(b) The District of Columbia;

(c) Any agency or instrumentality of a State other than a local government or State-controlled institution of higher education;

(d) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and

(e) The United States Virgin Islands, Guam, American Samoa, and a territory or possession of the United States.

§ 25.355 Subaward.

Subaward has the meaning given in paragraph C.4 of the award term in Appendix A to this part.

§ 25.360 Subrecipient.

Subrecipient has the meaning given in paragraph C.5 of the award term in Appendix A to this part.

Appendix A to Part 25—Award Term

I. *Central Contractor Registration and Universal Identifier Requirements.*

A. *Requirement for recipients.* Unless you are excepted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the Central Contractor Registration (CCR) until you submit the final financial report required under this award or receive the final payment, whichever is later.

B. *Requirement for subrecipients.* If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its Data Universal Numbering System (DUNS) number to you and is registered in the CCR.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you and is registered in the Central Contractor Registration.

C. *Definitions.* For purposes of this award term:

1. *Central Contractor Registration (CCR)* means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at *http://www.ccr.gov*).

2. *Data Universal Numbering System (DUNS) number* means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866–705–5711) or the Internet (currently at *http://fedgov.dnb.com/webform*).

3. *Entity,* as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

a. A Governmental organization, which is a State, local government, or Indian tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. *Subaward:*

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* Sec. __.210 of the attachment to OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. *Subrecipient* means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

PART 26—[RESERVED]

PART 27—ANNOUNCEMENTS OF FUNDING OPPORTUNITIES

Sec.

Authority: 31 U.S.C. 503; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939; Sec. 872, Pub. L. 110–417, 122 Stat. 4555.

§ 27.5 Purpose of this part.

This part provides the Office of Management and Budget (OMB) guidance for a Federal agency's responsibilities at the time of the announcement of a funding opportunity for a program under which the agency may make discretionary grant or cooperative agreement awards.

§ 27.10 Applicability.

(a) *Types of entities.* This part provides OMB guidance only to Federal agencies. Federal agencies' implementation of this part governs the rights and responsibilities of other entities affected by the guidance, which may include both—

(1) Organizations other than Federal agencies; and

(2) Individuals.

(b) *Programs.* This part applies to any Federal agency program under which the agency may make discretionary awards of grants and cooperative agreements.

§ 27.15 Federal agency implementation.

Each Federal agency with offices that make discretionary grant or cooperative agreement awards must issue any needed direction to those offices to require conformance with the policies and procedures in this part. It must:

(a) Issue any implementation other than a regulation within six months of the issuance of the part or any change to it.

(b) Submit any regulatory implementation to the OMB for review within nine months of the issuance of this part or update to it, prior to publication for comment, and issue final regulations within eighteen months of the issuance.

Subpart A—Competition—[Reserved]

Subpart B—Form and Content of Announcements

§ 27.200 Purpose of subpart B.

The purpose of this subpart is to provide guidance on the substantive content and format of Federal agencies' program announcements.

§ 27.205 Definition of "program announcement".

For the purposes of this part, a "program announcement" is any paper or electronic issuance that an agency uses to announce a funding opportunity under which it may make discretionary grant or cooperative agreement awards, whether that issuance is called a "program announcement," "notice of funding availability," "broad agency announcement," "research announcement," "solicitation," or something else.

§ 27.210 Use of the Governmentwide standard format for program announcements.

(a) The format in the Appendix to this part is the Governmentwide standard format for program announcements under which agencies make discretionary awards of grants or cooperative agreements. An agency must use this format for:

(1) All program announcements except those under which domestic entities are not eligible recipients; and

(2) All programs except those that do not issue separate announcements apart from their program descriptions in the Catalog of Federal Domestic Assistance (CFDA). For those excepted programs, the format will continue to conform to the guidance in OMB Circular A–89 for program information in the CFDA.

(b) To comply with the policy in paragraph (a) of this section, each agency program announcement:

(1) Must include the information elements that are marked "required" in the standard format in Appendix A to this part. It must include the information elements in the sequence provided and the content of each element must conform with guidance that the standard format provides for that element.

(2) May also include any or all of the elements that are marked "optional" in the standard format, as appropriate for the particular program. Whether or not the announcement includes any "optional" elements, the information that the announcement does include must be organized to conform with the standard format.

(c) An agency must request exceptions from OMB for any program announcement with information organized in a way that deviates from the policy in this section.

(d) An agency, at its discretion, may extend the use of the format in the Appendix to this part to programs that use forms of financial assistance other than grants and cooperative agreements.

Subpart C—Issuance

§ 27.300 Purpose of subpart C.

The purpose of this subpart is to provide guidance related to the release of the program announcement to the public.

§ 27.305 Electronic posting of program announcements.

(a) Each agency must post on the Web or Internet each program announcement under which domestic entities are eligible recipients. Ways to comply with this requirement include, but are not limited to:

(1) Publication of an announcement in the **Federal Register**, since it is available on the Internet.

(2) Posting an announcement at Grants.gov (*see* § 27.310(b)(2)(iii)).

(b) If an agency has a statutory or policy requirement to publish an announcement at a location that is not on the Web or Internet, it must comply with that requirement also (*i.e.,* not in lieu of posting the announcement as described in paragraph (a) of this section).

§ 27.310 Grants.gov posting of synopses of program announcements.

(a) *Policy.* It is a policy of the Federal Government to make available to the public at Grants.gov (or an alternative Web site or Internet location, if specified by OMB) a synopsis of each program announcement that may lead to discretionary awards of grants or cooperative agreements, in order to provide potential applicants:

(1) Enough information about the funding opportunity to decide whether they are interested in viewing the full program announcement;

(2) One or more ways (*e.g.,* an Internet site, e-mail address or telephone number) to get the full announcement with the detailed information about the funding opportunity; and

(3) A single Web site to search for all Federal grant opportunities by key word, date, CFDA number, or specific agency or agencies.

(b) *General requirement.* (1) Each agency:

(i) Must post a synopsis of each program announcement under which it will make discretionary awards of grants and cooperative agreements at Grants.gov (*http://www.grants.gov*) or an alternative Web site or Internet address designated by OMB.

(ii) Is encouraged to post any other funding opportunities at the designated site.

(2) Each synopsis must:

(i) Follow the format provided at the designated site.

