Federal Register

2–26–10 Friday
Vol. 75 No. 38 Feb. 26, 2010

Pages 8795–9084

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1631

Availability of Records

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) is amending its regulations on availability of records to establish the manner of service for administrative subpoenas issued by the Agency and to delegate authority to the Agency's General Counsel to issue administrative subpoenas. These changes implement section 107 of the Thrift Savings Plan Enhancement Act of 2009, which gave the Agency authority to issue subpoenas duces tecum in order to carry out the Agency's functions.

DATES: This final rule is effective February 26, 2010.

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at 202–942–1645.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

This regulation was published in proposed form on January 19, 2010 (75 FR 2822). No comments were received.

Issuance of Subpoenas

Section 107 of the Thrift Savings Plan Enhancement Act of 2009 ("the Act"), Public Law 111–31 (123 Stat. 1776, 1853)(codified at 5 U.S.C. 8480) authorizes the Agency to issue administrative subpoenas to compel production of designated books, documents, records, electronically stored information, or tangible things. The Agency, like other financial institutions, has been the subject of fraudulent withdrawals from its participants' accounts. The Agency anticipates using its subpoena authority to obtain information necessary to prevent or investigate fraudulent or otherwise improper routing of participants' money to financial institutions.

The Agency, therefore, needs an expeditious means to obtain information from financial institutions to which participants' money is transferred. Prompt action and cooperation from financial institutions is the best way to recover or deter fraudulent or improper routing of participants' money.

This regulation provides three means by which the Agency may serve an administrative subpoena: (1) Certified or registered mail, return receipt requested, (2) fax or electronic transmission, provided the subpoenaed party gives prior approval, or (3) personal delivery at the principal place of business or the last known residential address of the subpoenaed party. This regulation also delegates authority to the General Counsel to issue administrative subpoenas.

Allowing the use of several alternative means to accomplish service is intended to facilitate expeditious cooperation between the Agency and financial institutions in an effort to prevent or investigate fraudulent withdrawals and transfers. Delegation to the General Counsel of the authority to issue administrative subpoenas is intended to expedite the issuances of subpoenas, *e.g.* by removing the need for the staff of the Office of General Counsel to seek Executive Director approval for issuances that are routine or urgent.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, and which is administered by the Agency. Although it will also occasionally require financial institutions to provide information, such entities rarely constitute small entities. Additionally, this regulation provides the Agency with no new authority; it merely provides guidance on existing statutory authority.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register.** This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1631

Government employees, Courts, Freedom of information.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

■ For the reasons stated in the preamble, the Agency amends 5 CFR chapter VI as follows:

PART 1631—AVAILABILITY OF RECORDS

■ 1. Remove the existing authority citation for part 1631.

Subpart A—[Amended]

■ 2. Add an authority citation to subpart A of part 1631 to read as follows:

Authority: 5 U.S.C. 552.

Subpart B—[Amended]

■ 3. Add an authority citation to subpart B of part 1631 to read as follows:

Authority: 5 U.S.C. 552.

■ 4. Add subpart C to subpart 1631 to read as follows:

Subpart C—Administrative Subpoenas

Sec.
1631.40 Subpoena authority.
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1631.42 Service.
1631.43 Enforcement.

Authority: 5 U.S.C. 8480.

Subpart C—Administrative Subpoenas

§ 1631.40 Subpoena authority.

The Executive Director or General Counsel may issue subpoenas pursuant to 5 U.S.C. 8480. The General Counsel may delegate this authority to a Deputy General Counsel, Associate General Counsel, or Assistant General Counsel.

§ 1631.41 Production of records.

A subpoena may require the production of designated books, documents, records, electronically stored information, or tangible materials in the possession or control of the subpoenaed party when the individual signing the subpoena has determined that production is necessary to carry out any of the Agency's functions.

§ 1631.42 Service.

(a) *Return of service.* Each subpoena shall be accompanied by a Return of Service certificate stating the date and manner of service and the names of the persons served.

(b) *Methods of service.* Subpoenas shall be served by one of the following methods:

(1) Certified or registered mail, return receipt requested to the principal place of business or the last known residential address of the subpoenaed party.

(2) Fax or electronic transmission to the subpoenaed party or the subpoenaed party's counsel, provided the subpoenaed party gives prior approval.

(3) Personal delivery at the principal place of business or residence of the subpoenaed party during normal business hours.

§ 1631.43 Enforcement.

Upon the failure of any party to comply with a subpoena, the General Counsel shall request that the Attorney General seek enforcement of the subpoena in the appropriate United States district court.

[FR Doc. 2010–3917 Filed 2–25–10; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9477]

RIN 1545–BI14

Use of Controlled Corporations To Avoid the Application of Section 304; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9477) that were published in the **Federal Register** on Wednesday, December 30, 2009 (74 FR 69021) regarding certain transactions that are subject to section 304 but that are entered into with a principal purpose of avoiding the application of section 304 to a corporation that is controlled by the issuing corporation in the transaction, or with a principal purpose of avoiding the application of section 304 to a corporation that controls the acquiring corporation in the transaction.

DATES: These corrections are effective on February 26, 2010 and are applicable on or after December 29, 2009.

FOR FURTHER INFORMATION CONTACT: Sean W. Mullaney, (202) 622–3860 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9477) that are the subject of these corrections are under section 304 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9477) contain an error that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.304–4T is amended by revising paragraph (e) to read as follows:

§ 1.304–4T Special rule for the use of related corporations to avoid the application of section 304 (temporary).

* * * * *

(e) *Expiration date.* This section expires on or before December 28, 2012.

Diane Williams,

Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2010–3927 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2560 and 2570

RIN 1210–AB31

Civil Penalties Under ERISA Section 502(c)(8)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation that establishes procedures relating to the assessment of civil penalties by the Department of Labor under section 502(c)(8) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). Under the provision, which was added by the Pension Protection Act of 2006, the Secretary of Labor is granted authority to assess civil penalties not to exceed $1,100 per day against any plan sponsor of a multiemployer plan for certain violations of section 305 of ERISA. The regulation will affect multiemployer plans that are in either endangered or critical status.

DATES: This final rule is effective on March 29, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Del Conte, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Section 202 and section 212 of the Pension Protection Act of 2006 (PPA), Public Law 109–280, respectively, amended ERISA by adding section 305 and amended the Internal Revenue Code (Code) by adding section 432, to provide additional rules for multiemployer defined benefit pension plans in endangered status or critical status. All references in this document to section 305 of ERISA should be read to include section 432 of the Code.[1]

In general, section 305(b)(3)(A) of ERISA provides that not later than the 90th day of each plan year, the actuary of a multiemployer defined benefit pension plan shall certify to the Secretary of the Treasury and to the plan sponsor—(i) whether or not the plan is in endangered status for such plan year and whether or not the plan is or will be in critical status for such plan year, and (ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

Section 305(b)(3)(D)(i) of ERISA provides that, in any case in which it is certified under section 305(b)(3)(A) that a multiemployer plan is or will be in endangered or critical status for a plan year, the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor.[2]

Section 305(c)(1)(A) and section 305(e)(1)(A) provide that in the first year that a plan is certified to be in endangered or critical status, the plan sponsor generally has a 240-day period from the required date of the certification to adopt a funding improvement plan (in the case of a plan that is in endangered status) or a rehabilitation plan (in the case of a plan that is in critical status).[3] Section 305(c)(1) also requires multiemployer plans in endangered status to meet "applicable benchmarks" as defined under ERISA section 305(c)(3), as modified by ERISA section 305(c)(5).

Section 202(b)(3) of the PPA added section 502(c)(8)(A) to ERISA which gives the Secretary of Labor the authority to assess a civil penalty of not more than $1,100 a day against the plan sponsor for each violation by such sponsor of the requirement under section 305 to adopt by the deadline established in that section a funding improvement plan or rehabilitation plan with respect to a multiemployer plan which is in endangered or critical status.[4] Section 202(b)(3) of the PPA also added section 502(c)(8)(B) to ERISA which gives the Secretary of Labor the authority to assess a civil penalty of not more than $1,100 a day against the plan sponsor of a plan in endangered status, which is not in seriously endangered status, that fails to meet the applicable benchmarks under section 305 by the end of the funding improvement period with respect to the plan.[5] These provisions are effective for plan years beginning on or after January 1, 2008.

On September 4, 2009, the Department published in the **Federal Register** a proposed rule to implement section 502(c)(8) of ERISA and invited interested parties to comment.[6] In response to the proposal, the Department received one written comment, a copy of which is available under the "public comments" section of the Department's Web site at *http://www.dol.gov/ebsa*. The commenter requested clarification regarding the joint and several liability provision, at paragraph (j) of the proposal. The commenter's issue is discussed below, in the next section, in the context of paragraph (j). After careful consideration of the comment, the Department is publishing a final regulation, to be codified at 29 CFR 2560.502c–8, without change.

B. Overview of Final Rules

1. Assessment of Civil Penalties for Certain Violations of Section 305 of ERISA—§ 2560.502c–8

In general, the final regulation sets forth how the maximum penalty amounts are computed, identifies the circumstances under which a penalty may be assessed, sets forth certain procedural rules for service by the Department and filing by a plan sponsor, and provides a plan sponsor a means to contest an assessment by the Department by requesting an administrative hearing.

Paragraph (a) of the regulation addresses the general application of section 502(c)(8) of ERISA, under which the plan sponsor of an eligible plan shall be liable for civil penalties assessed by the Secretary of Labor in each case in which there are certain violations of section 305 of ERISA.

Paragraph (b) of the regulation sets forth the amount of penalties that may be assessed under section 502(c)(8) of ERISA and provides that the penalty assessed under section 502(c)(8) for each separate violation is to be determined by the Department, taking into consideration the degree or willfulness of the violation. Paragraph (b) provides that the maximum amount assessed for each violation shall not exceed $1,100 a day per violation or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.[7]

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[1] Pursuant to Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), the Department of the Treasury has interpretive authority over the minimum funding rules of Title I of ERISA, including section 305 of ERISA.

[2] Pursuant to section 305(b)(3)(D)(iii) of ERISA, the Department of Labor issued proposed 29 CFR 2540.305–1, which includes a model notice for plans in critical status. *See* 73 FR 15688 (Mar. 25, 2008). However, section 102(b)(1)(C) of the Worker, Retiree, and Employer Recovery Act of 2008, Public Law 110–458, signed into law on December 23, 2008, transferred the Secretary of Labor's obligation to prescribe a model notice to the Secretary of the Treasury, in consultation with the Secretary of Labor.

[3] The Worker, Retiree, and Employer Recovery Act of 2008, Public Law 110–458 (WRERA), permits multiemployer plans to delay temporarily their endangered or critical status under section 305 of ERISA. Section 204 of WRERA provides that a multiemployer plan may, for its first plan year beginning during the period from October 1, 2008, through September 30, 2009, elect to keep its status for the plan year preceding such plan year for purposes of section 305 of ERISA and section 432 of the Code. For example, a plan that was not in endangered status for 2008 may elect to keep that non-endangered status for 2009 even if it is in fact in endangered status. On March 27, 2009, the Internal Revenue Service issued Notice 2009–31, 2009–16 I.R.B. 856, providing guidance to multiemployer plans relating to such elections, on April 30, 2009, issued Notice 2009–42, 2009–20 I.R.B. 1011, modifying Notice 2009–31 to provide an extension of the election period and relief for plans needing arbitration on the election, and on October 5, 2009, issued Revenue Procedure 2009–43, 2009–40 I.R.B. 460, which sets forth additional circumstances in which the Service will automatically approve a request to revoke a section 204 election.

[4] An excise tax under Code section 4971(g)(4) generally applies, in addition to any penalty under ERISA section 502(c)(8), in the case of a failure to adopt a rehabilitation plan with respect to a multiemployer plan in critical status.

[5] An excise tax under Code section 4971(g)(3) generally applies in the case of a failure by a multiemployer plan in seriously endangered status to meet the applicable benchmarks by the end of the funding improvement period or a failure of a plan in critical status to meet the requirements applicable to such plans under section 432(e) of the Code.

[6] 74 FR 45791.

[7] The Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), Public Law 101–410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996 (the 1996 Act), Public Law 104–134, 110 Stat. 1321–373, generally provides that federal agencies adjust certain civil monetary penalties for inflation no later than 180 days after the enactment of the 1996 Act, and at least once every four years thereafter, in accordance with the guidelines specified in the 1990 Act. The 1996 Act specifies that any such increase in a civil monetary penalty shall apply only to violations that occur after the date the increase takes effect.

Paragraph (c) of the regulation provides that, prior to assessing a penalty under ERISA section 502(c)(8), the Department shall provide the plan sponsor with written notice of the Department's intent to assess a penalty, the amount of such penalty, the period to which the penalty applies, and the reason(s) for the penalty. The notice would indicate the specific provision violated. The notice is to be served in accordance with paragraph (i) of the regulation (service of notice provision).

Paragraph (d) of the regulation provides that the Department may decide not to assess a penalty, or to waive all or part of the penalty to be assessed, under ERISA section 502(c)(8), upon a showing by the plan sponsor, under paragraph (e) of the regulation, of compliance with section 305 of ERISA or that there were mitigating circumstances for noncompliance.

Under paragraph (e) of the regulation, the plan sponsor has 30 days [8] from the date of service of the notice issued under paragraph (c) of the regulation within which to file a statement making such a showing. When the Department serves the notice under paragraph (c) by certified mail, service is complete upon mailing but five (5) days are added to the time allowed the plan sponsor for the filing of the statement (see § 2560.502c 8(i)(2) (relating to Service of notices and filing of statements)).

Paragraph (f) of the regulation provides that a failure to file a timely statement under paragraph (e) shall be deemed to be a waiver of the right to appear and contest the facts alleged in the Department's notice of intent to assess a penalty for purposes of any adjudicatory proceeding involving the assessment of the penalty under section 502(c)(8) of ERISA, and to be an admission of the facts alleged in the notice of intent to assess. Such notice then becomes a final order of the Secretary 45 days from the date of service of the notice.

Paragraph (g)(1) of the regulation provides that, following a review of the facts alleged in the statement under paragraph (e), the Department shall notify the plan sponsor of its determination to waive the penalty, in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty. Under paragraph (g)(2) of the regulation, this notice becomes a final order 45 days after the date of service of the notice, except as provided in paragraph (h).

[8] Unless otherwise specified the word "days" refers to calendar days.

Paragraph (h) of the regulation provides that the notice described in paragraph (g) will become a final order of the Department unless, within 30 days of the date of service of the notice, the plan sponsor or representative files a request for a hearing to contest the assessment in administrative proceedings set forth in regulations issued under part 2570 of title 29 of the Code of Federal Regulations and files an answer, in writing, opposing the sanction. When the Department serves the notice under paragraph (g) by certified mail, service is complete upon mailing but five (5) days are added to the time allowed for the plan sponsor's filing of the request for hearing and answer (see § 2560.502c 8(i)(2)).

Paragraph (i)(1) of the regulation describes the rules relating to service of the Department's notice of penalty assessment (§ 2560.502c–8(c)) and the Department's notice of determination on a statement of reasonable cause (§ 2560.502c–8(g)). Paragraph (i)(1) provides that service by the Department shall be made by delivering a copy to the plan sponsor or representative thereof; by leaving a copy at the principal office, place of business, or residence of the plan sponsor or representative thereof; or by mailing a copy to the last known address of the plan sponsor or representative thereof. As noted above, paragraph (i)(2) of this section provides that when service of a notice under paragraph (c) or (g) is made by certified mail, service is complete upon mailing, but five days are added to the time allowed the plan sponsor for the filing of a statement or a request for hearing and answer, as applicable. Service by regular mail is complete upon receipt by the addressee.

Paragraph (i)(3) of the regulation, which relates to the plan sponsor's filing of statements of reasonable cause, provides that a statement of reasonable cause shall be considered filed (i) upon mailing if accomplished using United States Postal Service certified mail or express mail, (ii) upon receipt by the delivery service if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f), (iii) upon transmittal if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment, or (iv) in the case of any other method of filing, upon receipt by the Department at the address provided in the notice. This provision does not apply to the filing of requests for hearing and answers with the Office of the Administrative Law Judge (OALJ) which are governed by the Department's OALJ rules in 29 CFR 18.4.