(ii) Use the standard data elements at that site and provide information for all required data elements. The synopsis must include the CFDA number unless the program has an exception from that

requirement, in which case the agency must obtain an alternate identifier from the Grants.gov Program Management Office for use in the synopsis.

(iii) Either—

(A) State that the full announcement also may be found at Grants.gov FIND, if the agency elects to post it at that site; or

(B) Provide a link to the Uniform Resource Locator (URL) for the full program announcement if the agency elects to post it at another site.

(iv) Be posted no later than 3 business days after release of the full program announcement.

(c) *Exceptions.* The requirements in paragraph (b) of this section do not apply to:

(1) An agency program that does not issue a separate announcement apart from its program descriptions in the CFDA.

(2) A program announcement under which no award will have a total value of $25,000 or more and for which 100 percent of eligible applicants are foreign entities that reside or are located outside the United States.

(3) A single source program announcement under which all awards are directed to known recipients.

Appendix A to Part 27—Governmentwide Standard Announcement Format

Subdivision 1. How To Use This Appendix

I. Content and Organization of This Appendix

Sections I and II of Subdivision 2 of this appendix provide guidance for the two segments of a program announcement. Section I, "Overview Information," describes both required and optional information elements to precede the full text of an announcement. Section II, "Full Text of Announcement," defines sections into which detailed information about a funding opportunity is to be organized and provides guidance on the required and optional content of each section of the program announcement.

II. Standard Scheme for Designating Announcement Sections

Note that letters and numbers that an agency uses to designate sections within the program announcement should adhere to the standard scheme shown in the table following this paragraph. Using the standard scheme will make it easier for potential applicants to locate specific types of information about the funding opportunity. If an agency elects not to include material in a section that is optional, the agency should reserve that section in order to preserve the designations of subsequent sections. The sections of the overview and full text segments of an announcement, shown in the form of a notional table of contents, are:

Segment of announcement	Notional table of contents, showing both required and optional sections
A. Overview information preceding the full text	I. OVERVIEW OF THE FUNDING OPPORTUNITY A. Required Overview Content 1. Federal Agency Name(s)—Required. 2. Funding Opportunity Title—Required. 3. Announcement Type—Required. 4. Funding Opportunity Number—Required, if Applicable. 5. Catalog of Federal Domestic Assistance (CFDA) Number(s)—Required. 6. Dates—Required. B. Optional Overview Content
B. Full text of announcement	II. DETAILED INFORMATION ABOUT THE FUNDING OPPORTUNITY A. Funding Opportunity Description—Required B. Award Information—Required C. Eligibility Information 1. Eligible Applicants—Required. 2. Cost Sharing or Matching—Required. 3. Dun and Bradstreet Universal Numbering System (DUNS) Number and Central Contractor Registration (CCR)—Required. 4. Other—Required, if applicable. D. Application and Submission Information 1. Address To Request Application Package—Required. 2. Content and Form of Application Submission—Required. 3. Submission Dates and Times—Required. 4. Intergovernmental Review—Required, if applicable. 5. Funding Restrictions—Required. 6. Other Submission Requirements—Required. E. Application Review Information 1. Criteria—Required. 2. Review and Selection Process—Required. 3. Recipient Qualification—Required. 4. Anticipated Announcement and Award Dates—Optional. F. Award Administration Information 1. Award Notices—Required. 2. Administrative and National Policy Requirements—Required. 3. Reporting—Required. G. Agency Contact(s)—Required H. Other Information—Optional

III. How To Use the Guidance for the Full Text of a Program Announcement

A. The guidance in section II of Subdivision 2 of this appendix is organized into sections corresponding to the sections of the full text of the announcement. Immediately following the title of each section is an indicator stating whether that section is required in every announcement or is an agency option.

B. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each section of guidance in Section II of Subdivision 2 of this appendix to describe the types of information that an agency would include in the corresponding section of an announcement.

C. An agency that wishes to include information on a subject that the format does not specifically discuss may address that subject in whichever section(s) is most appropriate. For example, if an agency chooses to address performance goals in the announcement, it might do so in the funding

opportunity description, the application content, and/or the reporting requirements.

D. Similarly, when the guidance in Section II of Subdivision 2 of this appendix calls for a type of information to be in one particular section of the announcement, an agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, an agency may want to include in subsection II.A information about the types of recipients who are eligible to apply. The format specifies a standard location for that information in subsection II.C.1 but that does not preclude repeating the information in subsection II.A or creating a cross reference between subsections II.A and II.C.1, as long as a potential applicant can find the information quickly and easily from the standard location.

Sudivision 2. The Announcement Format

I. Overview Segment of the Program Announcement

A. *Required overview content.* The agency must display prominently the information described in paragraphs I.A.1 through I.A.6 of this subdivision, in the sequential order shown, in a location preceding the full text of the announcement.

1. *Federal Agency Name(s)—Required.* Include the name of your department or agency and the specific office(s) within the agency (*e.g.,* bureau, directorate, division, or institute) that are involved in the funding opportunity.

2. *Funding Opportunity Title—Required.* If your agency has a program name that is different from the Funding Opportunity Title, you also could include that name here.

3. *Announcement Type—Required.* Indicate whether this is the initial announcement of this funding opportunity or a modification of a previously announced opportunity. If it modifies a previous announcement, provide the date of that announcement and identify the portions that are being modified. Note that a modification does not need to include all of the sections of the full announcement text.

4. *Funding Opportunity Number—Required, if applicable.* Your agency may wish to assign identifying numbers to announcements. If you assign a number, you must include it. If it modifies a previous announcement, provide the number of that announcement.

5. *Catalog of Federal Domestic Assistance (CFDA) Number(s)—Required.* You also may wish to include the program name listed in the CFDA for each CFDA number that you give.

6. *Dates—Required.* Include key dates that potential applicants need to know. Key dates include due dates for applications or Executive Order 12372 submissions, as well as any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released.

B. *Optional, additional overview content.* Following the required overview information described above, the agency may present other information. Present any optional overview information in a sequential order that parallels the organization of the full text of the announcement. Examples of overview information that could help potential applicants decide whether to read the full announcement are: A concise description of the funding opportunity, the total amount to be awarded, the anticipated amounts and/or numbers of individual awards, the types of instruments that may be awarded, who is eligible to apply, whether cost sharing is required, and any limitations on the numbers of applications that each applicant may submit. You also may include other information that could later help applicants more quickly and easily find what they need (*e.g.,* where one can get application materials).