Paragraph (j) of the regulation clarifies the liability of the parties for penalties assessed under section 502(c)(8) of ERISA. Paragraph (j)(1) provides that, if more than one person is responsible as plan sponsor for the failure to adopt a funding improvement or rehabilitation plan, or to meet the applicable benchmarks, as required by section 305 of ERISA, all such persons shall be jointly and severally liable for such failure. Thus, as noted in the preamble to the proposed regulation, the entire joint board of trustees would be jointly and severally liable for any such failure. Paragraph (j)(2) provides that any person against whom a penalty is assessed under section 502(c)(8) of ERISA, pursuant to a final order, is personally liable for the payment of such penalty, and that such liability is not a liability of the plan. It is the Department's view that payment of penalties assessed under ERISA section 502(c)(8) from plan assets would not constitute a reasonable expense of administering a plan for purposes of sections 403 and 404 of ERISA.

One commenter requested clarification on whether it is the Department's intention that the joint and several liability provision in paragraph (j)(1) is to apply to all trustees for a specified failure without regard to the relative degree of fault attributable to each trustee. Paragraph (j) of the final regulation is not intended to address fault allocations. As is ordinarily the case with joint and several liability provisions, each member of the board of trustees would be jointly and severally liable for any penalty assessment where the board of trustees, for whatever reason, failed to meet its statutory obligation under section 305 of ERISA to adopt an improvement or rehabilitation plan, or to meet an applicable benchmark. This is true whether a particular trustee or trustees voted for or against a rehabilitation or improvement plan, for example.

Paragraph (k) of the regulation cross-references section 2570.160 through section 2570.171 of this chapter for procedural rules relating to administrative hearings under section 502(c)(8) of the Act.

2. Procedures for Administrative Review of Assessment of Civil Penalties Under ERISA Section 502(c)(8)—§ 2570.160 et seq.

This final regulation adds subpart I to part 2570 (section 2570.160 through section 2570.171) to establish procedures for hearings before an Administrative Law Judge (ALJ) with respect to assessment by the Department of a civil penalty under ERISA section

502(c)(8), and for appealing an ALJ decision to the Secretary or her delegate. The rules in subpart I are essentially the same as the rules that were contained in paragraph (k) of proposed § 2560.502c–8. These rules were removed from paragraph (k) and relocated in subpart I of part 2570 of the CFR to avoid confusion and for conformity with other civil penalty regulations under ERISA.

C. Regulatory Impact Analysis

Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule relating to the assessment of civil monetary penalties under section 502(c)(8) of the Act is not "significant" under section 3(f)(4) of the Executive Order; and, therefore, it is not subject to OMB review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of RFA requires that the agency present a regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of its analyses under the RFA, EBSA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reporting for pension plans that cover fewer than 100 participants. By this standard, data from the EBSA Private Pension Bulletin for 2006 show that only 46 multiemployer defined benefit pension plans or 3% of all multiemployer defined benefit pension plans are small entities. This number represents .1% of all small defined benefit pension plans. The Department does not consider this to be a substantial number of small entities. Therefore, pursuant to section 605(b) of RFA, the Department hereby certifies that the rule is not likely to have a significant economic impact on a substantial number of small entities.

The terms of the statute pertaining to the assessment of civil penalties under section 502(c)(8) of ERISA do not vary relative to plan or plan sponsor size. The opportunity for a plan sponsor to present facts and circumstances related to a failure or refusal to comply with section 305 of the Act that may be taken into consideration by the Department in reducing or not assessing penalties under ERISA section 502(c)(8) may offer some degree of flexibility to small entities subject to penalty assessments. Penalty assessments will have no direct impact on small plans, because the plan sponsor assessed a civil penalty is personally liable for the payment of that penalty pursuant to § 2560.502c–8(j)(2) of this final rule.

The Department invited interested persons to submit comments on the impact of this rule on small entities and on any alternative approaches that may serve to minimize the impact on small plans or other entities while accomplishing the objectives of the statutory provisions when the notice of proposed rulemaking was published; however, no comments on these issues were received.

Paperwork Reduction Act

The final regulation is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*), because it does not contain a collection of information as defined in 44 U.S.C. 3502(3). Information otherwise provided to the Secretary in connection with the administrative and procedural requirements of this final rule is excepted from coverage by PRA 95 pursuant to 44 U.S.C. 3518(c)(1)(B), and related regulations at 5 CFR 1320.4(a)(2) and (c). These provisions generally except information provided as a result of an agency's civil or administrative action, investigation, or audit.

Congressional Review Act

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not impose an annual burden exceeding $100 million, as adjusted for inflation, on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this final rule do not alter the fundamental reporting and disclosure, or administration and enforcement provisions of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects

29 CFR Part 2560

Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

■ Accordingly, 29 CFR Parts 2560 and 2570 are amended as follows:

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

■ 1. The authority citation for Part 2560 is revised to read as follows:

Authority: 29 U.S.C. 1132, 1135, and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2560.503–1 also issued under 29 U.S.C. 1133. Sec. 2560.502c–7 also issued under 29 U.S.C 1132(c)(7). Sec. 2560.502c–4 also issued under 29 U.S.C. 1132(c)(4). Sec. 2560.502c–8 also issued under 29 U.S.C. 1132(c)(8).

■ 2. Add § 2560.502c–8 to read as follows:

§ 2560.502c–8 Civil penalties under section 502(c)(8).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(8) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the plan sponsor (within the meaning of section 3(16)(B)(iii) of the Act) shall be liable for civil penalties assessed by the Secretary under section 502(c)(8) of the Act, for:

(i) Each violation by such sponsor of the requirement under section 305 of the Act to adopt by the deadline established in that section a funding improvement plan or rehabilitation plan with respect to a multiemployer plan which is in endangered or critical status; or

(ii) In the case of a plan in endangered status which is not in seriously endangered status, a failure by the plan to meet the applicable benchmarks under section 305 by the end of the funding improvement period with respect to the plan.

(2) For purposes of this section, violations or failures referred to in paragraph (a)(1) of this section shall mean a failure or refusal, in whole or in part, to adopt a funding improvement or rehabilitation plan, or to meet the applicable benchmarks, at the relevant times and manners prescribed in section 305 of the Act.

(b) *Amount assessed.* The amount assessed under section 502(c)(8) of the Act for each separate violation shall be determined by the Department of Labor, taking into consideration the degree or willfulness of the failure or refusal to comply with the specific requirements referred to in paragraph (a) of this section. However, the amount assessed for each violation under section 502(c)(8) of the Act shall not exceed $1,100 a day (or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the plan sponsor's failure or refusal to comply with the specific requirements referred to in paragraph (a) of this section.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(8) of the Act, the Department shall provide to the plan sponsor of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(8) of the Act, the amount of such penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the plan sponsor complied with the requirements of section 305 of the Act, or on a showing by the plan sponsor of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the plan sponsor shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the plan sponsor that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(8) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.161(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all of the facts in a statement of reasonable cause alleged in support of nonassessment or a complete or partial waiver of the penalty, shall notify the plan sponsor, in writing, of its determination on the statement of reasonable cause and its determination whether to waive the penalty in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty assessment, not to exceed the amount described in paragraph (c) of this section. This notice is a "pleading" for purposes of § 2570.161(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's determination to assess a penalty, shall become a final order, within the meaning of § 2570.161(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.161(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the plan sponsor or a representative thereof files a request for a hearing under §§ 2570.160 through 2570.171 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.162 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the plan sponsor or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the plan sponsor or representative thereof; or

(iii) By mailing a copy to the last known address of the plan sponsor or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five days shall be added to the time allowed by these rules for the filing of a statement or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or express mail;

(ii) Upon receipt by the delivery service, if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as plan sponsor for violations referred to in paragraph (a) of this section, all such persons shall be jointly and severally liable for such violations.

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(8) of the Act, pursuant to a final order within the meaning of § 2570.161(g) of this chapter, shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.160 through 2570.171 of this chapter for procedural rules relating to administrative hearings under section 502(c)(8) of the Act.

PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

■ 3. The authority citation for Part 2570 is revised to read as follows:

Authority: 5 U.S.C. 8477, 29 U.S.C. 1002(40), 1021, 1108, 1132, 1135; sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp. p. 332, and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

Subpart I is also issued under 29 U.S.C. 1132(c)(8).

■ 4. Add a new Subpart I to Part 2570 to read as follows:

Subpart I—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(8)

Sec.
2570.160 Scope of rules.
2570.161 Definitions.
2570.162 Service: Copies of documents and pleadings.
2570.163 Parties, how designated.
2570.164 Consequences of default.
2570.165 Consent order or settlement.
2570.166 Scope of discovery.
2570.167 Summary decision.
2570.168 Decision of the administrative law judge.
2570.169 Review by the Secretary.
2570.170 Scope of review.
2570.171 Procedures for review by the Secretary.

Subpart I—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(8)

§ 2570.160 Scope of rules.

The rules of practice set forth in this subpart are applicable to "502(c)(8) civil penalty proceedings" (as defined in § 2570.161(n) of this subpart) under section 502(c)(8) of the Employee Retirement Income Security Act of 1974, as amended (the Act). The rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges at Part 18 of this title will apply to matters arising under ERISA section 502(c)(8) except as modified by this subpart. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.161 Definitions.

For 502(c)(8) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–8(g) of this chapter;

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final order* means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(8) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of reasonable cause described in § 2560.502c–8(e) of this chapter within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, by either oral presentation or written submission, to the administrative law judge;

(i) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(8);

(j) *Party* includes a person or agency named or admitted as a party to a proceeding;

(k) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) *Petition* means a written request, made by a person or party, for some affirmative action;

(m) *Pleading* means the notice as defined in § 2560.502c–8(g) of this chapter, the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) *502(c)(8) civil penalty proceeding* means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(8) of ERISA;

(o) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(8);

(p) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Employee Benefits Security), administrator, commissioner, appellate body, board, or other official; and

(q) *Solicitor* means the Solicitor of Labor or his or her delegate.

§ 2570.162 Service: Copies of documents and pleadings.

For 502(c)(8) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA section 502(c)(8) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings.* (1) Every pleading shall contain information indicating the name of the Employee Benefits Security Administration (EBSA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (*e.g.,* notice, motion to dismiss, *etc.*). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ × 11-inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.163 Parties, how designated.

For 502(c)(8) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term "party" wherever used in this subpart shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as "respondent." The Department shall be designated as the "complainant."

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person who or organization that has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioner has the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may recognize one or more of such petitioners. The administrative law judge shall give each such petitioner, as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as *amicus curiae.*

§ 2570.164 Consequences of default.

For 502(c)(8) civil penalty proceedings, this section shall apply in lieu of § 18.5(a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–8(g) of this chapter within the 30 day period provided by § 2560.502c–8(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(8) of the Act. Such notice shall then become the final order of the Secretary, within the meaning of § 2570.161(g) of this subpart, forty-five (45) days from the date of service of the notice.

§ 2570.165 Consent order or settlement.

For 502(c)(8) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such a deferral and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time allowed therefor, the administrative law judge shall issue a decision incorporating such findings and agreement within 30 days of his receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within 30 days after receipt of such objections whether he shall sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

§ 2570.166 Scope of discovery.

For 502(c)(8) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish "good cause" for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which "good cause" has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representatives of a party concerning the proceeding.

§ 2570.167 Summary decision.

For 502(c)(8) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material fact.* (1) Where no issue of a material fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to §§ 2570.169 through 2570.171 of this subpart, shall become a final order.

(2) A decision made under paragraph (a) of this section shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of a material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 2570.168 Decision of the administrative law judge.

For 502(c)(8) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(8) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(8) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.169 through 2570.171 of this subpart.

§ 2570.169 Review by the Secretary.

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

§ 2570.170 Scope of review.

The review of the Secretary shall not be a de novo proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.171 Procedures for review by the Secretary.

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, DC, this 23rd day of February 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2010–4005 Filed 2–25–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0093]

RIN 1625–AA00

Safety Zone; NASSCO Launching of USNS Charles Drew, San Diego Bay, San Diego, CA.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Diego Bay in support of the NASSCO Ship Launching for the United States Naval Ship (USNS) Charles Drew. The safety zone is necessary to provide for the safety of vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) San Diego or his designated representative.

DATES: This rule is effective from 6:30 a.m. through 8:30 a.m. on February 27, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0093 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0093 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego; telephone 619–278–7262, e-mail *Corey.R.McDonald@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process was complete. As such, any delay in the regulation's effective date would be contrary to the public interest, as immediate action is necessary to provide for the safety of vessels and users of the waterway.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** The issuance of final approval was so recent that the rule will be made effective less than 30 days after publication. Any delay in the effective date of this rule will expose vessels and persons of the waterway to dangers posed by ship launchings.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Diego Bay to contribute to the safety of the USNS Charles Drew and surrounding vessels as this ship launches from NASSCO shipyards. There will be three tugboats to take control of the vessel after the launch. This temporary safety zone is necessary to provide for the safety of the vessels and users of the waterway.

Discussion of Rule

The USNS Charles Drew will be launched from NASSCO shipyard into the San Diego Bay the morning of February 27, 2010. The safety zone is required because the vessel's planned launch location is in the maritime navigation channel. The limits of the temporary safety zone include all navigable waters encompassed by the following coordinates:

32°41.39′ N, 117°08.66′ W;
32°41.24′ N, 117°09.05′ W;
32°41.05′ N, 117°08.73′ W;
32°41.20′ N, 117°08.34′ W;
thence north along the shoreline to 32°41.39′ N, 117°08.66′ W.

The safety zone is necessary to provide for the safety of the vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the COTP San Diego or his designated representative. Vessels or persons violating this zone will be

subject to both criminal and civil penalties.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified time unless authorized by the COTP San Diego or his designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the San Diego Bay from 6:30 a.m. to 8:30 a.m. on February 27, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced only 2 hours early in the day when vessel traffic is low. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via VHF Channel 16.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.01.

■ 2. Add § 165.T11–289 to read as follows:

§ 165.T11–289 Safety Zone; NASSCO Launching of USNS Charles Drew, San Diego Bay, San Diego, CA.

(a) *Location.* The safety zone encompasses the navigable waters encompassed by the following coordinates:

Beginning at 32°41.39′ N, 117°08.66′ W; thence to

32°41.24′ N, 117°09.05′ W; thence to

32°41.05′ N, 117°08.73′ W; thence to

32°41.20′ N, 117°08.34′ W;

thence north along the shoreline back to 32°41.39′ N, 117°08.66′ W.

(b) *Enforcement Period.* This section will be enforced from 6:30 a.m. until 8:30 a.m. on February 27, 2010. If the event concludes prior to the scheduled termination time, the COTP will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) No person or vessel may enter or remain in a safety zone without the permission of the COTP or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard or other official personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: February 16, 2010.

D.L. Leblanc,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. 2010–3964 Filed 2–23–10; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[Docket No. E8–27047J]

RIN 1024–AD71

Special Regulation: Areas of the National Park System, National Capital Region; Correction

AGENCY: National Park Service, Interior.

ACTION: Correcting amendments.

SUMMARY: The National Park Service (NPS) published the final rule governing viewing of the Inaugural Parade by the Presidential Inaugural Committee in the **Federal Register** on November 17, 2008. That document inadvertently left out text that was intended to be retained from the previous regulation. That document also retained a paragraph that should have been removed. This document makes correcting amendments restoring the missing text to the appropriate paragraph, and removing the unnecessary paragraph.

DATES: *Effective Date:* February 26, 2010.

FOR FURTHER INFORMATION CONTACT: National Park Service, Regional Director of the National Capital Region, 1100 Ohio Drive, SW., Room 336, Washington, DC 20242.

SUPPLEMENTARY INFORMATION:

On November 17, 2008 (73 FR 67739), the National Park Service published a final rule to revise the special regulations for the National Capital Parks in Washington, DC. The purposes of the revision were to: (1) Clarify the regulations on issuance of permits for events in National Capital Parks, (2) respond to a decision of the U.S. District Court for the District of Columbia related to practice and procedure of permit application processing for the Presidential Inaugural Committee, and (3) provide more public access to park areas along the inaugural parade route. The paragraph revised was entitled "Permit processing".

Through a formatting error, the portion of the paragraph that notified the public of conditions under which a permit could be denied was omitted. That same formatting error resulted in a duplicate paragraph. Paragraph (g)(5)(iv) was revised and redesignated (g)(4)(vi), but the old paragraph (g)(5)(iv) was retained in error. This correction restores the omitted language, unchanged in wording or content, to the paragraph on permit processing, removes the old duplicate paragraph, and redesignates the sections after it to restore correct numbering.

Need for Correction

As published and codified, the regulation omitted important information that the public needs in order to plan a demonstration in a time, place, and manner that will increase the chances of approval of the permit by the National Park Service. It also contained a duplicate paragraph that could cause confusion in interpretation of the regulation.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ In consideration of the reasons stated in the preamble, the National Park Service makes the following correcting amendments to 36 CFR part 7:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under D.C. Code 10–137(2001) and D.C. Code 50–2201 (2001).

■ 2. In section 7.96:

■ a. Add paragraph (g)(4)(vii);

■ b. Remove paragraph (g)(5)(iv); and

■ c. Redesignate paragraphs (g)(5)(v) through (g)(5)(xiv) as paragraphs (g)(5)(iv) through (g)(5)(xiii), respectively.

The addition reads as follows:

§ 7.96 National Capital Region.

* * * * *

(g) * * *

(4) * * *

(vii) A permit may be denied in writing by the Regional Director upon the following grounds:

(A) A fully executed prior application for the same time and place has been received, and a permit has been or will be granted authorizing activities which do not reasonably permit multiple occupancy of the particular area; in that event, an alternate site, if available for the activity, will be proposed by the Regional Director to the applicant.

(B) It reasonably appears that the proposed demonstration or special event will present a clear and present danger to the public safety, good order, or health.

(C) The proposed demonstration or special event is of such a nature or duration that it cannot reasonably be accommodated in the particular area applied for; in that event, the Regional Director shall propose an alternate site to the applicant, if available for the activity; in this connection, the Regional Director shall reasonably take into account possible damage to the park, including trees, shrubbery, other plantings, park installations and statues.

(D) The application proposes activities contrary to any of the provisions of this section or other applicable law or regulation.

* * * * *

Dated: January 20, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–3337 Filed 2–25–10; 8:45 am]

BILLING CODE 4312–52–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2010–0044; FRL–9111–2]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona, Maricopa County Air Quality Department; State of Nevada, Nevada Division of Environmental Protection, Washoe County District Health Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending certain regulations to reflect the current delegation status of national emission standards for hazardous air pollutants (NESHAP) in Arizona and Nevada. Several NESHAP were delegated to the Maricopa County Air Quality Department, Nevada Division of Environmental Protection, and Washoe County District Health Department within the past 18 months. The purpose of this action is to update the listing in the Code of Federal Regulations.

DATES: This rule is effective on April 27, 2010 without further notice, unless EPA receives adverse comments by March 29, 2010. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0044, by one of the following methods:

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

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

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

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

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

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

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I. Background

A. Delegation of NESHAP

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to State or local air pollution control agencies the authority to implement and enforce the standards set out in the Code of Federal Regulations, Title 40 (40 CFR), Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR Part 63, Subpart E (hereinafter referred to as "Subpart E"), establishing procedures for EPA's approval of State rules or programs under section 112(l) (*see* 58 FR 62262). Subpart E was later amended on September 14, 2000 (*see* 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and Subpart E. To streamline the approval process for future applications, a State or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement

and enforce *any* CAA section 112 standards. If such demonstration is approved, then the State or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

B. Maricopa County Delegations

On March 2, 2000, EPA published a direct final action delegating to the Maricopa County Air Quality Department (Maricopa County) several NESHAP and approving Maricopa County's delegation mechanism for future standards (*see* 65 FR 11231). That action explained the procedure for EPA to grant future delegations to Maricopa County by letter, with periodic **Federal Register** listings of standards that have been delegated. On March 11, 2009, Maricopa County requested delegation of the following NESHAP contained in 40 CFR Part 63:

- Subpart DDDD—NESHAP: Plywood and Composite Wood Products.
- Subpart DDDDD—NESHAP for Industrial, Commercial, Institutional Boilers and Process Heaters.

On April 28, 2009, EPA granted delegation to Maricopa County for these NESHAP, along with any amendments to previously delegated NESHAP, as of July 1, 2006. Today's action is serving to notify the public of the April 28, 2009, delegation and to codify these delegations into the Code of Federal Regulations.

C. Nevada Delegations

On May 27, 1998, EPA published a direct final action delegating to the Nevada Division of Environmental Protection (NDEP) several NESHAP and approving NDEP's delegation mechanism for future standards (see 63 FR 28906). That action explained the procedure for EPA to grant delegations to NDEP by letter, with periodic **Federal Register** listings of standards that have been delegated. On September 29, 2008, NDEP requested delegation of the following NESHAP contained in 40 CFR Part 63:

- The amendments to Subpart DDDD—NESHAP: Plywood and Composite Wood Products, as set forth in 72 FR 61060 (October 29, 2007).
- The amendments to Subpart A—General Provisions, as set forth in 73 FR 3568 (January 18, 2008).
- The amendments to Subpart ZZZZ—NESHAP for Stationary Reciprocating Internal Combustion Engines, as set forth in 73 FR 3568 (January 18, 2008).
- The amendments to Subpart EEEEE—NESHAP for Iron and Steel Foundries, as set forth in 73 FR 7210 (February 7, 2008).
- Subpart WWWWW—National Emission Standards for Hospital Ethylene Oxide Sterilizers.
- Subpart YYYYY—NESHAP for Area Sources: Electric Arc Furnace Steelmaking Facilities.
- Subpart ZZZZZ—NESHAP for Iron and Steel Foundries Area Sources.
- The amendments to Subpart EEEEEE—NESHAP for Primary Copper Smelting Area Sources, as set forth in 72 FR 36363 (July 3, 2007).
- The amendments to Subpart FFFFFF—NESHAP for Secondary Copper Smelting Area Sources, as set forth in 72 FR 36363 (July 3, 2007).
- Subpart LLLLLL—NESHAP for Acrylic and Modacrylic Fibers Production Area Sources.
- Subpart MMMMMM—NESHAP for Carbon Black Production Area Sources.
- Subpart NNNNNN—NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds.
- Subpart OOOOOO—NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources.
- Subpart PPPPPP—NESHAP for Lead Acid Battery Manufacturing Area Sources.
- Subpart QQQQQQ—NESHAP for Wood Preserving Area Sources.
- Subpart RRRRRR—NESHAP for Clay Ceramics Manufacturing Area Sources.
- Subpart SSSSSS—NESHAP for Glass Manufacturing Area Sources.
- Subpart TTTTTT—NESHAP for Secondary Nonferrous Metals Processing Area Sources.

On December 1, 2008, EPA granted delegation to NDEP for these NESHAP. Today's action is serving to notify the public of the December 1, 2008, delegations and to codify these delegations into the Code of Federal Regulations.

D. Washoe County Delegations

On May 27, 1998, EPA published a direct final action delegating to Washoe County District Health Department (Washoe County) several NESHAPs and approving Washoe County's delegation mechanism for future standards (*see* 63 FR 28906). That action explained the procedure for EPA to grant future delegations to Washoe County by letter, with periodic **Federal Register** listings of standards that have been delegated. On January 15, 2009, the Washoe County Air Quality Management Division requested delegation of the following NESHAP contained in 40 CFR Part 63:

- Subpart VVV—Publicly Owned Treatment Works.
- Subpart EEEE—Organic Liquids Distribution (Non-Gasoline).
- Subpart WWWW—Reinforced Plastic Composites Production.
- Subpart ZZZZ—Reciprocating Internal Combustion Engines.
- Subpart WWWWW—Hospital Ethylene Oxide Sterilizers.
- Subpart BBBBBB—Gasoline Distribution Bulk Terminals, Bulk Plants and Pipeline Facilities.
- Subpart CCCCCC—Gasoline Dispensing Facilities.
- Subpart HHHHHH—Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources.
- Subpart OOOOOO—Flexible Polyurethane Foam Fabrication Operations Area Sources.
- Subpart WWWWWW—Area Source Standards for Plating and Polishing Operations.
- Subpart XXXXXX—Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

On February 26, 2009, EPA granted delegation to Washoe County for these NESHAP, along with any amendments to previously-delegated NESHAP, as of August 28, 2008. Today's action is serving to notify the public of the February 26, 2009, delegations and to codify these delegations into the Code of Federal Regulations.

II. EPA Action

Today's document serves to notify the public of the delegation of NESHAP to Maricopa County on April 28, 2009, to NDEP on December 1, 2008, and to Washoe County on February 26, 2009. Today's action will codify these delegations into the Code of Federal Regulations.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve delegation requests that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7412(l); 40 CFR 63.91(b). Thus, in reviewing delegation submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 27, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Date Signed: January 20, 2010.

Deborah Jordan,

Director, Air Division Region IX.

■ Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for Part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by revising paragraphs (a)(3) and (a)(29)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(3) *Arizona.* (i) The following table lists the specific Part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Arizona. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA

Subpart	Description	ADEQ [1]	MCAQD [2]	PDEQ [3]	PCAQCD [4]
A	General Provisions	X	X	X	X
F	Synthetic Organic Chemical Manufacturing Industry	X	X	X	X
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X	X	X	X
H	Organic Hazardous Air Pollutants: Equipment Leaks	X	X	X	X
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X	X	X	X
J	Polyvinyl Chloride and Copolymers Production	X	X	X	
L	Coke Oven Batteries	X	X	X	X
M	Perchloroethylene Dry Cleaning	X	X	X	X
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X	X	X	X
O	Ethylene Oxide Sterilization Facilities	X	X	X	X
Q	Industrial Process Cooling Towers	X	X	X	X
R	Gasoline Distribution Facilities	X	X	X	X
S	Pulp and Paper	X	X	X	
T	Halogenated Solvent Cleaning	X	X	X	X
U	Group I Polymers and Resins	X	X	X	X
W	Epoxy Resins Production and Non-Nylon Polyamides Production.	X	X	X	X

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA—Continued

Subpart	Description	ADEQ [1]	MCAQD [2]	PDEQ [3]	PCAQCD [4]
X	Secondary Lead Smelting	X	X	X	X
AA	Phosphoric Acid Manufacturing Plants	X	X	X	
BB	Phosphate Fertilizers Production Plants	X	X	X	
CC	Petroleum Refineries	X	X	X	X
DD	Off-Site Waste and Recovery Operations	X	X	X	X
EE	Magnetic Tape Manufacturing Operations	X	X	X	X
GG	Aerospace Manufacturing and Rework Facilities	X	X	X	X
HH	Oil and Natural Gas Production Facilities	X	X	X	
JJ	Wood Furniture Manufacturing Operations	X	X	X	X
KK	Printing and Publishing Industry	X	X	X	X
LL	Primary Aluminum Reduction Plants	X		X	
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	X	X	X	
OO	Tanks—Level 1	X	X	X	X
PP	Containers	X	X	X	X
QQ	Surface Impoundments	X	X	X	X
RR	Individual Drain Systems	X	X	X	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X	X	X	
TT	Equipment Leaks—Control Level 1	X	X	X	
UU	Equipment Leaks—Control Level 2	X	X	X	
VV	Oil-Water Separators and Organic-Water Separators	X	X	X	X
WW	Storage Vessels (Tanks)—Control Level 2	X	X	X	
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.	X	X	X	
YY	Generic MACT Standards	X	X	X	
CCC	Steel Pickling	X	X	X	
DDD	Mineral Wool Production	X	X	X	
EEE	Hazardous Waste Combustors	X	X	X	
GGG	Pharmaceuticals Production	X	X	X	
HHH	Natural Gas Transmission and Storage Facilities	X	X	X	
III	Flexible Polyurethane Foam Production	X	X	X	
JJJ	Group IV Polymers and Resins	X	X	X	X
LLL	Portland Cement Manufacturing Industry	X	X	X	
MMM	Pesticide Active Ingredient Production	X	X	X	
NNN	Wool Fiberglass Manufacturing	X	X	X	
OOO	Manufacture of Amino/Phenolic Resins	X	X	X	
PPP	Polyether Polyols Production	X	X	X	
QQQ	Primary Copper Smelting	X	X	X	
RRR	Secondary Aluminum Production	X	X	X	
TTT	Primary Lead Smelting	X	X	X	
UUU	Petroleum Refineries: Catalytic Cracking, Catalytic Reforming, and Sulfur Recovery Units.	X	X	X	
VVV	Publicly Owned Treatment Works	X	X	X	
XXX	Ferroalloys Production	X	X	X	
AAAA	Municipal Solid Waste Landfills	X	X	X	
CCCC	Manufacturing of Nutritional Yeast	X	X	X	
DDDD	Plywood and Composite Wood Products	X	X	X	
EEEE	Organic Liquids Distribution (non-gasoline)	X	X	X	
FFFF	Miscellaneous Organic Chemical Manufacturing	X	X	X	
GGGG	Solvent Extraction for Vegetable Oil Production	X	X	X	
HHHH	Wet-Formed Fiberglass Mat Production	X	X	X	
IIII	Surface Coating of Automobiles and Light-Duty Trucks	X	X		
JJJJ	Paper and Other Web Coating	X	X	X	
KKKK	Surface Coating of Metal Cans	X	X	X	
MMMM	Miscellaneous Metal Parts and Products	X	X	X	
NNNN	Large Appliances	X	X	X	
OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles.	X	X	X	
PPPP	Surface Coating of Plastic Parts and Products	X	X		
QQQQ	Wood Building Products	X	X	X	
RRRR	Surface Coating of Metal Furniture	X	X	X	
SSSS	Surface Coating of Metal Coil	X	X	X	
TTTT	Leather Finishing Operations	X	X	X	
UUUU	Cellulose Products Manufacturing	X	X	X	
VVVV	Boat Manufacturing	X	X	X	
WWWW	Reinforced Plastics Composites Production	X	X	X	
XXXX	Tire Manufacturing	X	X	X	
YYYY	Stationary Combustion Turbines	X	X	X	
ZZZZ	Stationary Reciprocating Internal Combustion Engines	X	X		

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA—Continued

Subpart	Description	ADEQ [1]	MCAQD [2]	PDEQ [3]	PCAQCD [4]
AAAAA	Lime Manufacturing Plants	X	X	X	
BBBBB	Semiconductor Manufacturing	X	X	X	
CCCCC	Coke Oven: Pushing, Quenching and Battery Stacks	X	X	X	
DDDDD	Industrial, Commercial, and Institutional Boiler and Process Heaters.	X	X		
EEEEE	Iron and Steel Foundries	X	X	X	
FFFFF	Integrated Iron and Steel	X	X	X	
GGGGG	Site Remediation	X	X	X	
HHHHH	Miscellaneous Coating Manufacturing	X	X	X	
IIIII	Mercury Emissions from Mercury Cell Chlor-Alkali Plants.	X	X	X	
JJJJJ	Brick and Structural Clay Products Manufacturing	X	X	X	
KKKKK	Clay Ceramics Manufacturing	X	X	X	
LLLLL	Asphalt Roofing and Processing	X	X	X	
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X	X	X	
NNNNN	Hydrochloric Acid Production	X	X	X	
PPPPP	Engine Test Cells/Stands	X	X	X	
QQQQQ	Friction Products Manufacturing	X	X	X	
RRRRR	Taconite Iron Ore Processing	X	X	X	
SSSSS	Refractory Products Manufacturing	X	X	X	
TTTTT	Primary Magnesium Refining	X	X	X	
WWWWW	Hospital Ethylene Oxide Sterilizers			X	
YYYYY	Area Sources: Electric Arc Furnace Steelmaking Facilities.			X	
ZZZZZ	Iron and Steel Foundries Area Sources			X	
BBBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities.			X	
CCCCCC	Gasoline Dispensing Facilities			X	
DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources.			X	
EEEEEE	Primary Copper Smelting Area Sources			X	
FFFFFF	Secondary Copper Smelting Area Sources			X	
GGGGGG	Primary Nonferrous Metals Area Sources—Zinc, Cadmium, and Beryllium.			X	
HHHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources.			X	
LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources			X	
MMMMMM	Carbon Black Production Area Sources			X	
NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds.			X	
OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources.			X	
PPPPPP	Lead Acid Battery Manufacturing Area Sources			X	
QQQQQQ	Wood Preserving Area Sources			X	
RRRRRR	Clay Ceramics Manufacturing Area Sources			X	
SSSSSS	Glass Manufacturing Area Sources			X	
TTTTTT	Secondary Nonferrous Metals Processing Area Sources.			X	

[1] Arizona Department of Environmental Quality.
[2] Maricopa County Air Quality Department.
[3] Pima County Department of Environmental Quality.
[4] Pinal County Air Quality Control District.