C. *Method of presentation.* The agency may include the summary information in any of the following ways:

1. *Executive summary.* An agency may wish to include an executive summary of the announcement before the full text. Especially for announcements that are long (25 pages or more in length) or complex, agencies should consider including executive summaries with at least the required overview information described above in subsection I.A of this subdivision, as well as any additional information described in subsection I.B. An executive summary should be short, preferably one page, with information in concise bullets to give an overview of the funding opportunity.

2. *Cover and/or inside cover.* If the agency does not wish to include an executive summary, an alternative is to provide at least the required overview information described above in subsection I.A of this subdivision on the cover and/or inside cover of the announcement (or the first screen a potential applicant would see, in the case of an electronic announcement).

3. **Federal Register** *format.* For an announcement that appears as a notice in the **Federal Register**, some of the required overview information will appear with other information near the beginning of the notice, due to the **Federal Register's** standard format for notices. Nonetheless, the agency must display the required overview information (described above in subsection I.A of this subdivision) in a single location preceding the full text of the announcement, which would be in the **SUPPLEMENTARY INFORMATION** section of the **Federal Register** notice. The agency may elect to include additional information, as described above in subsection I.B of this subdivision.

II. Full Text of Announcement

A. Funding Opportunity Description—Required

This subsection contains the full programmatic description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the agency's funding priorities or the technical or focus areas in which the agency intends to provide assistance. As appropriate, it may include any program history (*e.g.,* whether this is a new program or a new or changed area of program emphasis). This subsection may communicate indicators of successful projects (*e.g.,* if the program encourages collaborative efforts) and may include examples of projects that have been funded previously. This subsection also may include other information the agency deems necessary, such as citations for authorizing statutes and regulations for the funding opportunity.

B. Award Information—Required

1. Provide sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that your agency expects to award through the announcement; the anticipated number of awards; the expected amounts of individual awards (which may be a range); the amount of funding per award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new awards. This subsection also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new awards.

2. This subsection also must indicate the type(s) of assistance instrument (*i.e.,* grant, cooperative agreement, and/or other instrument) that may be awarded if applications are successful. If cooperative agreements may be awarded, this subsection either should describe the "substantial involvement" that the agency expects to have or should reference where the potential applicant can find that information (*e.g.,* in the funding opportunity description in subsection II.A of this subdivision or award administration information in subsection II.F). If procurement contracts also may be awarded, you must say so.

C. Eligibility Information

This subsection addresses considerations or factors that make an applicant or application eligible or ineligible for consideration. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. You should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in your agency's returning the application without review or, even though an application may be reviewed, will preclude the agency from making an award. Key elements to be addressed are:

1. Eligible Applicants—Required

You must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this paragraph may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if your program is limited to non-profit organizations subject to Section 501(c)(3) of the tax code, your announcement should say so. Similarly, it is better to state explicitly that Native American

tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that non-profit organizations may apply. Eligibility also can be expressed by exception, (*e.g.,* open to all types of domestic applicants other than individuals). This paragraph should refer to any portion of subsection II.D specifying documentation that must be submitted to support an eligibility determination (*e.g.,* proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in paragraph II.D.5 could affect the eligibility of an applicant or project, you must either restate that restriction in this section or provide a cross-reference to its description in paragraph II.D.5.

2. Cost Sharing or Matching—Required

You must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, you must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (*e.g.,* provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (*e.g.,* in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as well as those imposed by administrative decision of the agency. This paragraph should refer to the appropriate portion(s) of subsection II.D stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if an award is made.

3. Dun and Bradstreet Universal Numbering System (DUNS) Number and Central Contractor Registration (CCR)—Required

This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the agency under 2 CFR 25.110(d)) is required to: (i) Be registered in the CCR prior to submitting its application; (ii) provide a valid DUNS number in its application; and (iii) continue to maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency. It also must state that the agency may not make an award to an applicant until the applicant has complied with all applicable DUNS and CCR requirements and, if an applicant has not fully complied with the requirements by the time the agency is ready to make an award, the agency may determine that the applicant is not qualified to receive an award and use that determination as a basis for making an award to another applicant.

4. Other—Required, if Applicable

If there are other eligibility criteria (*i.e.,* criteria that have the effect of making an application or project ineligible for award, whether you refer to them as "responsiveness" criteria, "go-no go" criteria, "threshold" criteria, or in other ways), you must clearly state them. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. In this paragraph you also must state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. Also use this paragraph to address any eligibility criteria for beneficiaries or for program participants other than award recipients.

D. Application and Submission Information

1. Address To Request Application Package—Required

You must tell potential applicants how to get application forms, kits, or other materials they need to apply (if this announcement contains everything they need, this paragraph need only say so). You may give an Internet address where they can access the materials.[1] Since high-speed Internet access is not yet universally available for downloading documents, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD) or Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.

2. Content and Form of Application Submission—Required

a. This paragraph must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this paragraph may refer to where those requirements may be found. This paragraph also should address any preliminary submissions that the agency requires or encourages, either to facilitate its own planning or to provide potential applicants with feedback to help them decide whether to submit a full proposal.

b. For a full application, this includes all content and forms or formats that constitute a complete application, including: General information (*e.g.,* applicant name and address), budgetary information, narrative programmatic information, biographical sketches, and all other required information (*e.g.,* documentation that an applicant meets stated eligibility criteria or certifications or assurances of compliance with applicable requirements, such as evidence of compliance with human subjects requirements). You must either include required forms or formats as part of this announcement or state where the applicant may obtain them.

c. In paragraph II.D.2, you should specifically address content and form or format requirements for:

i. Pre-applications, letters of intent, or white papers that your agency requires or encourages (*see* paragraph II.D.3), including any limitations on the number of pages or other formatting requirements similar to those for full applications.

ii. The application as a whole. For hard copy submissions, that could include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required,[2] that could include special requirements for formatting or signatures.

iii. Component pieces of the application (*e.g.,* if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (*e.g.,* references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).

iv. Information that successful applicants must submit after your agency notifies them of its intent to make awards, but prior to award. This could include evidence of compliance with human subjects requirements or information your agency needs to comply with the National Environmental Policy Act (NEPA).