(ii) [Reserved]

* * * * *

(29) *Nevada.* (i) The following table lists the specific part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Nevada. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA

Subpart	Description	NDEP [1]	WCAQMD [2]	CCDAQM [3]
A	General Provisions	X	X	
F	Synthetic Organic Chemical Manufacturing Industry	X		
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X		
H	Organic Hazardous Air Pollutants: Equipment Leaks	X		
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X		

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA—Continued

Subpart	Description	NDEP [1]	WCAQMD [2]	CCDAQM [3]
J	Polyvinyl Chloride and Copolymers Production	X		
L	Coke Oven Batteries	X		
M	Perchloroethylene Dry Cleaning	X	X	
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X	X	
O	Ethylene Oxide Sterilization Facilities	X	X	
Q	Industrial Process Cooling Towers	X		
R	Gasoline Distribution Facilities	X	X	
S	Pulp and Paper	X		
T	Halogenated Solvent Cleaning	X	X	
U	Group I Polymers and Resins	X		
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X		
X	Secondary Lead Smelting	X		
Y	Marine Tank Vessel Loading Operations	X		
AA	Phosphoric Acid Manufacturing Plants	X		
BB	Phosphate Fertilizers Production Plants	X		
CC	Petroleum Refineries	X		
DD	Off-Site Waste and Recovery Operations	X		
EE	Magnetic Tape Manufacturing Operations	X		
GG	Aerospace Manufacturing and Rework Facilities	X		
HH	Oil and Natural Gas Production Facilities	X		
II	Shipbuilding and Ship Repair (Surface Coating)	X		
JJ	Wood Furniture Manufacturing Operations	X		
KK	Printing and Publishing Industry	X	X	
LL	Primary Aluminum Reduction Plants	X		
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	X		
OO	Tanks—Level 1	X		
PP	Containers	X		
QQ	Surface Impoundments	X		
RR	Individual Drain Systems	X		
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X		
TT	Equipment Leaks—Control Level 1	X		
UU	Equipment Leaks—Control Level 2	X		
VV	Oil-Water Separators and Organic-Water Separators	X		
WW	Storage Vessels (Tanks)—Control Level 2	X		
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.	X		
YY	Generic MACT Standards	X		
CCC	Steel Pickling	X		
DDD	Mineral Wool Production	X		
EEE	Hazardous Waste Combustors	X		
GGG	Pharmaceuticals Production	X		
HHH	Natural Gas Transmission and Storage Facilities	X		
III	Flexible Polyurethane Foam Production	X		
JJJ	Group IV Polymers and Resins	X		
LLL	Portland Cement Manufacturing Industry	X		
MMM	Pesticide Active Ingredient Production	X		
NNN	Wool Fiberglass Manufacturing	X		
OOO	Manufacture of Amino/Phenolic Resins	X		
PPP	Polyether Polyols Production	X		
QQQ	Primary Copper Smelting	X		
RRR	Secondary Aluminum Production	X		
TTT	Primary Lead Smelting	X		
UUU	Petroleum Refineries: Catalytic Cracking, Catalytic Reforming, and Sulfur Recovery Units.	X		
VVV	Publicly Owned Treatment Works	X	X	
XXX	Ferroalloys Production	X		
AAAA	Municipal Solid Waste Landfills	X		
CCCC	Manufacturing of Nutritional Yeast	X		
DDDD	Plywood and Composite Wood Products	X		
EEEE	Organic Liquids Distribution (non-gasoline)	X	X	
FFFF	Miscellaneous Organic Chemical Manufacturing	X		
GGGG	Solvent Extraction for Vegetable Oil Production	X		
HHHH	Wet-Formed Fiberglass Mat Production	X		
IIII	Surface Coating of Automobiles and Light-Duty Trucks	X		
JJJJ	Paper and Other Web Coating	X		
KKKK	Surface Coating of Metal Cans	X		
MMMM	Miscellaneous Metal Parts and Products	X		
NNNN	Large Appliances	X		
OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles	X		

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA—Continued

Subpart	Description	NDEP [1]	WCAQMD [2]	CCDAQM [3]
PPPP	Surface Coating of Plastic Parts and Products	X		
QQQQ	Wood Building Products	X		
RRRR	Surface Coating of Metal Furniture	X		
SSSS	Surface Coating of Metal Coil	X		
TTTT	Leather Finishing Operations	X		
UUUU	Cellulose Products Manufacturing	X		
VVVV	Boat Manufacturing	X		
WWWW	Reinforced Plastics Composites Production	X	X	
XXXX	Tire Manufacturing	X		
YYYY	Stationary Combustion Turbines	X		
ZZZZ	Stationary Reciprocating Internal Combustion Engines	X	X	
AAAAA	Lime Manufacturing Plants	X		
BBBBB	Semiconductor Manufacturing	X		
CCCCC	Coke Oven: Pushing, Quenching and Battery Stacks	X		
DDDDD	Industrial, Commercial, and Institutional Boiler and Process Heaters.	X		
EEEEE	Iron and Steel Foundries	X		
FFFFF	Integrated Iron and Steel	X		
GGGGG	Site Remediation	X		
HHHHH	Miscellaneous Coating Manufacturing	X		
JJJJJ	Brick and Structural Clay Products Manufacturing	X		
KKKKK	Clay Ceramics Manufacturing	X		
LLLLL	Asphalt Roofing and Processing	X		
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X		
NNNNN	Hydrochloric Acid Production	X		
PPPPP	Engine Test Cells/Stands	X		
QQQQQ	Friction Products Manufacturing	X		
SSSSS	Refractory Products Manufacturing	X		
WWWWW	Hospital Ethylene Oxide Sterilizers	X	X	
YYYYY	Electric Arc Furnace Steelmaking Facilities (area sources)	X		
ZZZZZ	Iron and Steel Foundries Area Sources	X		
BBBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants and Pipeline Facilities.		X	
CCCCCC	Gasoline Dispensing Facilities		X	
DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources	X		
EEEEEE	Primary Copper Smelting Area Sources	X		
FFFFFF	Secondary Copper Smelting Area Sources	X		
GGGGGG	Primary Nonferrous Metals Area Sources—Zinc, Cadmium, and Beryllium.	X		
HHHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources.		X	
LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources	X		
MMMMMM	Carbon Black Production Area Sources	X		
NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds	X		
OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources.	X	X	
PPPPPP	Lead Acid Battery Manufacturing Area Sources	X		
QQQQQQ	Wood Preserving Area Sources	X		
RRRRRR	Clay Ceramics Manufacturing Area Sources	X		
SSSSSS	Glass Manufacturing Area Sources	X		
TTTTTT	Secondary Nonferrous Metals Processing Area Sources	X		
WWWWWW	Area Source Standards for Plating and Polishing Operations		X	
XXXXXX	Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.		X	

[1] Nevada Division of Environmental Protection.
[2] Washoe County Air Quality Management Division.
[3] Clark County Department of Air Quality Management.

* * * * *

[FR Doc. 2010–4079 Filed 2–25–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected
Pope County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1028			
Arkansas River	At the intersection with the Arkansas Avenue bridge	+323	Unincorporated Areas of Pope County.
	At the confluence with Lake Dardanelle	+340	
Lake Dardanelle	Approximately 8.323 miles downstream of the Highway 40 bridge.	+340	Unincorporated Areas of Pope County, City of Russellville.
	At the intersection with the Pleasant View Road bridge	+347	
Whig Creek	Approximately 5,166 feet from South Frankfort Avenue	+330	Unincorporated Areas of Pope County, City of Russellville.
	Approximately 218 feet downstream of McHenry Road	+340	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Russellville
Maps are available for inspection at 716 North El Paso Avenue, Russellville, AR 72801.

Unincorporated Areas of Pope County
Maps are available for inspection at 420 North Hampton Avenue, Suite B, Russellville, AR 72801.

Forrest County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–1016

Black Creek	At the Forrest/Perry county boundary	+140	Unincorporated Areas of Forrest County.
	At the Lamar/Forrest county boundary	+205	
Boggy Branch	At the confluence with Greens Creek	+172	Unincorporated Areas of Forrest County, City of Petal.
	Approximately 2,870 feet upstream of Otis Lee Road	+233	
Gordons Creek	Just upstream of West Street	+159	City of Hattiesburg.
	Approximately 2,260 feet upstream of Interstate 59	+252	
Greens Creek	At Chappell Hill Road	+171	Unincorporated Areas of Forrest County, City of Petal.
	Approximately 4,220 feet upstream of Robertson Road	+242	
Little Beaver Creek	Approximately 2,820 feet downstream of Churchwell Road	+187	Unincorporated Areas of Forrest County.
	At the Lamar/Forrest county boundary	+237	
Mixons Creek	At U.S. Route 49	+163	City of Hattiesburg.
	At I–59	+176	
	Approximately 120 feet upstream of I–59	+176	
	Approximately 380 feet upstream of I–59	+176	
	Approximately 2,080 feet downstream of West 4th Street	+193	
Mixons Creek Tributary 1	Approximately 2,900 feet upstream of Dogwood Cove	+197	City of Hattiesburg.
	Approximately 3,800 feet upstream of Dogwood Cove	+204	
Mixons Creek Tributary 2	Approximately 118 feet downstream of Spring Hill Drive	+190	City of Hattiesburg.
	Approximately 1,460 feet upstream of Bridges Circle	+208	
Mixons Creek Tributary 4	Just upstream of Joy Drive	+196	City of Hattiesburg.
	Approximately 1.8 mile upstream of Joy Drive	+283	
Unnamed Tributary 2	Approximately 111 feet downstream of Hillcrest Loop	+149	City of Petal.
	Approximately 335 feet upstream of Chandler Lane	+188	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Hattiesburg
Maps are available for inspection at City Hall, 200 Forrest Street, Hattiesburg, MS 39401.

City of Petal
Maps are available for inspection at City Hall, 107 West 8th Avenue, Petal, MS 39401.

Unincorporated Areas of Forrest County
Maps are available for inspection at the Forrest County Courthouse, 629 Main Street, Hattiesburg, MS 39401.

Lamar County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–1018

Gordons Creek	At I–59	+252	Unincorporated Areas of Lamar County.
	Approximately 1,984 feet upstream of I-59	+252	
Little Beaver Creek	Approximately 0.8 mile downstream of Browns Bridge Road.	+227	Unincorporated Areas of Lamar County.
	Approximately 210 feet upstream of Browns Bridge Road	+237	
Mill Creek No. 1	Approximately 1,800 feet downstream of Hardie Road	+260	Unincorporated Areas of Lamar County, Town of Sumrall.
	Approximately 1.6 mile upstream of State Highway 42	+313	
Mixons Creek Tributary 3	Approximately 935 feet upstream of the confluence with Mixons Creek.	+187	Unincorporated Areas of Lamar County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
	Approximately 1.5 mile upstream of the confluence with Mixons Creek.	+235	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Sumrall
Maps are available for inspection at the Town Hall, 4880 Highway 589, Sumrall, MS 39482.

Unincorporated Areas of Lamar County
Maps are available for inspection at the County Administrator's Office, 403 Main Street, Purvis, MS 39475.

Cortland County, New York (All Jurisdictions)
Docket No.: FEMA–B–7784

Blue Creek	At the confluence with Dry Creek	+1185	Town of Cortlandville.
	Approximately 215 feet upstream of Kinney Gulf Road	+1204	
Dry Creek	Approximately 720 feet downstream of North Main Street	+1116	City of Cortland, Town of Cortlandville.
	Approximately 330 feet upstream of Kinney Gulf Road	+1211	
Gridley Creek	At the confluence with the Tioughnioga River	+1044	Town of Virgil.
	Approximately 1.8 mile upstream of Page Green Road	+1462	
Gridley Creek Tributary 9	At the confluence with Gridley Creek	+1354	Town of Virgil.
	Approximately 1,915 feet upstream of State Route 392	+1396	
Gridley Creek Tributary 9–1	At the confluence with Hope Lake	+1429	Town of Virgil.
	Approximately 0.4 mile upstream of Clute Road	+1564	
Hope Lake	Entire shoreline within the Town of Virgil	+1429	Town of Virgil.
Mosquito Creek	Approximately 50 feet upstream of West Center Street	+1150	Town of Cortlandville, Village of McGraw.
	Approximately 0.78 mile upstream of Heath Road	+1509	
Otselic River	Approximately 991 feet downstream of Route 23	+1034	Town of Cincinnatus.
	Approximately 1.6 mile upstream of Telephone Road	+1053	
Otter Creek	Approximately 130 feet upstream of North Main Street	+1121	City of Cortland, Town of Cortlandville.
	Approximately 70 feet upstream of State Route 13	+1186	
Otter Creek Tributary 3	At the confluence with Otter Creek	+1170	Town of Cortlandville.
	Approximately 1,000 feet upstream of Gutchess Lumber Service Road.	+1170	
Skaneateles Lake	Entire shoreline within the Town of Scott	+867	Town of Scott.
Song Lake	Entire shoreline within the Town of Preble	+1195	Town of Preble.
Tioughnioga River Reach 2	Approximately 0.58 mile downstream of Main Street	+1014	Town of Marathon, Village of Marathon.
	Approximately 0.85 mile upstream of Main Street	+1023	
Trout Brook	At Town of Solon Corporate Limits, approximately 1.280 mile upstream of Hollow Road.	+1204	Town of Solon.
	Approximately 1.288 mile upstream of Hollow Road	+1204	
Tully Lake	Entire shoreline within the Town of Preble	+1195	Town of Preble.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.START
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Cortland
Maps are available for inspection at City Hall, 25 Court Street, Cortland, NY 13045.

Town of Cincinnatus
Maps are available for inspection at the Town Hall, 2770 Lower Cincinnatus Road, Cincinnatus, NY 13040.

Town of Cortlandville
Maps are available for inspection at the Cortlandville Town Hall, Raymond G. Thorpe Municipal Building, 3577 Terrace Road, Cortland, NY 13045.

Town of Marathon
Maps are available for inspection at the Town of Marathon Highway Department, 16 Brink Street, Marathon, NY 13803.

Town of Preble
Maps are available for inspection at the Town Hall, 1968 Preble Road, Preble, NY 13141.

Town of Scott

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected

Maps are available for inspection at the Scott Town Hall, 6689 State Route 41, Homer, NY 13077.

Town of Solon

Maps are available for inspection at the Solon Town Hall, 4012 North Tower Road, East Freetown, NY 13040.

Town of Virgil

Maps are available for inspection at the Virgil Town Hall, 1176 Church Street, Cortland, NY 13045.

Village of Marathon

Maps are available for inspection at the Marathon Village Hall, 18 Tannery Street, Marathon, NY 13803.

Village of McGraw

Maps are available for inspection at the Village Hall, 1 Cemetery Street, McGraw, NY 13101.

Coshocton County, Ohio, and Incorporated Areas
Docket No.: FEMA–B–1020

Muskingum River	170 feet upstream of the railroad crossing over the Muskingum River east of the Village of Conesville.	+737	Village of Conesville.
	260 feet upstream of the railroad crossing over the Muskingum River east of the Village of Conesville.	+737	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Village of Conesville

Maps are available for inspection at the Coshocton County Engineer's Office, 23194 County Road 621, Coshocton, OH 43812.

Chippewa County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–7799

Chippewa River	Just upstream of the Jim Falls Dam Powerhouse	+955	Unincorporated Areas of Chippewa County, City of Cornell.
	Just downstream of the Cornell Dam	+980	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Cornell

Maps are available for inspection at City Hall, 222 Main Street, Cornell, WI 54732.

Unincorporated Areas of Chippewa County

Maps are available for inspection at the Chippewa County Clerk's Office, 711 North Bridge Street, Room 109, Chippewa Falls, WI 54729.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Sandra K. Knight,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–4070 Filed 2–25–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1135

[STB Ex Parte No. 682]

Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is amending 49 CFR part 1135 to add a rule that requires the Association of American Railroads (AAR) to annually update each Class I railroad's weighted average State tax rate for use in the Revenue Shortfall Allocation Method (RSAM). RSAM is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's *Simplified Standards for Rail Rate Cases,* STB Docket No. 646 (Sub-No. 1) (STB served Sept. 5, 2007) (*Simplified Standards*).[1] The new rule requires that the AAR submit this information by May 30 of each year.

[1] *Aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (DC Cir. 2009), *and vacated in part on other grounds on reh'g, CSX Transp., Inc.* v. *STB,* 584 F.3d 1076 (DC Cir. 2009).

DATES: *Effective Date:* This rule is effective on February 26, 2010.

ADDRESSES: Information or questions regarding this final rule should reference STB Ex Parte No. 682 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Valerie O. Quinn at (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Board is revising its regulations to include a new rule, 49 CFR 1135.2, that requires the AAR to annually calculate the weighted average State tax rate for each Class I railroad and submit that information to the Board by May 30 of each year. On May 11, 2009, the Board completed its revision of the methodology it uses to calculate RSAM, one of the three benchmarks used in the rate standard applied to the smallest rate disputes under *Simplified Standards. See Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method,* STB Ex Parte No. 646 (Sub-No. 2) (STB served May 11, 2009) (*RSAM Taxes*). Specifically, that revision addressed the methodology used to calculate railroad-specific tax rates to be reflected in RSAM. The calculation of the railroad-specific weighted average State tax rates requires, as one component, the State tax rates applicable to each Class I railroad, which can vary by State and railroad depending on a number of factors. The Board noted in *RSAM Taxes* that, because of this variance, the Board would need updated tax information on an annual basis. Therefore, on September 21, 2009, the Board served a decision that, among other things, instituted this rulemaking, set a procedural schedule for comments, and proposed that the AAR annually update each Class I railroad's weighted average State tax information on or before the due date for the Class I railroads to file their Annual Report R–1, Schedule 250, which is April 30 of each year.[2] *See Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method,* STB Ex Parte No. 682 (STB served Sept. 21, 2009) (*September Decision*).

Pursuant to the procedural schedule forth in the *September Decision,* the AAR filed its comments on the proposed rulemaking on October 21, 2009. The AAR concurs with the Board's proposal to require the AAR to calculate and file the weighted average State tax rate for each Class I railroad on a specific date and also concurs with the proposed procedural schedule for reviewing the submitted information. The AAR requests, however, that the Board change the due date for submission of the State tax information from April 30 to May 30 of each year. The AAR states that the Annual Report R–1, due March 31 of each year, includes the mileage necessary to weight the State tax rates.[3] If there is a delay in filing the Annual Report Form R–1, which the AAR reports has occurred in the past, then the AAR states that it would not have enough time prior to April 30 to verify the mileage data and calculate the railroad-specific weighted average State tax rates. Therefore, the AAR requests that we extend the due date for submitting the railroad-specific weighted average State tax rates to May 30 of each year.

The Board received no reply comments to the AAR's submission. The Board finds the AAR's request to extend the due date for the calculations of the railroad-specific weighted average State tax rates reasonable. We will modify the final rule to reflect a due date of May 30 of each year.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1135

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

Authority: 5 U.S.C. 553 and 49 U.S.C. 721 and 10708.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

Jeffrey Herzig,

Clearance Clerk.

■ For the reasons set forth in the preamble, the Surface Transportation Board amends part 1135 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1135—REPORTING REQUIREMENTS FOR RATE PROCEEDINGS

■ 1. The authority citation for part 1135 is revised to read as follows:

Authority: 5 U.S.C. 553, and 49 U.S.C. 721, 10701, 10704, 10708, and 11145.

■ 2. Section 1135.2 is added to read as follows:

§ 1135.2 Revenue Shortfall Allocation Method: Annual State tax information.

(a) To enable the Board to calculate the revenue shortfall allocation method (RSAM), which is one of the three benchmarks that are used to determine the reasonableness of a challenged rate under one standard of the Board's *Simplified Standards for Rail Rate Cases,* STB Docket No. 646 (Sub-No. 1) (STB served Sept. 5, 2007), the Association of American Railroads (AAR) shall file with the Board, on or before May 30, the weighted average State tax rates applicable to each Class I railroad for the previous year. The AAR shall submit workpapers detailing its calculations.

(b) The Board will serve and publish a notice of the filing in the **Federal Register** within 10 days of the AAR's filing.

(c) Any interested party may file comments on the AAR's filing within 30 days of the notice described in paragraph (b) of this section. If no comments are received within 30 days, the Board will automatically adopt the AAR's weighted average State tax rates on the 31st day. If comments opposing the AAR's calculations are received, the AAR's response will be due within 20 days of the comments. The Board will review the submission and comments and serve a decision within 60 days from the date of the close of the record that either accepts, rejects, or modifies the AAR's railroad-specific tax information.

[FR Doc. 2010–3969 Filed 2–25–10; 8:45 am]

BILLING CODE 4915–01–P

[2] The Annual Report R–1 is a report filed annually with the Board by March 31 by every Class I railroad pursuant to 49 U.S.C. 11145. This report contains a yearly accounting of the affairs of the railroad. Though Schedule 250 is one of several schedules required as part of the Annual Report R–1, it is a separate document used by the Board in revenue adequacy determinations, and it has a later submission deadline than does the rest of the Annual Report R–1 due to the time required to prepare it.

[3] The mileage information is included in Schedule 702.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XU38

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Reopening of the Gulf Group King Mackerel East Coast Subzone

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

ACTION: Temporary rule; reopening.

SUMMARY: NMFS reopens the commercial fishery for Gulf group king mackerel in the exclusive economic zone (EEZ) of the east coast subzone. NMFS previously determined the quota for this commercial fishery would be reached by February 4, 2010. The latest estimates for landings indicate the quota was not reached by that date. Consequently, NMFS will reopen this fishery for 5 days. The purpose of this action is to allow the fishery to maximize harvest benefits and at the same time protect the king mackerel resource.

DATES: The reopening is effective 12:01 a.m., local time, March 3, 2010, until 12:01 a.m., local time, on March 8, 2010. The fishery will then be closed until the end of the fishing season, 12:01 a.m., local time, April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone 727–824–5305, fax 727–824–5308, e-mail *Susan.Gerhart@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001, (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg) (50 CFR 622.42(c)(1)(i)(A)(*1*)).

From November 1 through March 31 the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary) to 29°25′N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary). Beginning April 1, the boundary between Atlantic and Gulf groups of king mackerel shifts south and west to the Monroe/Collier County boundary on the west coast of Florida. From April 1 through October 31, king mackerel harvested along the east coast of Florida, including all of Monroe County, are considered to be Atlantic group king mackerel.

Under 50 CFR 622.43(a)(3), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS projected the fishery for king mackerel in the east coast subzone would reach the quota on February 4, 2010, and closed the fishery on that date (75 FR 4705, January 29, 2010). However, based on current statistics, NMFS has determined that only 93 percent of the available commercial quota was landed by that date. Based on daily landings rates and the pounds remaining on the quota (approximately 70,000 lb (31,751 kg)), NMFS has determined the fishery can reopen for 5 days. Accordingly, NMFS is reopening the commercial king mackerel fishery in the east coast subzone from 12:01 a.m., local time, on March 3, 2010, until 12:01 a.m., local time, on March 8, 2010. The fishery will then be closed until 12:01 a.m., local time, April 1, 2010, when the boundary between the Atlantic and Gulf groups shifts. March 1, 2010, was chosen as the reopening day for the fishery based on feedback from the fishing industry and weather concerns, which indicated that this was the best time to reopen.

The operator of a vessel with a valid commercial vessel permit for king mackerel may not fish for or retain king mackerel prior to 12:01 a.m., local time, March 3, 2010, and must have landed and bartered, traded, or sold such king mackerel prior to 12:01 a.m., local time, March 8, 2010.

During the closed period, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain king mackerel in or from Federal waters of the closed subzone. There is one exception, however, for a person aboard a charter vessel or headboat. A person aboard a vessel that has a valid charter/headboat permit for coastal migratory pelagic fish and a commercial king mackerel permit may continue to retain king mackerel in or from the closed subzone under the 2–fish daily bag limit, provided the vessel is operating as a charter vessel or headboat. Charter vessels or headboats that hold a commercial king mackerel permit are considered to be operating as a charter vessel or headboat when they carry a passenger who pays a fee or when more than three persons are aboard, including operator and crew.

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). Allowing prior notice and opportunity for public comment on the reopening is unnecessary because the rule establishing the annual quota has already been subject to notice and comment, and all that remains is to notify the public that additional harvest remains in the established quota and, therefore, the fishery will reopen for a limited time period.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: February 19, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–4014 Filed 2–23–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0809121213–9221–02]

RIN 0648–AY40

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the commercial, recreational and tribal Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) February 26, 2010. Comments on this final rule must be received no later than 5 p.m., local time on March 29, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AY40 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* 206–526–6736, Attn: Gretchen Arentzen
- *Mail:* Barry Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, *Attn:* Gretchen Arentzen.

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 (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.

FOR FURTHER INFORMATION CONTACT: Gretchen Arentzen (Northwest Region, NMFS), *phone:* 206–526–6147, *fax:* 206–526–6736 and e-mail *gretchen.arentzen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. A proposed rule to implement the 2009–2010 groundfish harvest specifications and management measures published on December 31, 2008, (73 FR 80516). The final rule to implement the 2009–2010 specifications and management measures for the Pacific Coast Groundfish Fishery was published on March 6, 2009 (74 FR 9874). This final rule was subsequently amended by inseason actions on April 27, 2009 (74 FR 19011), July 6, 2009 (74 FR 31874), and October 28, 2009 (74 FR 55468). Additional changes to the 2009–2010 specifications and management measures for petrale sole were made in two final rules: On November 4, 2009 (74 FR 57117) and December 10, 2009 (74 FR 65480). These specifications and management measures are codified in the CFR (50 CFR part 660, subpart G).

Changes to the biennial groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its October 31 through November 5, 2009, meeting in Costa Mesa, California. The Council recommended adjusting the biennial groundfish management measures for the remainder of the biennial period to respond to updated fishery information and other inseason management needs. These changes include: Adjustments to cumulative limits in commercial fisheries off Washington, Oregon, and California; adjustments to lingcod retention in the Washington recreational fishery on days when the primary halibut fishery is open; and revisions to tribal management measures for black rockfish and widow rockfish. Increases to cumulative limits may be implemented at any time during a "two-month cumulative limit period". There are six two-month cumulative limit periods during the year: January-February, March-April, etc. Prior to the effective date of this rule (*see* the **DATES** section above), landings must not exceed the applicable cumulative limits as described in the Code of Federal Regulations. The additional fish that become available under the new, higher limits for January and February may be harvested by the fishery after the effective date that is listed in the **DATES** section above. Total landings for January and February (the current cumulative limit period) may not exceed the new, higher cumulative limit.

The projected impacts to three of the seven overfished species (widow and darkblotched rockfishes and Pacific Ocean perch) will increase slightly with the adjustments to the cumulative limits in the limited entry non-whiting trawl fishery. These impacts, however, when combined with the impacts from all other fisheries, are not projected to exceed the 2010 rebuilding OYs for these species. The other adjustments to fishery management measures are not expected to result in greater impacts to overfished species than originally projected through the end of 2010. Estimated mortality of overfished and target species are the result of management measures designed to meet the Pacific Coast Groundfish FMP objective of achieving, to the extent possible, but not exceeding, OYs of target species, while fostering the rebuilding of overfished stocks by remaining within their rebuilding OYs.

Review of 2009 Fisheries and Setting Management Measures for the Remainder of the Biennium

At its November 2009 meeting, the Council reviewed the 2009 commercial groundfish fisheries by considering: (1) The fishery management measures initially set for 2009, (2) modifications to management measures that were needed inseason in 2009 as new data became available throughout the season, and (3) retrospective total catch pattern data from the 2009 year-to-date. Two noticeable features of the 2009 fishing

season were that the Council had to: recommend adjustments to limited entry non-whiting trawl fishery management measures to reduce the harvest of petrale sole to facilitate rebuilding; and, on several occasions, recommend inseason adjustments to commercial fisheries to liberalize trip limits in order to allow total catch of some target species to approach, but not exceed, their 2009 allowable harvest levels. This practice is in keeping with the Council's rebuilding goals for overfished species, but is challenging for an industry trying to predict whether and how much fish will be available for harvest in the next month (or bi-monthly period) of the year. The Council's goal in scrutinizing the 2009 groundfish fisheries was to develop a set of management measures for the remainder of the biennial period that would take into account new knowledge gained in 2009 to better structure the fisheries in 2010. The improved structure of the initial 2010 management measures was designed to continue to keep total catch of managed species within their optimum yield levels, yet be conservative enough to reduce the need for inseason restrictions, and liberal enough to allow the catch of target species to approach, but not exceed, their 2010 OYs. The purpose of revising the 2010 management measures was to reduce the frequency with which management measure adjustments would be needed inseason during the remainder of 2010; and to allow the industry to plan for their 2010 fishing season(s). These revisions also ensure that management measures in place for the remainder of the biennial period reflect the best available science and are appropriately designed to constrain total catch during the year for all species.

Limited Entry Non-Whiting Trawl Fishery Management Measures

Based on the Council's goals in reviewing 2009 fishery data, as described above, the Council's Groundfish Management Team (GMT) reviewed the adjustments to fishery management measures in the limited entry non-whiting trawl fishery during the 2009–2010 biennium. Two major factors were considered during development of changes to limited entry non-whiting trawl fishery management measures for the remainder of the biennium: The severe restrictions put in place to reduce catches of petrale sole in both 2009 and 2010; and routine adjustments to 2009 fishery management measures that were necessary during the first ten months of the biennium.

The most prominent feature of changes to the 2009–2010 trawl fishery were the more restrictive management measures for petrale sole, put in place for the end of 2009 and for all of 2010, to facilitate rebuilding of petrale sole. These changes are anticipated to indirectly affect the harvest of incidentally caught overfished species that co-occur with petrale sole. By reducing catches of petrale sole, projected impacts to Pacific Ocean perch (POP), darkblotched rockfish, and widow rockfish are also reduced. The GMT explored potential options for modest increases to trip limits for target species due to the availability of incidentally caught overfished species. Where possible, modest increases to target species trip limits were developed in an attempt to off-set some of the loss of petrale sole fishing opportunities. Projected impacts to POP, darkblotched and widow rockfish are slightly increased by providing additional target species opportunities. However the new projected impacts to these overfished species are approximately equivalent to what they were projected to be prior to the severe restrictions placed on petrale sole harvest opportunities.

The second major factor that was considered during development of changes to the limited entry non-whiting trawl fishery management measures for the remainder of the biennium was performance of the 2009 fishery. Performance of the 2009 fishery includes both the scope and magnitude of routine adjustments to 2009 fishery management measures that were necessary during 2009, and the most recent fishery information through October 30, 2009. Review of changes to trip limits implemented for target species during 2009 identified that, aside from petrale sole, sablefish was the primary species that needed adjustments to trip limits and closed areas in order to achieve, but not exceed, the 2009 harvest specification. During 2009, inseason adjustments were also made to arrowtooth flounder trip limits to modestly raise trip limits and reduce regulatory discarding that was reported by industry representatives during the summer fishery. Additionally, chilipepper rockfish trip limits were raised considerably during 2009 to allow additional targeting opportunities. At their November 2009 meeting, the Council also received the most recent Pacific Fishery Information Network's (PacFIN) and Quota Species Monitoring (QSM) data, which estimated catch through the end of October. The Council considered trip limit adjustments based on the performance of the fishery during the first 10 months of the biennial period (January–October 2009).

The most recently available fishery information indicates that, with the inseason adjustments to increase trip limits and modify the trawl RCA that occurred in 2009, catches of sablefish through the end of 2009 are projected to come in just below the allocation (3,270 mt of the 3,280 mt sablefish allocation). The Council considered adjustments to sablefish cumulative limits for the remainder of the biennium that would re-distribute the projected catch more equitably throughout the calendar year, while still maintaining modest increases to approach, but not exceed, the 2010 sablefish allocation. To do this, the Council chose to raise cumulative limits in January-April, 2010, and lower cumulative limits at the end of the year, which were the limits that were raised via inseason action during 2009. The overall effect of these cumulative limit adjustments is to have a more constant cumulative limit throughout the year, rather than cumulative limits that ramp-up toward the end of the year. With this adjustment, catches of sablefish for 2010 are projected to come in just below the allocation (3,182 mt of the 3,280 mt sablefish allocation).