3. Submission Dates and Times—Required

a. Your announcement must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (*e.g.,* letters of intent, white papers, or pre-applications). It also includes any other submissions of information before award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, paragraph II.D.3 should say so. Note that the information on dates that is included in this paragraph also must appear with other overview information in a location preceding the full text of the announcement (*see* "Overview Information" segment of this format, in section I of this subdivision).

b. For each type of submission that you address, indicate whether the submission is encouraged or required and, if required, any deadline date for submission (or dates, if the agency plans more than one cycle of application submission, review, and award under the announcement). The announcement must state (or provide a reference to another document that states):

i. Any deadline in terms of a date and local time.

ii. What the deadline means (*e.g.,* whether it is the date and time by which the agency must receive the application, the date by which the application must be postmarked, or something else) and how that depends, if at all, on the submission method (*e.g.,* mail, electronic, or personal/courier delivery).

iii. The effect of missing a deadline (*e.g.,* whether late applications are neither reviewed nor considered or are reviewed and considered under some circumstances).

[1] With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

[2] *See* footnote 1 to subdivision II, paragraph II.D.1 of this appendix.

iv. How the receiving Federal office determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

c. Paragraph II.D.3 also may indicate whether, when, and in what form the applicant will receive an acknowledgment of receipt.

d. You should consider displaying the above information in ways that will be easy to understand and use. It can be difficult to extract all needed information from narrative paragraphs, even when they are well written. A tabular form for providing a summary of the information may help applicants for some programs and give them what effectively could be a checklist to verify the completeness of their application package before submission. For example, a summary table might look like:

What to submit	Required content	Required form or format	When to submit it
i. *Preapplication* (optional, but encouraged).	Described in paragraph II.D.2 of this announcement.	Format required by section ____ of grants policy manual (give URL or where to access it).[3]	By (give pre-application due date).
ii. *Application:*			
(1) Cover sheet	(per required form)	Form SF–____, available from (give source).	
(2) Budget information	(per required form)	Form SF–____, available from (give source).	By (give pre-application due date).
(3) Narrative	Described in paragraph II.D.2 of this announcement.	Format described in paragraph II.D.2.	
(4) Assurances	(per required form)	Form SF–____, available from (give source).	
(5) Letters from third parties contributing to cost sharing.	Third parties' affirmations of amounts of their commitments.	No specific form or format	
iii. *Statement of intent to comply with human subjects requirements.*	(per required form)	Form SF–____, available from (give source).	Prior to award, when requested by grants officer (if application is successful).

4. Intergovernmental Review—Required, if Applicable

If the funding opportunity is subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs," you must say so. In alerting applicants that they must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372, you may wish to inform them that the names and addresses of the SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html*.

5. Funding Restrictions—Required

You must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). You also must tell applicants if awards will not allow reimbursement of pre-award costs.

6. Other Submission Requirements—Required

a. Paragraph II.D.6 must address any other submission requirements not included in the other paragraphs of subsection II.D. This might include the format of submission, *i.e.,* paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and paragraph II.D.6 should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

b. Paragraph II.D.6 also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this should include the name of an office, official, individual or function (*e.g.,* application receipt center) and a complete mailing address. For electronic submission, this should include the URL or e-mail address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact that will be available in the event the applicant experiences technical difficulties.[4]

E. Application Review Information

1. Criteria—Required

a. Paragraph II.E.1 must address the criteria that your agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (*e.g.,* minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to give applicants visibility into the evaluation process so that they can make informed decisions when preparing their applications and so that the process is as fair and equitable as possible.

b. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (*e.g.,* whether they result in additional points being assigned).

c. If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in paragraph II.C.2 of this subdivision), the announcement must specifically address how it will be considered (*e.g.,* to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (*e.g.,* in-kind contributions) that are acceptable as cost sharing.

2. Review and Selection Process—Required

a. Paragraph II.E.2 may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for award (*e.g.,* geographical dispersion, program balance, or diversity).

b. You also may include other details you deem appropriate. For example, paragraph II.E.2 may indicate who is responsible for evaluation against the merit criteria (*e.g.,*

[3] *See* footnote 1 to subdivision II, paragraph II.D.1 of this appendix.

[4] *See* footnote 1 to subdivision II, paragraph II.D.1 of this appendix.

peers external to the agency or Federal agency personnel) and/or who makes the final selections for award. If you have a multi-phase review process (*e.g.,* an external panel advising internal agency personnel who make final recommendations to the deciding official), you may describe the phases. You also may include: The number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. In addition, if you permit applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in paragraph II.E.2.

3. Recipient Qualification—Required

This paragraph must inform potential applicants about the standards that will be used to determine that an entity is qualified to receive an award, in accordance with the agency's implementation of the OMB guidance at 2 CFR 35.115. It must inform them:

a. That every Federal agency awarding official, prior to making an award to an entity, is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) to review and consider any information about the entity that is in the Federal Awardee Performance and Integrity Information System (FAPIIS);

b. That an applicant, at its option, may go to FAPIIS (when it is available, the FAPIIS Web site should provide information on how and where to enter comments) to comment on any information about itself that a Federal Government official previously entered and is currently in FAPIIS;

c. That the awarding official will consider that comment, in addition to the other information in FAPIIS, in making a judgment about the entity's integrity, business ethics, and record of performance under Federal awards that may affect the official's determination that the applicant is qualified to receive an award.

d. About any agency-specific standards for recipient qualification that the agency uses, as permitted under 2 CFR 35.115(b).

4. Anticipated Announcement and Award Dates—Optional

This paragraph is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the agency can include in this paragraph information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having awards in place. If applications are received and evaluated on a "rolling" basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the agency's decision.

F. Award Administration Information

1. Award Notices—Required

This paragraph must address what a successful applicant can expect to receive following selection. If your practice is to provide a separate notice stating that an application has been selected before you actually make the award, this paragraph would be the place to indicate that the letter is not an authorization to begin performance (to the extent that you allow charging to awards of pre-award costs at the recipient's own risk). This paragraph should indicate that the notice of award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants.

2. Administrative and National Policy Requirements—Required

a. Paragraph II.F.2 must identify the usual administrative and national policy requirements your agency's awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before award. The announcement need not include all of the award terms and conditions, but may refer to a document (with information about how to obtain it) or Internet site [5] where applicants can see the terms and conditions.

b. If this funding opportunity will lead to awards with some special terms and conditions that differ from your agency's usual (sometimes called "general") terms and conditions, paragraph II.F.2 should highlight those special terms and conditions. Doing so will alert applicants who have received awards from your agency previously and might not otherwise expect different terms and conditions. For the same reason, you should inform potential applicants about special requirements that could apply to particular awards after review of applications and other information, based on the particular circumstances of the effort to be supported (*e.g.,* if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. Reporting—Required

This paragraph must include general information about the type (*e.g.,* financial or performance), frequency, and means of submission (paper or electronic) of post-award reporting requirements. Highlight any special reporting requirements for awards under this funding opportunity that differ (*e.g.,* by report type, frequency, form/format, or circumstances for use) from what your agency's awards usually require.

G. Agency Contact(s)—Required

You must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so you should consider approaches such as giving:

1. Points of contact who may be reached in multiple ways (*e.g.,* by telephone, FAX, and/or e-mail, as well as regular mail).

2. A fax or e-mail address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.

3. Different contacts for distinct kinds of help (*e.g.,* one for questions of programmatic content and a second for administrative questions).

H. Other Information—Optional

This subsection may include any additional information that will assist a potential applicant. For example, the subsection might:

1. Indicate whether this is a new program or a one-time initiative.

2. Mention related programs or other upcoming or ongoing agency funding opportunities for similar activities.

3. Include Internet addresses for agency Web sites that may be useful to an applicant in understanding the program (**Note:** You should make certain that any Internet sites are current and accessible).[6]

4. Alert applicants to the need to identify proprietary information and inform them about the way the agency will handle it.

5. Include certain routine notices to applicants (*e.g.,* that the Government is not obligated to make any award as a result of the announcement or that only grants officers can bind the Government to the expenditure of funds).

PARTS 28–34—[RESERVED]

PART 35—TIME-OF-AWARD RESPONSIBILITIES

Sec.

Authority: 31 U.S.C. 503; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939; Sec. 872, Pub. L. 110–417, 122 Stat. 4555.

[5] *See* footnote 1 to subdivision II, paragraph II.D.1 of this appendix.

[6] *See* footnote 1 to subdivision II, paragraph II.D.1 of this appendix.

§ 35.5 Purpose of this part.

This part provides the Office of Management and Budget (OMB) guidance for Federal agencies' responsibilities at the time of the award of a grant or cooperative agreement.

§ 35.10 Applicability.

(a) *Types of entities.* This part provides OMB guidance only to Federal agencies. Federal agencies' implementation of this part governs the rights and responsibilities of other entities affected by the guidance, which may include both—

(1) Organizations other than Federal agencies; and

(2) Individuals.

(b) *Types of awards.* This part applies to Federal agencies' grants and cooperative agreements.

§ 35.15 Federal agency implementation.

Each Federal agency with offices that award grants or cooperative agreements must issue any needed direction to those offices to require conformance with the policies and procedures in this part. It must:

(a) Issue any implementation other than a regulation within six months of the issuance of the part or any change to it.

(b) Submit any regulatory implementation to the OMB for review within nine months of the issuance of this part or update to it, prior to publication for comment, and issue final regulations within eighteen months of the issuance.

Subpart A—Recipient Qualification Matters

§ 35.100 Purpose of subpart A.

The purpose of this subpart is to specify policies and procedures for a Federal agency awarding official's determination of recipient qualifications prior to award.

§ 35.105 Policy.

(a) *General.* Federal agency awarding officials normally will award grants or cooperative agreements only to qualified recipients that meet the standards in § 35.115. This practice conforms with the Governmentwide policy to do business only with responsible persons, as stated at 2 CFR 180.125(a).

(b) *Exceptions.*

(1) The general policy in paragraph (a) of this section does not apply to types of awards listed at 2 CFR 180.215.

(2) A Federal agency awarding official may make an award to a recipient that does not fully meet the standards in § 35.115, as described in paragraphs (b)(2)(i) and (ii) of this section, as applicable.

(i) If an entity currently is listed in the Excluded Parties List System (EPLS) as being suspended, debarred, or otherwise ineligible for the award, the awarding official must comply with the agency's implementation of the exception provision in 2 CFR 180.400.

(ii) If there are special award conditions that can appropriately mitigate the effects of the entity's failure to fully meet the standards, such as special administrative requirements an agency may include in accordance with the agency's implementation of 2 CFR 215.14 (OMB Circular A–110) or section __.12 of the Governmentwide common rule implementing OMB Circular A–102, then the awarding official may make the award with those conditions.

§ 35.110 Federal agency awarding officials' responsibilities.

To comply with the policy in § 35.105, the Federal agency awarding official is responsible for determining a recipient's qualification prior to award. The official's signature on the award document shall signify his or her determination that either:

(a) The potential recipient meets the standards in § 35.115 and is qualified to receive the grant or cooperative agreement; or

(b) An award is otherwise justified, pursuant to § 35.105(b).

§ 35.115 Standards.

(a) *Governmentwide minimum standards.* To be qualified, a potential recipient must at least—

(1) Have a satisfactory record of executing programs or activities under Federal assistance or procurement awards, if it is a prior recipient of such awards; and

(2) Have a satisfactory record of integrity and business ethics.

(b) *Agency-specific standards.* An agency in its implementation of this part may establish additional standards for recipient qualification.

§ 35.120 Required procedures for determining recipient qualification.

(a) *Use of Excluded Parties List System (EPLS).* (1) In deciding that an entity is qualified in accordance with the standards in § 35.115, a Federal agency awarding official must determine whether the entity is identified in the EPLS as being debarred, suspended, or otherwise ineligible to receive the award, as required by his or her agency's implementation of the Governmentwide guidance on nonprocurement debarment and suspension (2 CFR part 180).

(2) If the entity is listed in the EPLS, the awarding official must comply with other applicable provisions of his or her agency's implementation of 2 CFR part 180.

(3) As stated at 2 CFR 180.425 and 180.430, the Federal agency awarding official's responsibilities include checking the EPLS for:

(i) Potential recipients of prime awards; and

(ii) A recipient's principals (as defined at 2 CFR 180.995), potential recipients of subawards, and principals of those potential subaward recipients, if Federal agency approval of those principals or lower-tier recipients is required under the terms of the award.

(b) *Use of the Federal Awardee Performance and Integrity Information System (FAPIIS).* (1) For each award with a total value expected to exceed the simplified acquisition threshold defined at 41 U.S.C. 403(11) (currently $100,000), a Federal agency awarding official must review any information about the recipient that is contained in FAPIIS (which will be at a Web site for which the Universal Resource Locator, or URL, is not yet available) and consider all such information in making the determination that the recipient meets the minimum qualification standards in § 35.115(a).