During 2009, the Council recommended and NMFS implemented an increase in the arrowtooth flounder trip limits, for vessels using large and small footrope gear, at the end of 2009 (from 150,000 lb (68,039 kg) per 2 months to 180,000 lb (81,647 kg) per 2 months in Periods 5 and 6) to reduce regulatory discards that were being reported by the industry. The Council considered options for arrowtooth flounder trip limits in the limited entry non-whiting trawl fishery for 2010. The Council recommended the 150,000 lb (68,039 kg) per 2 months trip limit, the same limit that was established for the 2009–2010 biennium during the harvest specifications and management measures process, remain in place for all of 2010, for vessels using large and small footrope trawl gear. These slightly lower limits are intended to slightly reduce projected impacts to co-occurring overfished species (POP and darkblotched rockfish). The Council may consider inseason adjustments to this trip limit during 2010 based on the most up to date fishery information, including industry reports of regulatory discard.

Based on analysis provided by the GMT at their June 2009 meeting, the Council recommended increasing the chilipepper rockfish cumulative limit for the limited entry non-whiting trawl fishery south of 40°10′ N. lat. The

analysis presented in June 2009 was requested by industry representatives, who reported an increasing incidental encounter rate and high discards of chilipepper rockfish under the lower 5,000 lb (2,268 kg) per 2 months cumulative limit. West Coast Groundfish Observer Program (WCGOP) data confirmed that discards of chilipepper rockfish in this fishery were high. Results of the June 2009 analysis indicated that a 12,000 lb (5,443 kg) 2 month cumulative limit could reduce regulatory discards, while balancing the risk of inducing effort shifts to convert the trip limit from an incidental landing allowance to a cumulative limit that would be targeted by fishermen. The GMT presented analysis in June 2009 that indicated that, even if some change in fishing behavior were to occur, there was little risk of additional impacts to any overfished species (cowcod and bocaccio in particular) due to a decrease in trawl effort in areas where bycatch of cowcod and bocaccio have been observed. For the same reasons that the chilipepper rockfish trip limit was increased in June 2009, the Council recommended continuing the higher, 12,000 lb (5,443 kg) per 2 months, cumulative limit for chilipepper rockfish for all of 2010.

The Council recommended a suite of changes to trip limits in the non-whiting trawl fishery for the remainder of the biennium in response to the two major factors outlined above: The severe restrictions put in place to reduce catches of petrale sole in both 2009 and 2010; and routine adjustments to 2009 fishery management measures during the first ten months of the biennium.

Based on the considerations outlined above, the Council recommended and NMFS is implementing the following changes to cumulative limits in the limited entry non-whiting trawl fishery for 2010: increase slope rockfish limits north of 40°10′ N. lat. from "1,500 lb (680 kg) per 2 months" to "6,000 lb (2,722 kg) per 2 months", all year, beginning on February 26, 2010; increase the slope rockfish limits between 40°10′ N. lat. and 38° N. lat. from "10,000 lb (4,536 kg) per 2 months" to "15,000 lb (6,804 kg) per 2 months" in July–August and decrease from "18,000 lb (8,165 kg) per 2 months" to "15,000 lb (6,804 kg) per 2 months" in November–December; modify sablefish cumulative limits caught with large and small footrope trawl gears north of 40°10′ N. lat. to "20,000 lb (9,072 kg) per 2 months" in January-April, "24,000 lb (10,886 kg) per 2 months" in May–October, and "20,000 lb (9,072 kg) per 2 months" in November–December, beginning on February 26, 2010; modify sablefish limits caught with selective flatfish trawl gear and multiple trawl gears north of 40°10′ N. lat. to "9,000 lb (4,082 kg) per 2 months" all year, beginning February 26, 2010; modify sablefish limits south of 40°10′ N. lat. to "22,000 lb (9,979 kg) per 2 months" all year, beginning on February 26, 2010; increase longspine thornyhead limits taken with large and small footrope trawl gears north of 40°10′ N. lat. and with all trawl gears south of 40°10′ N. lat. from "22,000 lb (9,979 kg) per 2 months" to "24,000 lb (10,886 kg) per 2 months" all year, beginning on February 26, 2010; increase longspine thornyhead limits taken with selective flatfish trawl gear and multiple trawl gears north of 40°10′ N. lat. from "3,000 lb (1,361 kg) per 2 months" to "5,000 lb (2,268 kg) per 2 months" for January–February and November–December (Periods 1 and 6), beginning on February 26, 2010; increase shortspine thornyhead limits taken with large and small footrope trawl gears North of 40°10′ N. lat. and with all trawl gears south of 40°10′ N. lat. from "17,000 lb (7,711 kg) per 2 months" to "18,000 lb (8,165 kg) per 2 months" all year, beginning on February 26, 2010; increase shortspine thornyhead limits taken with selective flatfish trawl gear and multiple trawl gears north of 40°10′ N. lat. from "3,000 lb (1,361 kg) per 2 months" to "5,000 lb (2,268 kg) per 2 months" all year, beginning on February 26, 2010; increase Dover sole limits taken with selective flatfish trawl gear and multiple trawl gears north of 40°10′ N. lat. from 40,000 lb/2 months for January–February and November–December (Periods 1 and 6) and from 45,000 lb/2 months in March–October (Periods 2–5) to "65,000 lb/2 months" all year, beginning on February 26, 2010; decrease "other flatfish" limits taken with selective flatfish trawl gear and multiple trawl gears, from "90,000 lb/2 months" to "60,000 lb/2 months" all year, beginning on March 1, 2010; decrease arrowtooth flounder limits taken with large and small footrope trawl gears from "180,000 lb (81,647 kg) 2 months" to "150,000 lb (68,039 kg) per 2 months" in September–December; increase splitnose rockfish limits taken with all trawl gears between 40°10′ N. lat. and 38° N. lat. from "10,000 lb (4,536 kg) per 2 months" to "15,000 lb (6,804 kg) per 2 months" in July–October; and increase chilipepper rockfish limits south of 40°10′ N. lat. taken with all trawl gears from "5,000 lb (2,268 kg) per 2 months" to "12,000 lb/2 months" from January–June, beginning on February 26, 2010.

Limited Entry Fixed Gear and Open Access Fishery Management Measures

Based on the Council's goals in reviewing 2009 fishery data, as described above, the Council's GMT reviewed the adjustments to fishery management measures in the limited entry fixed gear and open access fisheries during the first ten months of the 2009–2010 biennium. The major factor considered during development of changes to limited entry fixed gear and open access fisheries' management measures for the remainder of the biennium were the routine adjustments to 2009 fishery management measures that were necessary during the first ten months of the biennium.

Minor Nearshore and Black Rockfish Trip Limits Between 42° N. lat. and 40°10.00′ N. lat.

Black rockfish is a nearshore rockfish species that was assessed in 2007 as two separate stocks, and therefore the harvest specifications are divided at the Washington/Oregon border (46°16.00′ N. lat.). The 2010 black rockfish OY for the area south of 46°16.00′ N. lat. is 1,000 mt. Oregon and California work cooperatively to manage their nearshore fisheries (both commercial and recreational) to approach but not exceed the black rockfish OY in this area. The 2010 black rockfish commercial allocation for California is 185 mt. At their June 2009 meeting, the Council recommended an increase in the minor nearshore and black rockfish trip limit, as catches were projected to be well below the 2009 allocation (74 mt of a 185 mt allocation) if no action were taken. This trip limit increase was only considered for the area between 42° N. lat. and 40°10.00′ N. lat., where the lower trip limits were being attained. At their June 2009 meeting, the Council also considered the potential for increased impacts to blue rockfish if the trip limit were increased while leaving the minor nearshore rockfish and black rockfish trip limit structure as "no more than 1,200 lb (544 kg) may be species other than black or blue rockfish". So, on July 6, 2009 (74 FR 31974) NMFS implemented the Council recommendations to raise the trip limit for minor nearshore and black rockfish, while decreasing the blue rockfish trip limit by changing the trip limit structure. The limit for the limited entry fixed gear and open access fisheries between 42° N. lat. and 40°10.00′ N. lat. was raised and restructured from "6,000 lb (2,722 kg) per two months, no more than 1,200 lb (544 kg) of which may be species other than black or blue rockfish" to "7,000 lb (3,175 kg) per two

months, no more than 1,200 lb (544 kg) of which may be species other than black rockfish" in July–December (Periods 3–6) of 2009.

At their November 2009 meeting, the Council considered the most recent limited entry fixed gear and open access nearshore fishery information, and recommended that the increased and re-structured limit that was implemented inseason during 2009 remain in place for the 2010 fishery. Therefore, the Council recommended and NMFS is implementing an increase to the minor nearshore rockfish trip limit, and a decrease in the blue rockfish sub-limit, between 42° N. lat. and 40°10′ N. lat. from "6,000 lb (2,722 kg) per two months, no more than 1,200 lb (544 kg) of which may be species other than black or blue rockfish" to "7,000 lb (3,175 kg) per two months, no more than 1,200 lb (544 kg) of which may be species other than black rockfish." Because the re-structuring of this trip limit restricts the catch of blue rockfish, it cannot be implemented during the middle of a cumulative limit period. Therefore, it will go into effect beginning March 1, 2010 through the end of the year. Limited Entry Fixed Gear Sablefish Daily Trip Limit Fishery North of 36° N. lat.

Over the past several years, the amount of sablefish harvested in the limited entry fixed gear sablefish daily trip limit (DTL) fishery north of 36° N. lat. has been lower than their sablefish allocation. The Council recommended and NMFS implemented a precautionary adjustment that moderately raised the daily, weekly and bi-monthly trip limits for sablefish in this fishery on May 1, 2009 (74 FR 19011). At their June 2009 meeting the Council recommended and NMFS implemented a second precautionary adjustment that modestly increased the bi-monthly limit for July–October (July 6, 2009, 74 FR 31874). At their September 2009 meeting the Council recommended and NMFS implemented a third adjustment to remove the daily limit and increase the weekly and bimonthly limits from October–December (October 28, 2009, 74 FR 55468). With the numerous adjustments to increase limits for sablefish in this fishery, the projected impacts through the end of 2009 are 199 mt out of a 351 mt allocation.

At their November 2009 meeting, the Council considered the scope and magnitude of routine adjustments to 2009 fishery management measures. The Council also received the most recent PacFIN and QSM data, which estimated catch through the end of October, and considered trip limit adjustments based on the performance of the fishery during the first 10 months of the biennial period (January–October 2009).

Review of changes to trip limits implemented for sablefish during 2009 and analysis of the effects that changes to sablefish trip limits in this fishery had on sablefish landings found that maintaining the higher bi-monthly limit that was in place during the end of 2009 could be considered for all of 2010, without exceeding the 2010 sablefish allocation of 321 mt. As described above, the catch limits for sablefish in this fishery were gradually increased throughout 2009. The Council considered adjustments to sablefish cumulative limits for the remainder of the biennium that would re-distribute the projected catch more equitably throughout the calendar year, while still maintaining increases to approach, but not exceed, the 2010 sablefish allocation. To do this, the Council chose to eliminate the daily limit and raise the weekly and bi-monthly limits in January–August, and lower the weekly cumulative limit at the end of the year (September–December). The overall effect of these cumulative limit adjustments is to have a more constant cumulative limit throughout the year, rather than cumulative limits that ramp-up toward the end of the year. With this adjustment, catches of sablefish for 2010 are projected to be 201 mt (63 percent of the 321 mt sablefish allocation).

This increase in sablefish trip limits is not anticipated to increase projected impacts to overfished species, because projected impacts to overfished species are calculated assuming that the entire sablefish allocation is harvested. Increases in projected impacts to co-occurring target species are not anticipated to exceed OYs.

Therefore, the Council recommended and NMFS is implementing trip limit changes for the limited entry fixed gear fishery north of 36° N. lat. that increase sablefish DTL fishery limits to "1,750 lb (794 kg) per week, not to exceed 7,000 lb (3,175 kg) per 2 months" beginning on February 26, 2010 through the end of the year.

Tribal Fishery Management Measures

At their November 2009 meeting, the Council received a request from the Makah Indian Tribe to increase their 2010 black rockfish harvest guideline and to re-structure their widow rockfish landing limit for their midwater trawl fishery for 2010.

The Makah Indian Tribe requested an increase in the 2010 tribal black rockfish harvest guideline for the area north of Cape Alava, Washington (48°10′ N. lat.) from 20,000 lbs (9.1-mt) to 30,000 lbs (13.6-mt) to allow a small amount of targeting opportunity to occur on black rockfish in a live-fish fishery. With the higher tribal harvest guideline north of Cape Alava, and the projected catches of black rockfish from all other fisheries North of 46°16′ N. lat., the total catch of black rockfish is not projected to exceed the 2010 northern black rockfish OY of 490 mt.

Therefore, the Council recommended and NMFS is implementing an increase in the black rockfish tribal harvest guideline for the area north of Cape Alava, Washington (48°10′ N. lat.) from 20,000 lbs (9.1-mt) to 30,000 lbs (13.6-mt).

The Makah Indian Tribe also requested that the widow rockfish landing limit in the midwater trawl fishery be re-structured in 2010 to allow greater flexibility in management and to reduce discarding of widow rockfish, while maintaining the overall catch below their annual widow rockfish limit. The current limit structure states that "landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed in a two-month period." The Makah Indian Tribe is proposing to re-structure the limit so that the total landings of widow rockfish would not exceed 10 percent of the weight of yellowtail rockfish landed by a given vessel for the entire year, e.g. if a vessel landed 100,000 lbs of yellowtail rockfish for the season, that same vessel is only allowed to have landed a total of 10,000 lbs of widow rockfish at that time. The Makah Tribe will maintain a total catch of each species, for each vessel, throughout the year to ensure that the catch ratio of widow rockfish to yellowtail rockfish is not exceeded during 2010.

Therefore, the Council recommended and NMFS is implementing a re-structured cumulative limit ratio for widow rockfish in the tribal midwater trawl fishery as follows: From "* * * not exceed 10 percent of the weight of yellowtail rockfish landed in any two-month period." to "* * * not exceed 10 percent of the cumulative weight of yellowtail rockfish landed, for a given vessel, throughout the year."

Washington Recreational Fisheries Management Measures

The Council recommended a change in Washington recreational fishery management measures in the area between the Queets River and Leadbetter Point to allow lingcod retention seaward of the boundary line approximating the 30-fm (55-m) depth contour on days that the primary halibut season is open. Under current regulations, most recreational groundfish fishing, including fishing for

lingcod, is prohibited, for part of the year, seaward of the line approximating the 30 fm depth contour to reduce incidental impacts to yelloweye rockfish. Therefore, anglers targeting halibut there are forced to discard lingcod, but once their halibut is caught, these anglers move shoreward of the boundary line approximating the 30-fm (55-m) depth contour and begin targeting lingcod. This shoreward shift of effort on lingcod results in more fishing effort than would occur if the lingcod caught incidentally offshore while targeting halibut were allowed to be retained. The additional effort targeting lingcod shoreward could negate some of the potential yelloweye rockfish catch reductions from the RCA if yelloweye are encountered. The State of Washington will prohibit further fishing seaward of the 30-fm line once a vessel reaches its limit of halibut. This regulatory change is not anticipated to increase impacts to yelloweye rockfish, and the Washington Department of Fish and Wildlife and NMFS will continue to monitor impacts to yelloweye rockfish to ensure the harvest guideline is not exceeded.

Classification

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

These inseason adjustments are taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (*see* **ADDRESSES**) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as quickly as possible.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its October 31 through November 5, 2009, meeting in Costa Mesa, California. The Council recommended that these changes be implemented on or as close as possible to January 1, 2010. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the Agency from managing fisheries using the best available science to approach, without exceeding, the OYs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington, Oregon, and California, and recreational and tribal fisheries off Washington.

These adjustments to management measures must be implemented in a timely manner to allow fishermen an opportunity to harvest higher limits in 2010 for slope rockfish, sablefish, longspine and shortspine thornyheads, Dover sole, chilipepper rockfish, slope rockfish, splitnose rockfish and minor nearshore and black rockfish. Increases to cumulative limits for: Sablefish in the limited entry trawl fishery and the limited entry fixed gear fishery; slope rockfish, longspine and shortspine thornyheads, Dover sole, splitnose rockfish and chilipepper rockfish in the limited entry trawl fishery; and minor nearshore and black rockfish in the limited entry fixed gear fishery and the open access fishery allow fishermen increased opportunities to harvest available healthy stocks while staying within the OYs for these species. These changes must be implemented in a timely manner, as early as possible in 2010, so that fishermen are allowed increased opportunities to harvest available healthy stocks, and meet the objective of the Pacific Coast Groundfish FMP to allow fisheries to approach, but not exceed, OYs. It would be contrary to the public interest to delay implementation of these changes until after public notice and comment, because making this regulatory change in February 2010 allows additional harvest in fisheries that are important to coastal communities.