(2) For grants, the requirement to consider all information in the data system is a statutory requirement under section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). This requirement also applies to cooperative agreements as a matter of Federal Government policy.

(3) Awarding officials should note that:

(i) The data system is required by law to include information about all suspensions and debarments that began during the most recent 5-year period, which may include suspensions or debarments that subsequently expired or were terminated. However, under the Governmentwide policy at 2 CFR part 180, a suspension or debarment of an entity, or a proposal to debar the entity under the Federal Acquisition Regulation, restricts the entity's eligibility to receive Federal awards only until the date on which the suspension is lifted, the proposed debarment is terminated, or the period of debarment expires.

(ii) Therefore, even though information about an expired or terminated suspension or debarment action may be in the data system after that date, the relevance of the information to an awarding official's determination of an entity's current qualification for an award is limited by

the fact that it is a past action that no longer has an exclusionary effect.

§ 35.125 Additional procedures for determining recipient qualification.

(a) A Federal agency awarding official may use methods in addition to those required under § 35.120 to determine recipient qualification. In deciding on appropriate methods to use and levels of effort to expend, the Federal agency awarding official should consider factors such as:

(1) Whether the recipient has no previous experience under Federal awards and therefore may be unfamiliar with Federal Government requirements or not have previously established systems for compliance with them;

(2) Federal agencies' past experience with the recipient;

(3) The amount of the prospective award and complexity of the project or program to be carried out under the award.

(b) There is no Governmentwide requirement to obtain a pre-award credit report, audit, or any other specific piece of information. If a Federal agency awarding official judges in a specific case that there is a need to obtain any such information to assist in deciding whether the recipient meets the standards in § 35.115, then the guidance in paragraphs (b)(1) and (2) of this section applies.

(1) Before judging that a pre-award credit report, audit, or survey is needed, the Federal agency awarding official should consider whether any pre-existing surveys or audits of the recipient, such as the single audit of the recipient's internal control systems under OMB Circular A–133,[1] will satisfy the need.

(2) If the Federal agency awarding official decides to obtain a credit report, audit, or other information, and the report or other information discloses that a potential recipient is delinquent on a debt to an agency of the United States Government, then—

(i) The Federal agency awarding official must take such information into account when determining whether the potential recipient is qualified with respect to the grant or cooperative agreement; and

(ii) If the awarding official decides to make the award to the recipient, unless there are compelling reasons to do otherwise, he or she must delay the award of the grant or cooperative agreement until payment is made or satisfactory arrangements are made to repay the debt; and

(iii) The awarding official should refer to the agency's suspending and debarring official any evidence of substantial debt delinquency, as described at 2 CFR 180.800(c)(3) as a cause for debarment.

§ 35.130 Reporting the disqualification of a recipient.

(a) *Requirement to report a disqualification.* (1) *Determinations that must be reported.* If a Federal agency awarding official does not make an award to an entity because the official determines that the entity does not meet either or both of the minimum qualification standards in § 35.115(a), the official must report that determination, as described in paragraph (a)(3) of this section, only if all of the following apply:

(i) The only basis for disqualification is the entity's prior record of executing programs or activities under Federal awards or its record of integrity and business ethics (i.e., the entity was determined to be qualified based on all factors other than those two standards); and

(ii) The total value of the award that otherwise would be made to the entity is expected to exceed the simplified acquisition threshold at 41 U.S.C. 403(11) (currently $100,000).

(2) *Determinations that need not be reported.* The official is not required to report a determination that an entity is not qualified if he or she makes the award to the entity and includes special award conditions, as described in § 35.105(b)(2);

(3) *Reporting procedures.* The Federal agency awarding official must report each determination described in paragraph (a)(1) of this section to FAPIIS (which will be at a Web site for which the Universal Resource Locator, or URL, is not yet available). The official must provide a copy of the notice sent to the disqualified entity and the information about the determination that is required at that Internet site.

(b) *Requirement to notify the disqualified entity.* If a Federal agency awarding official reports a determination that an entity is not qualified to FAPIIS, as described in paragraph (a) of this section, the official also must notify the entity that—

(1) The determination was made and reported to FAPIIS;

(2) The information will be kept in that data system for a period of 5 years from the date of the determination, as required by section 872 of Public Law 110–417, archived for one additional year, and then discarded;

(3) Each awarding official who considers making an award to the entity during that period must consider that information in judging whether the entity is qualified to receive the award;

(4) The entity may go to FAPIIS (when it is available, the FAPIIS Web site should provide information on how and where to enter comments) and comment on any information the data system contains about itself, for future consideration by Federal awarding officials; and

(5) An awarding official will consider that entity's comment in determining whether the entity is qualified for a future award.

(c) *Correction or updating of information previously submitted.* If a Federal agency awarding official, after entering information into the data system about a disqualification, subsequently:

(1) Learns that any of that information is erroneous, he or she must correct the information in the data system within 3 business days.

(2) Obtains an update to that information that could be helpful to other Federal agency officials who must use the data system, he or she is strongly encouraged to amend the information in the data system to incorporate the update in a timely way.

(d) *Source of the requirements.* The requirements in this section are matters of Federal Government policy that are parallel and analogous to the requirements for a Federal contracting officer to report a determination that a potential contractor is not presently responsible, under section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

Subpart B—The Award

§ 35.200 Purpose of subpart B.

The purpose of this subpart is to specify policies and procedures related to the creation, execution, and dissemination of electronic or paper award documents and other actions at the time of award.

§ 35.205 Award content.

(a) *Responsibility.* Each Federal agency must issue any needed direction to offices that make awards, to specify that the agency official authorized to sign or otherwise approve an award, thereby obligating the Government, is responsible for ensuring that the award contains the appropriate terms and conditions.

(b) *Governmentwide award terms.* Pending issuance of comprehensive Governmentwide guidance on award

[1] Electronic copies may be obtained at Internet site *http://www.whitehouse.gov/OMB.* For paper copies, contact the Office of Management and Budget, EOP Publications, 725 17th St., NW., New Executive Office Building, Washington, DC 20503.

format and content, Federal agencies' awards must contain each of the following terms and conditions that is applicable in accordance with the associated guidance:

(1) The award term "Central Contractor Registration and Universal Identifier Requirements," in accordance with the guidance in 2 CFR 25.220.

(2) The award term "Requirements Related to Recipient Integrity and Performance Matters," in accordance with the guidance in § 35.275.

(3) The award term "Trafficking in Persons," in accordance with the guidance in 2 CFR 175.15.

§ 35.275 Use of award term.

(a) An agency must include the award term in Appendix A to this part in each grant or cooperative agreement award.

(b) An agency may use different letters and numbers to designate the paragraphs of the award term, if necessary, to conform the system of paragraph designations with the one used in other terms and conditions in the agency's awards.

Appendix to Part 35—Award Term for Recipient Integrity and Performance Matters

I. *Reporting of matters related to recipient integrity and performance.*

A. General reporting requirement. If there is any period of time during which the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal agencies exceeds $10,000,000, then you as the recipient are required during that period of time to maintain the currency of information about all civil, criminal, or administrative proceedings described in paragraph B. of this award term that reached their final disposition during the most recent 5-year period. This is a statutory requirement under section 872 of Public Law 110–417.

B. Proceedings about which you must report. During any period of time when you are subject to the requirement in paragraph A. of this award term, submit information about each proceeding that is connected with the award or performance of a grant, cooperative agreement, or procurement contract from either the Federal Government or a State, and is:

1. A criminal proceeding that resulted in a conviction;

2. A civil proceeding that resulted in a finding of fault and liability and your paying a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

3. An administrative proceeding, as defined in paragraph e. of this award term, that resulted in a finding of fault and liability and your payment of either monetary fine or penalty of $5,000 or more or a reimbursement, restitution, or damages in excess of $100,000; or

4. Any other criminal, civil, or administrative proceeding if:

a. It is practical for you to judge that it could have led to an outcome described in paragraph B.1, 2, or 3 of this award term;

b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

c. The requirement in this award term to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. *Reporting procedures.* Submit the information specified at the Federal Awardee Performance and Integrity Information System, or FAPIIS (when it is available, the FAPIIS Web site should provide information on how and where to enter the information), about each proceeding described in paragraph B. of this award term, in accordance with the procedures specified at that Internet site. You do not need to submit the information a second time under assistance instruments that you received if you already submitted the information to FAPIIS because you were required to do so under Federal procurement contracts that you were awarded.

D. *Reporting frequency.* During any period of time when you are subject to the requirement in paragraph A. of this award term, you must report to FAPIIS no less frequently than semiannually following your initial report of any proceedings for the most recent 5-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report.

E. *Definitions.* For purposes of this award term:

1. *Administrative proceeding* means any Federal Government, State, or local or foreign government proceeding, other than a criminal or civil proceeding, to render a decision concerning an entity's alleged violation of or failure to comply with a Federal, State, local, or foreign statute or regulation if the proceeding may result in both:

i. A finding of fault or misconduct; and

ii. Imposition of a fine or penalty, assessment of damages, or a requirement for restitution or repayment.

2. *Total value* of currently active grants, cooperative agreements, and procurement contracts includes the value of all options, even if not yet exercised.

PARTS 36–39—[RESERVED]

4. Subchapter C to chapter I, consisting of parts 40 through 59, is established and reserved to read as follows:

Subchapter C—Award Content and Format—[Reserved]

PARTS 40–59—[RESERVED]

5. Subchapter D to chapter I, consisting of parts 60 through 79, is established and added to read as follows:

Subchapter D—Post-Award Responsibilities

PARTS 60–76—[RESERVED]

PART 77—REMEDIES AND TERMINATION

Sec.
77.5 Purpose of this part.
77.10 Applicability.
77.15 Federal agency implementation.

Subpart A—[Reserved]

Subpart B—Termination

77.200 Purpose of subpart B.
77.220 Reporting.

Authority: 31 U.S.C. 503; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939; Sec. 872, Pub. L. 110–417, 122 Stat. 4555.

§ 77.5 Purpose of this part.

This part provides Office of Management and Budget (OMB) guidance concerning—

(a) Remedies available to Federal agencies for recipient non-compliance matters; and

(b) Termination of an award prior to the end of the project or program period.

§ 77.10 Applicability.

(a) *Types of entities.* This part provides OMB guidance only to Federal agencies. Federal agencies' implementation of this part governs the rights and responsibilities of other entities affected by the guidance, which may include both—

(1) Organizations other than Federal agencies; and

(2) Individuals.

(b) *Types of awards.* This part applies to Federal agencies' grants and cooperative agreements.

§ 77.15 Federal agency implementation.

Each Federal agency with offices that award grants or cooperative agreements must issue any needed direction to those offices to require conformance with the policies and procedures in this part. It must:

(a) Issue any implementation other than a regulation within six months of

the issuance of the part or any change to it.

(b) Submit any regulatory implementation to the OMB for review within nine months of the issuance of this part or update to it, prior to publication for comment, and issue final regulations within eighteen months of the issuance.

Subpart A—[Reserved]

Subpart B—Termination

§ 77.200 Purpose of subpart B.

The purpose of this subpart is to specify policies and procedures concerning terminations of awards.

§ 77.220 Reporting.

(a) *Reporting requirement.* (1) If a Federal agency official terminates an award to a recipient prior to the end of the project or program period on the basis of the recipient's material failure to comply with award terms and conditions, he or she must—

(i) Report the termination to the Federal Awardee Performance and Integrity Information System, or FAPIIS (which will be at a Web site for which the Universal Resource Locator, or URL, is not yet available); and

(ii) Provide a copy of the notice of termination and information about the termination that is specified at that Internet site.

(2) If the agency has administrative procedures by which the recipient may appeal the agency official's decision to terminate the award, the information required under paragraph (a) of this section is not to be reported to FAPIIS until the recipient either—

(i) Has exhausted the appeal procedures available to it and the agency has sustained the termination; or

(ii) Has not, within 30 days of being notified of the termination, informed the agency that it intends to appeal the agency official's decision to terminate.

(b) *Notification requirement.* The Federal agency's notice of termination must notify the recipient that—

(1) The termination will be reported to FAPIIS;

(2) The information will be kept in FAPIIS for a period of 5 years from the date of the termination, as required by section 872 of Public Law 110–417, archived for one additional year, and then discarded;

(3) Each awarding official who considers making an award to the entity during that period must consider that information in judging whether the entity is qualified to receive the award;

(4) The entity may go to FAPIIS (when it is available, the FAPIIS Web site should provide information on how and where to enter comments) and comment on any information FAPIIS contains about the entity, for future consideration by Federal awarding officials; and

(5) An awarding official will consider that entity's comment in determining whether the entity is qualified for a future award.