These adjustments to management measures must be implemented in a timely manner to prevent 2010 OYs from being exceeded or to prevent premature closure of the fishery. Decreases to cumulative limits for other flatfish and arrowtooth flounder in the limited entry trawl fishery and for blue rockfish in the limited entry fixed gear and open access fisheries are intended to prevent exceeding the 2010 OYs for these species and co-occurring species, and prevent premature closure of fisheries that impact these species. These changes must be implemented in a timely manner, on March 1, 2010. Cumulative limits cover a two-month period, so if implementation is delayed much past March 1 fishermen could harvest the prior higher limit before the revised limit is effective. Decreases to cumulative limits for other flatfish and arrowtooth flounder in the limited entry trawl fishery are intended to reduce impacts to co-occurring overfished species, and to reduce impacts to petrale sole, a co-occurring species for which a severely reduced OY was implemented for 2010 (74 FR 65480). Decreases to cumulative limits for blue rockfish in the limited entry fixed gear and open access fisheries are intended to prevent the 2010 blue rockfish OY from being exceeded and prevent premature closure of nearshore fisheries that take blue rockfish.

Delaying these changes would keep management measures in place that are not based on the best available data, which could deny fishermen access to available harvest and could lead to early closures of the fishery if harvest of groundfish exceeds levels projected for 2010. Such delay would impair achievement of the Pacific Coast Groundfish FMP objective of approaching, but not exceeding, OYs.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: February 17, 2010.

Emily H. Menashes,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 is amended to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

■ 2. Section 660.321 is revised to read as follows:

§ 660.321 Black rockfish harvest guideline.

From the commercial harvest of black rockfish off Washington State, a treaty Indian tribes' harvest guideline is set of 30,000 lb (13,608 kg) for the area north of Cape Alava, WA (48°09.50′ N. lat) and 10,000 lb (4,536 kg) for the area between Destruction Island, WA (47°40′ N. lat.) and Leadbetter Point, WA (46°38.17′ N. lat.). This harvest guideline applies and is available to the

treaty Indian tribes identified in § 660.324(b).

■ 3. In § 660.384 paragraph (c)(1)(i)(D) (*2*), is revised to read as follows:

§ 660.384 Recreational fishery management measures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(D) * * *

(*2*) Between the Queets River and Leadbetter Point, recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 30-fm (55-m) depth contour from March 15 through June 15, except that recreational fishing for sablefish and Pacific cod is permitted within the recreational RCA from May 1 through June 15, and on days that the primary halibut fishery is open lingcod may be taken, retained and possessed seaward of the boundary line approximating the 30-fm (55-m) depth contour. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Retention of lingcod seaward of the boundary line approximating the 30-fm (55-m) depth contour south of 46°58' N. lat. is prohibited on Fridays and Saturdays from July 1 through August 31. For additional regulations regarding the Washington recreational lingcod fishery, see paragraph (c)(1)(iii) of this section. Coordinates for the boundary line approximating the 30-fm (55-m) depth contour are listed in § 660.391.

* * * * *

■ 4. In § 660.385 paragraphs (b)(1) and (b)(5) are revised to read as follows:

§ 660.385 Washington coastal tribal fisheries management measures.

* * * * *

(b) * * *

(1) *Black Rockfish.* For the commercial harvest of black rockfish off Washington State, a harvest guideline of: 30,000 lb (13,608 kg) north of Cape Alava, WA (48°10′ N. lat.) and 10,000 lb (4,536 kg) between Destruction Island, WA (47°40′ N. lat.) and Leadbetter Point, WA (46°38.17′ N. lat.). There are no tribal harvest restrictions for black rockfish in the area between Cape Alava and Destruction Island.

* * * * *

(5) The Makah Tribe will manage the midwater trawl fisheries as follows: yellowtail rockfish taken in the directed tribal mid-water trawl fisheries are subject to a cumulative limit of 180,000 lb (81,647 kg) per 2 month period for the entire fleet. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed, for a given vessel, throughout the year. These limits may be adjusted by the tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish, provided the average 2-month cumulative yellowtail rockfish limit does not exceed 180,000 lb (81,647 kg) for the fleet.

* * * * *

■ 5. Table 2a to Part 660, Subpart G, and footnote "/cc" following Tables 2a through 2c to Part 660, Subpart G are revised to read as follows:

* * * * *

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Table 2a. To Part 660, Subpart G-2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreation-al
ROUNDFISH:									
Lingcod c/									
N of 42 N. lat.	4,058		771			4,829	4,829		
S of 42 N. lat.									
Pacific Cod e/	3,200		d/			3,200	1,600		
Pacific Whiting f/	f/					f/	134,773 - 404,318		
Sablefish g/									
N of 36 N. lat.	9,217					9,217	6,471		
S of 36 N. lat.							1,258		
Cabezon h/									
S of 42 N. lat.	d/		86		25	111	79		
FLATFISH:									
Dover sole	28,582					28,582	16,500		
English sole j/	9,745					9,745	9,745	-	
Petrale sole k/	1,514		1,237			2,751	1,200	-	
Arrowtooth flounder l/	10,112					10,112	10,112	-	
Starry Flounder m/	1,578					1,578	1,077		
Other flatfish n/	6,731					6,731	4,884	-	
ROCKFISH:									
Pacific Ocean Perch o/	1,173					1,173	200	198	

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreational
Shortbelly p/	6,950					6,950	6,950		
Widow q/	6,937					6,937	509	447.4	7.2
Canary r/	940					940	44 - 105		
Chilipepper s/	d/			2,576		2,576	2,447	2,447	
Bocaccio t/	d/			793		793	288	206.4	67.3
Splitnose u/	d/			615		615	461		
Yellowtail v/	4,562			d/		4,562	4,562		
Shortspine thornyhead w/ N of 34 27' N. lat.	2,411					2,411	1,591	1,591	
S of 34 27' N. lat.							410		
Longspine thornyhead x/ N of 34 27' N. lat.	3,671					3,671	2,175		
S of 34 27' N. lat.							385		
Cowcod y/	d/			14		14	4		
Darkblotched z/	440					440	291	288.05	
Yelloweye aa/						32	17	3.1	8.0
California Scorpionfish bb/					155	155	155		
Black cc/ N of 46 16' N. lat.	464					464	464		
S of 46 16' N. lat.			1,317			1,317	1,000		

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreational
Minor Rockfish dd/									
N of 40 10' N. lat.	3,678			--		3,678	2,283		
Minor Rockfish ee/									
S of 40 10' N. lat.	--			3,382		3,382	1,990		
Remaining	1,640			1,318					
bank ff/	d/			350					
blackgill gg/	d/			292					
blue	28			211					
bocaccio north	318			--					
chilipepper north	32			--					
redstripe	576			d/					
sharpchin	307			45					
silvergrey	38			d/					
splitnose north	242			--					
yellowmouth	99			d/					
yellowtail	--			116					
gopher	d/			302					
Other rockfish hh/	2,038			2,066					
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:									
Longnose Skate ii/	3,269					3,269	1,349		
Other fish jj/	11,200					11,200	5,600		

* * * * *

[cc/] New assessments were prepared for black rockfish south of 45°56.00 N. lat. (Cape Falcon, Oregon) and for black rockfish north of Cape Falcon. The ABC for the area north of 46°16′ N. lat. (Washington) is 464 mt (97 percent) of the 478 mt ABC contribution from the northern assessment area. The ABC for the area south of 46°16′ N. lat. (Oregon and California) is 1,317 mt which is the sum of a contribution of 14 mt (3 percent) from the northern area assessment, and 1,303 mt from the southern area assessment. The ABCs were derived using an FMSY proxy of F50%. Because both portions of the stock are above 40 percent, the OYs could be set equal to the ABCs. For the area north of 46°16′ N. lat., the OY of 490 mt is set equal to the ABC. The following tribal harvest guidelines are being set: 30,000 lb (13.6 mt) north of Cape Alava, WA (48°09.50′ N. lat.) and 10,000 lb (4.5 mt) between Destruction Island, WA (47°40′ N. lat.) and Leadbetter Point, WA (46°38.17′ N. lat.) For the area south of 46°16′ N. lat., the OY of 1,000 mt is a constant harvest level. The black rockfish OY in the area south of 46°16′ N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

* * * * *

■ 6. Tables 3 (North), 3 (South), 4 (North), 4 (South), and 5 (North) to part 660, subpart G are revised to read as follows:

Table 3 (North) to Part 660, Subpart G -- 2010 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 120909

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 48°10' N. lat.	shore - modified[7/] 200 fm line[6/]	shore - 200 fm line[6/]	shore - 150 fm line[6/]		shore - 200 fm line[6/]	shore - modified[7/] 200 fm line[6/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[6/] - modified[7/] 200 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - 150 fm line[6/]	100 fm line[6/] - 150 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - modified[7/] 200 fm line[6/]
3	45°46' N. lat. - 40°10' N. lat.			75 fm line[6/] - 200 fm line[6/]	100 fm line[6/] - 200 fm line[6/]		
	Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
4	**Minor slope rockfish[2/] & Darkblotched rockfish**	6,000 lb/ 2 months					
5	**Pacific ocean perch**	1,500 lb/ 2 months					
6	**DTS complex**						
7	Sablefish						
8	large & small footrope gear	20,000 lb/ 2 months		24,000 lb/ 2 months			20,000 lb/ 2 months
9	selective flatfish trawl gear	9,000 lb/ 2 months					
10	multiple bottom trawl gear[8/]	9,000 lb/ 2 months					
11	Longspine thornyhead						
12	large & small footrope gear	24,000 lb/ 2 months					
13	selective flatfish trawl gear	5,000 lb/ 2 months					
14	multiple bottom trawl gear[8/]	5,000 lb/ 2 months					
15	Shortspine thornyhead						
16	large & small footrope gear	18,000 lb/2 months					
17	selective flatfish trawl gear	5,000 lb/ 2 months					
18	multiple bottom trawl gear[8/]	5,000 lb/ 2 months					
19	Dover sole						
20	large & small footrope gear	110,000 lb/ 2 months					
21	selective flatfish trawl gear	65,000 lb/ 2 months					
22	multiple bottom trawl gear[8/]	65,000 lb/ 2 months					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
23	**Whiting**						
24	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
25	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
26	**Flatfish** (except Dover sole)						
27	Arrowtooth flounder						
28	large & small footrope gear	150,000 lb/ 2 months					
29	selective flatfish trawl gear	90,000 lb/ 2 months					
30	multiple bottom trawl gear [8/]	90,000 lb/ 2 months					
31	Other flatfish [3/], English sole, starry flounder, & Petrale sole						
32	large & small footrope gear for Other flatfish [3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
33	large & small footrope gear for Petrale sole	9,500 lb/ 2 months					9,500 lb/ 2 months
34	selective flatfish trawl gear for Other flatfish [3/], English sole, & starry flounder	90,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.	60,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.				
35	selective flatfish trawl gear for Petrale sole						
36	multiple bottom trawl gear [8/]	90,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.	60,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.				
37	**Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish**						
38	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
39	large & small footrope gear	300 lb/ 2 months					
40	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
41	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month

TABLE 3 (North) con't

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
42	**Canary rockfish**						
43	large & small footrope gear	CLOSED					
44	selective flatfish trawl gear	100 lb/ month		300 lb/ month		100 lb/ month	
45	multiple bottom trawl gear 8/	CLOSED					
46	**Yellowtail**						
47	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
48	large & small footrope gear	300 lb/ 2 months					
49	selective flatfish trawl gear	2,000 lb/ 2 months					
50	multiple bottom trawl gear 8/	300 lb/ 2 months					
51	**Minor nearshore rockfish & Black rockfish**						
52	large & small footrope gear	CLOSED					
53	selective flatfish trawl gear	300 lb/ month					
54	multiple bottom trawl gear 8/	CLOSED					
55	**Lingcod** 4/						
56	large & small footrope gear	1,200 lb/ 2 months		4,000 lb/ 2 months			
57	selective flatfish trawl gear			1,200 lb/2 months			
58	multiple bottom trawl gear 8/						
59	**Pacific cod**	30,000 lb/ 2 months		70,000 lb/ 2 months			30,000 lb/ 2 months
60	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
61	**Other Fish** 5/	Not limited					

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart G -- 2010 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

120909

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	South of 40°10' N. lat.	100 fm line[6/] - 150 fm line[6/ 7/]					
All trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA.							
See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
2	**Minor slope rockfish[2/] & Darkblotched rockfish**						
3	40°10' - 38° N. lat.	15,000 lb/ 2 months					
4	South of 38° N. lat.	55,000 lb/ 2 months					
5	**Splitnose**						
6	40°10' - 38° N. lat.	15,000 lb/ 2 months					
7	South of 38° N. lat.	55,000 lb/ 2 months					
8	**DTS complex**						
9	Sablefish	22,000 lb/ 2 months					
10	Longspine thornyhead	24,000 lb/ 2 months					
11	Shortspine thornyhead	18,000 lb/ 2 months					
12	Dover sole	110,000 lb/ 2 months					
13	**Flatfish** (except Dover sole)						
14	Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
15	Petrale sole	9,500 lb/ 2 months					9,500 lb/ 2 months
16	Arrowtooth flounder	10,000 lb/ 2 months					
17	**Whiting**						
18	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
19	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					

TABLE 3 (South)

Table 3 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
20	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**						
21	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month					
22	large footrope or midwater trawl for Chilipepper	12,000 lb/ 2 months					
23	large footrope or midwater trawl for Widow & Yelloweye	CLOSED					
24	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month					
25	small footrope trawl for Chilipepper	12,000 lb/ 2 months					
26	**Bocaccio**						
27	large footrope or midwater trawl	300 lb/ 2 months					
28	small footrope trawl	CLOSED					
29	**Canary rockfish**						
30	large footrope or midwater trawl	CLOSED					
31	small footrope trawl	100 lb/ month		300 lb/ month		100 lb/ month	
32	**Cowcod**	CLOSED					
33	**Bronzespotted rockfish**	CLOSED					
34	**Minor nearshore rockfish & Black rockfish**						
35	large footrope or midwater trawl	CLOSED					
36	small footrope trawl	300 lb/ month					
37	**Lingcod[4/]**						
38	large footrope or midwater trawl	1,200 lb/ 2 months		4,000 lb/ 2 months			
39	small footrope trawl			1,200 lb/ 2 months			
40	**Pacific cod**	30,000 lb/ 2 months		70,000 lb/ 2 months			30,000 lb/ 2 months
41	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
42	**Other Fish[5/] & Cabezon**	Not limited					

TABLE 3 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
5/ Other fish are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is an area closed to fishing by particulary gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

Table 4 (North) to Part 660, Subpart G -- 2009-2010 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 120909

TABLE 4 (North)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 45°03.83' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	45°03.83' N. lat. - 43°00' N. lat.	30 fm line[6/] - 125 fm line [6/ 7/]					
4	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
5	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
6	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
7	**Pacific ocean perch**	1,800 lb/ 2 months					
8	**Sablefish**	1,750 lb per week, not to exceed 7,000 lb/ 2 months					
9	**Longspine thornyhead**	10,000 lb/ 2 months					
10	**Shortspine thornyhead**	2,000 lb/ 2 months					
11	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Starry flounder**						
16	**Other flatfish[1/]**						
17	**Whiting**	10,000 lb/ trip					
18	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
19	**Canary rockfish**	CLOSED					
20	**Yelloweye rockfish**	CLOSED					
21	**Minor nearshore rockfish & Black rockfish**						
22	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
23	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish [3/]				
24	**Lingcod[4/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
25	**Pacific cod**	1,000 lb/ 2 months					
26	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
27	**Other fish[5/]**	Not limited					

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South) to Part 660, Subpart G -- 2009-2010 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 120909

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	1,750 lb per week, not to exceed 7,000 lb/ 2 months					
7	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb				3,000 lb per week	
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 4 (South)

Table 4 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor nearshore rockfish & Black rockfish**							TABLE 4 (South)
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
34	Deeper nearshore							
35	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months		
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod**[3/]	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Other fish**[4/] **& Cabezon**	Not limited						

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (North) to Part 660, Subpart G -- 2009-2010 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 120909

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 45°03.83' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	45°03.83' N. lat. - 43°00' N. lat.	30 fm line[6/] - 125 fm line [6/ 7/]					
4	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
5	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
6	**Minor slope rockfish[1/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
7	**Pacific ocean perch**	100 lb/ month					
8	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months			300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 2,750 lb/ 2 months		
9	**Thornyheads**	CLOSED					
10	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	**Arrowtooth flounder**						
12	**Petrale sole**						
13	**English sole**						
14	**Starry flounder**						
15	**Other flatfish[2/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor nearshore rockfish & Black rockfish**						
21	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
22	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish [3/]				
23	**Lingcod[4/]**	CLOSED		400 lb/ month			CLOSED
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Other Fish[5/]**	Not limited					

TABLE 5 (North)

Table 5 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
27	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
28	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
29	**SALMON TROLL**						
30	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook, plus 1 lingcod up to a trip limit of 10 lingcod, both within and outside of the RCA. This limit is within the 400 lb per month limit for lingcod, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above.					