(c) *Correction or updating of information previously submitted.* If a Federal agency official, after entering information into FAPIIS about a termination, subsequently:

(1) Learns that any of that information is erroneous, he or she must correct the information in FAPIIS within 3 business days.

(2) Obtains an update to that information that could be helpful to Federal agency awarding officials who must use FAPIIS, he or she is strongly encouraged to amend the information in FAPIIS to incorporate the update in a timely way.

(d) *Sources of the requirements.* Both reporting information about terminations and notifying recipients are statutory requirements for grants under section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). The requirements also apply to cooperative agreements, as a matter of Federal Government policy.

PARTS 78–79—[RESERVED]

6. Subchapter E to chapter I, consisting of parts 80 through 99, is established and reserved to read as follows:

Subchapter E—Cost Principles—[Reserved]

PARTS 80–99—[RESERVED]

7. Subchapter F to chapter I, consisting of parts 100 through 119, is established and reserved to read as follows:

Subchapter F—Audit Requirements—[Reserved]

PARTS 100–119—[RESERVED]

8. Subchapter G to chapter I, consisting of parts 120 through 199, is established, and a new subchapter heading is added to read as follows:

Subchapter G—National Policy Requirements

PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

10. Add §§ 180.650, 180.655, 180.660, and 180.665 to subpart F to read as follows:

§ 180.650 May an administrative agreement be the result of a settlement?

Yes, a Federal agency may enter into an administrative agreement with you as part of the settlement of a debarment or suspension action.

§ 180.655 How will other Federal agencies know about an administrative agreement that is the result of a settlement?

The suspending or debarring official who enters into an administrative agreement with you must report information about the agreement to the Federal Awardee Performance and Integrity Information System (FAPIIS) (the specific information that must be reported is specified at the Internet site for that data system). This reporting is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

§ 180.660 Will I be told how Federal agencies use information about me in the Federal Awardee Performance and Integrity Information System and allowed to comment on it?

Yes, the suspending or debarring official who enters into an administrative agreement with you must include wording in the agreement to inform you that:

(a) Information about the administrative agreement will be reported to FAPIIS;

(b) The information will be kept in FAPIIS for a period of 5 years from the date of the administrative agreement (or for the period of time during which the agreement is in effect, if that is more than 5 years), as required by section 872 of Public Law 110–417, archived for one additional year, and then discarded;

(c) Each Federal agency official who considers awarding a grant, cooperative agreement, or procurement contract to you during that period must consider the information about you that is in FAPIIS prior to making the award, to determine whether you are qualified to receive the award based on your business ethics and integrity and prior performance of programs under Federal awards;

(d) You may go to FAPIIS (when it is available, the FAPIIS Web site should provide information on how and where to enter comments) and comment on any information the data system contains about you; and

(e) A Federal agency awarding official will consider your comment in determining whether you are qualified for a future award.

§ 180.665 Will information about me in the Federal Awardee Performance and Integrity Information System be corrected or updated?

Yes, the suspending or debarring official who entered information into FAPIIS about an administrative agreement with you:

(a) Must correct the information within 3 business days if he or she subsequently learns that any of it is erroneous.

(b) Must correct in FAPIIS, within 3 business days, the ending date of the period during which the agreement is in effect, if the agreement is amended to extend that period.

(c) Is strongly encouraged to amend the information in FAPIIS in a timely way to incorporate any update that he or she obtains that could be helpful to Federal agency officials who must use FAPIIS.

11. In § 180.715, revise paragraphs (f) and (g), and add a new paragraph (h) to read as follows:

§ 180.715 What notice does the suspending official give me if I am suspended?

* * * * *

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other agency procedures governing suspension decisionmaking;

(g) Of the Governmentwide effect of your suspension from procurement and nonprocurement programs and activities; and

(h) That the information about the suspension that is reported to the EPLS, in accordance with § 180.520, also will be available to Federal agency officials responsible for awarding contracts, grants, and cooperative agreements through another Governmentwide data system, FAPIIS, *and that*—

(1) The information will be kept in FAPIIS for a period of 5 years from the date of the suspension (or for the period of time during which the suspension is in effect, if that is more than 5 years), as required by section 872 of Public Law 110–417, archived for one additional year, and then discarded;

(2) Each Federal agency official who considers awarding a grant, cooperative agreement, or procurement contract to you during that period must consider the information about you that is in FAPIIS prior to making the award, to determine whether you are qualified to receive the award based on your business ethics and integrity and prior performance of programs under Federal awards;

(3) You may go to FAPIIS (when it is available, the FAPIIS Web site should provide information on how and where to enter comments) and comment on any information the data system contains about you;

(4) The purpose of any comment you make in FAPIIS about the suspension is for future consideration by Federal awarding officials and is separate from the process described in this subpart for contesting the suspension; and

(5) A Federal agency awarding official will consider your comment in determining whether you are qualified for a future award.

12. In § 180.870, revise paragraphs (b)(2)(iii) and (iv), and add a new paragraph (b)(2)(v) to read as follows:

§ 180.870 When do I know if the debarring official debars me?

* * * * *

(b) * * *

(2) * * *

(iii) States the period of your debarment, including the effective dates;

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception; and

(v) Informs you that the information about the debarment that is reported to the EPLS, in accordance with § 180.520, also will be available to Federal agency officials responsible for awarding contracts, grants, and cooperative agreements through another Governmentwide data system, FAPIIS, *and that*—

(A) The information will be kept in FAPIIS for a period of 5 years from the date of the debarment (or for the period of time during which the debarment is in effect, if that is more than 5 years), as required by section 872 of Public Law 110–417, archived for one additional year, and then discarded;

(B) Each Federal agency official who considers awarding a grant, cooperative agreement, or procurement contract to you during that period must consider the information about you that is in FAPIIS prior to making the award, to determine whether you are qualified to receive the award based on your business ethics and integrity and prior performance of programs under Federal awards;

(C) You may go to FAPIIS (when it is available, the FAPIIS Web site should provide information on how and where to enter comments) and comment on any information the data system contains about you;

(D) The purpose of any comment you make in FAPIIS about the debarment is for future consideration by Federal awarding officials, is separate from any request you make under § 180.875 for reconsideration of the debarment, and is not to appeal the debarring official's decision; and

(E) A Federal agency awarding official will consider your comment in determining whether you are qualified for a future award.

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