TABLE 5 (North) con't

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2010–3892 Filed 2–25–10; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XU63

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central 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 vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allocation of the 2010 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 24, 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 allocation of the 2010 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA is 2,207 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2010) and inseason adjustment (74 FR 68713, December 29, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allocation of the 2010 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,007 mt and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached.

Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central 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 closure of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Central 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 22, 2010.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: February 22, 2010.

James P. Burgess,

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

[FR Doc. 2010–4013 Filed 2–23–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XU65

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by pot catcher/processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2010 Pacific cod total allowable catch (TAC) specified for pot catcher/processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 23, 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 BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2010 Pacific cod TAC allocated as a directed fishing allowance to pot catcher/processors in the BSAI is 1,147 metric tons as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) and inseason adjustment (74 FR 68717, December 29, 2009)).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season apportionment of the 2010 Pacific cod TAC allocated as a directed fishing allowance to pot catcher/processors in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher/processors in the BSAI.

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 closure of Pacific cod by pot catcher/processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 22, 2010.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: February 23, 2010.

James P. Burgess,

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

[FR Doc. 2010–4018 Filed 2–23–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XU64

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 feet (18.3 m) Length Overall Using Jig or Hook-and-Line Gear in the Bogoslof Pacific Cod Exemption Area in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) length overall (LOA) using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the limit of Pacific cod for catcher vessels less than 60 ft LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 23, 2010, through 2400 hrs, A.l.t., December 31, 2010.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.22(a)(7)(i)(C), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 113 metric tons of Pacific cod have been caught by catcher vessels less than 60 ft LOA using jig or hook-and-line gear in the Bogoslof exemption area described at § 679.22(a)(7)(i)(C)(*1*). Consequently, the Regional Administrator is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area.

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 closure of Pacific cod by catcher vessels less than 60 ft LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February, 22, 2010.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.22 and is exempt from review under Executive Order 12866.

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

Dated: February 23, 2010.

James P. Burgess,

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

[FR Doc. 2010–4011 Filed 2–23–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XU62

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Offshore 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 offshore 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 offshore component in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 23, 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 offshore component in the Western Regulatory Area of the GOA is 255 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, 2010).

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 offshore 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 250 mt for the offshore component in the Western Regulatory Area of the GOA. The remaining five mt for the offshore 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 offshore 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 offshore 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 22, 2010.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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 22, 2010.

James P. Burgess,

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

[FR Doc. 2010–4015 Filed 2–23–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 38
Friday, February 26, 2010

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–94; RC–2010–0004]

Sherwood Martinelli; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated December 23, 2009, which was filed with the NRC by Sherwood Martinelli. The petition was docketed by the NRC on December 24, 2009, and has been assigned Docket No. PRM–50–94. The petitioner requests that the NRC amend its regulations regarding the domestic licensing of production and utilization facilities. Specifically, the petitioner requests that the NRC revise its regulations as they relate to decommissioning and decommissioning funding.

DATES: Submit comments by May 12, 2010. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2010–0004 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

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

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

Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0004. Comments may be submitted electronically through this Web site. Address questions about NRC dockets to Carol Gallagher, 301–492–3668, e-mail *Carol.Gallagher@nrc.gov.*

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

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

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

You can access publicly available documents related to this petition, including the incoming petition for rulemaking, using the following methods:

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

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC, including the incoming petition for rulemaking (ADAMS Accession No. ML093620175), are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Federal Rulemaking Web Site: Public comments and supporting materials related to this petition for rulemaking can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0004.

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

SUPPLEMENTARY INFORMATION:

Background

Sherwood Martinelli (petitioner) submitted a petition for rulemaking dated December 23, 2009. The petitioner requests that the NRC revise its regulations as they relate to decommissioning and decommissioning funding. The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–50–94. The NRC is requesting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner believes that with the current state of the economy, a 2-year reporting requirement is not adequate to ensure the safety and adequacy of funds set aside for the decommissioning of a nuclear power plant. The petitioner requests that the NRC amend its regulations to require yearly reporting by licensees on the status of these financial mechanisms used to ensure funding, and biannual reporting if the license is within 5 years of expiration. The petitioner further requests that the NRC require additional deposits to the funding accounts within 90 days from the time a shortage is noted in the annual reports.

According to the petitioner, licensees may choose from three alternative decommissioning strategies: DECON (immediate removal or decontamination), SAFSTOR ("delayed DECON"), or ENTOMB (permanent encasement onsite). The petitioner believes that the SAFSTOR decommissioning option allows licensees to turn the reactor sites into long-term high-level waste storage facilities. The petitioner cites the NRC Fact Sheet, Decommissioning Nuclear

Power Plants, which states that a decision by a licensee to adopt a combination of DECON and SAFSTOR may be based on factors such as the availability of waste disposal sites. The petitioner believes that this wording creates a loophole whereby a site choosing the SAFSTOR option would not be returned to unrestricted use within a period of 60 years from the time reactor operation ceases. The petitioner requests that the NRC amend its regulations to clarify that a licensee's choice of alternative decommissioning strategy must result in the return of the site to unrestricted use within 60 years and that the NRC eliminate the ENTOMB strategy as an option.

The petitioner believes that, if implemented, the reporting and financial assurance amendments proposed would provide reasonable assurance that funds will be available when needed to clean up a plant site and avoid costly legacy sites to be cleaned up at taxpayer expense. With respect to the proposal to clarify the decommissioning strategies available to licensees, the petitioner believes that these proposed amendments assure that portions of the facility containing radioactive contaminants would be removed or decommissioned to a level that permits release of the property for unrestricted use within 60 years after the cessation of operations.

Dated at Rockville, Maryland, this 22nd day of February, 2010.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2010–3989 Filed 2–25–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AB08

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Reports of Foreign Financial Accounts

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN, a bureau of the Department of the Treasury (Treasury), is proposing to revise the regulations implementing the Bank Secrecy Act (BSA) regarding reports of foreign financial accounts. The proposed rule would clarify which persons will be required to file reports of foreign financial accounts and which accounts will be reportable. In addition, the proposed rule would exempt certain persons with signature or other authority over foreign financial accounts from filing reports and would include provisions intended to prevent United States persons from avoiding this reporting requirement.

DATES: Written comments on the notice of proposed rulemaking may be submitted on or before April 27, 2010.

ADDRESSES: You may submit comments, identified by RIN 1506–AB08, by any of the following methods:

- *Federal e-rulemaking portal: http://www.regulations.gov.* Refer to Docket Number Fincen–2009–0008 and follow the instructions for submitting comments.
- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AB08 in the body of the text.

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, FinCEN (800) 949–2732 and select option 1.

SUPPLEMENTARY INFORMATION:

I. Introduction

The provision of the BSA authorizing reports of foreign financial accounts reflects congressional concern that foreign financial institutions were being used to evade domestic criminal, tax, and regulatory laws. The House report on the bill leading to the enactment of the BSA described the use of undisclosed foreign financial accounts for a wide range of abuses.[1] Nearly four decades after the enactment of the BSA, foreign financial accounts continue to be used for many of the abuses cataloged by Congress when it was originally considering the enactment of the BSA. For example, the Senate Permanent Subcommittee on Investigations has found that Americans have continued to use complex schemes to try to conceal their foreign financial accounts in attempts to circumvent United States law.[2]

Considerable effort has been made to address these abuses. The Internal Revenue Service (IRS), for example, has several projects focused on the use of offshore accounts to evade federal income taxes.

II. Background

A. Statutory and Regulatory Background

The BSA, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, authorizes the Secretary of the Treasury (Secretary), among other things, to issue regulations requiring persons to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, regulatory, and counterterrorism matters. The regulations implementing the BSA appear at 31 CFR Part 103. The Secretary's authority to administer the BSA has been delegated to the Director of FinCEN.

Under 31 U.S.C. 5314 the Secretary is authorized to require any "resident or citizen of the United States, or a person in, and doing business in, the United States, to * * * keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency." For this purpose, foreign financial agency means "a person acting for a person as a financial institution bailee, depository trustee or agent, or acting in a similar way related to money, credit, securities, gold, or in a transaction in money, credit, securities or gold."[3] The Secretary is also

[1] The House report states:

Considerable testimony was received by the Committee from the Justice Department, the United States Attorney for the Southern District of New York, the Treasury Department, the Internal Revenue Service, the Securities and Exchange Commission, the Defense Department and the Agency for International Development about serious and widespread use of foreign financial facilities located in secrecy jurisdictions for the purpose of violating American law. Secret foreign bank accounts and secret foreign financial institutions have permitted proliferation of 'white collar' crime; have served as the financial underpinning of organized criminal operations in the United States; have been utilized by Americans to evade income taxes, conceal assets illegally, and purchase gold; have allowed Americans and others to avoid the law and regulations governing securities and exchanges; have served as essential ingredients in frauds including schemes to defraud the United States; have served as the ultimate depository of black market proceeds from Vietnam; have served as a source of questionable financing for conglomerate and other corporate stock acquisitions, mergers and takeovers; have covered conspiracies to steal from the U.S. defense and foreign aid funds; and have served as the cleansing agent for 'hot' or illegally obtained monies. H.R. Rep. No. 975 91st Cong. 2d Sess. 12 (1970).

[2] *See Tax Haven Banks and U.S. Tax Compliance,* Staff Report, Permanent Subcommittee on Investigations, Senate Comm. on Homeland Security and Governmental Affairs, (July 17, 2008); *Tax Haven Abuses: The Enablers, the Tools and Secrecy,* Staff Report, Permanent Subcommittee on Investigations, Senate Comm. on Homeland Security and Governmental Affairs, (Aug. 1, 2006).

[3] *See* 31 U.S.C. 5312(a)(1) which excepts from the definition of financial agency a person acting for a country, a monetary or financial authority acting as a monetary or financial authority or an international

authorized to prescribe exemptions to the reporting requirement and to prescribe other matters the Secretary considers necessary to carry out section 5314.

B. Overview of Current Regulations and Form

The regulations implementing 31 U.S.C. 5314 appear at 31 CFR 103.24, 103.27, and 103.32. Section 103.24 generally requires each person subject to the jurisdiction of the United States having a financial interest in or signature or other authority over a bank, securities, or other financial account in a foreign country to "report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists, and * * * provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons." Section 103.27 requires the form to be filed with respect to foreign financial accounts exceeding $10,000. The form must be filed on or before June 30 of each calendar year for accounts maintained during the previous calendar year. Section 103.32 requires records of accounts to be maintained for each person having a financial interest in or signature or other authority over such account. The records must be maintained for a period of five years.[4]

The form used to file the report required by section 103.24 is the Report of Foreign Bank and Financial Accounts—Form TD F 90–22.1 (the FBAR).[5] The instructions to the FBAR specify which persons must file as well as the types of accounts that must be reported. The instructions also provide exemptions from reporting for certain persons with signature or other authority over the accounts.

The authority to enforce the provisions of 31 U.S.C. 5314 and sections 103.24 and 103.32 has been re-delegated from FinCEN to the Commissioner of Internal Revenue by means of a Memorandum of Agreement between FinCEN and the IRS dated April 2, 2003.[6] With this delegation, FinCEN conferred upon the IRS the authority to enforce the FBAR provisions of the BSA and its implementing regulations, investigate possible violations, and assess and collect civil penalties in connection therewith. The delegation also conferred upon the IRS the authority to: (1) Respond to public inquiries and requests for advice; (2) issue administrative rulings; and (3) provide related assistance to the public with respect to compliance with FBAR requirements. Finally, the delegation conferred upon the IRS the authority to revise the FBAR form and instructions, and to propose to FinCEN revisions of the applicable regulations for the purpose of enhancing FBAR compliance and enforcement.

A revised Form TD F 90–22.1 that modified several aspects of the FBAR form instructions was issued in October 2008. Most notably, the revised FBAR form instructions broadened the definition of "United States person" to conform more closely to the FBAR's authorizing statute,[7] and sought to clarify the scope of foreign financial accounts that trigger FBAR filing requirements. In the ensuing months, the IRS received a number of questions and comments seeking guidance on compliance with the revised FBAR instructions. In response to these comments, the IRS published guidance indicating that until further notice, all persons may rely on the definition of "United States person" found in the prior version of the FBAR instructions from 2000. The IRS also extended the FBAR filing deadline for the 2008 and earlier calendar years to September 23, 2009 for certain filers.[8]

In addition, the IRS published Notice 2009–62 on August 10, 2009, which extended the FBAR filing deadline for the 2008 and earlier calendar years to June 30, 2010 for certain filers, and requested comments from the public regarding several FBAR-related issues. Specifically, Notice 2009–62 requested public comment regarding: (1) When a person with signature or other authority over, but no financial interest in, a foreign financial account should be relieved of filing an FBAR for the account; (2) whether to expand the filing exemption currently available to officers and employees of banks and certain publicly traded domestic companies, where such officers and employees have signature or other authority over their employer's accounts; and (3) when an interest in a foreign entity should trigger an FBAR filing requirement.[9]

III. Section-by-Section Analysis

The proposed rule would include a definition of United States persons and definitions of bank, securities, and other financial accounts in a foreign country. FinCEN believes that inclusion of these definitions will more clearly delineate both the scope of individuals and entities that would be required to file the FBAR and the types of accounts for which such reports should be made, so that determining a person's filing obligations will be more straightforward and predictable. In addition, the proposed rule would exempt certain persons with signature or other authority from filing the FBAR. Finally, the proposed rule would include provisions intended to prevent United States persons required to file the FBAR from avoiding this reporting requirement.

A. § 103.24(a)—In General

FinCEN proposes to amend 31 CFR 103.24 by using a new term "United States person" to indicate persons that would be required to file an FBAR.

B. Section 103.24(b)—United States Person

FinCEN proposes to define a United States person as a citizen or resident of the United States, or an entity, including but not limited to a corporation, partnership, trust or limited liability company, created, organized, or formed under the laws of the United States, any state, the District of Columbia, the Territories and Insular Possessions of the United States or the Indian Tribes. This definition applies to an entity regardless of whether an election has been made under 26 CFR 301.7701–2 or 301.7701–3 to disregard the entity for federal income tax purposes. The determination of whether an individual is a resident of the United States would be made under the rules of the Internal Revenue Code, specifically 26 U.S.C. 7701(b) and the regulations thereunder except that the definition of the term "United States" provided in 31 CFR 103.11(nn) will be used instead of the definition of "United States" in 26 CFR 301.7701(b)-1(c)(2)(ii). FinCEN believes that this approach is appropriate because it provides for uniformity regardless of where in the United States an individual may be. In addition, FinCEN believes this approach takes into account that individuals may seek to hide their residency in an effort to obscure the source of their income or location of their assets.[10]

financial institution of which the United States government is a member.

[4] This notice of proposed rulemaking would not amend sections 103.27 and 103.32.

[5] The FBAR form currently available on both the FinCEN and IRS Web sites allows users to complete the form electronically and then print a PDF document that can be mailed to the address on the form.

[6] *See* 31 CFR 103.56(g).

[7] 31 U.S.C. 5314.

[8] Announcement 2009–51, 2009–25 I.R.B. 1005.

[9] In crafting the proposed rule, FinCEN reviewed the public comments received in response to Notice 2009–62.

[10] *See Tax Haven Banks and U.S. Tax Compliance,* Staff Report, Permanent Subcommittee

Continued

C. Section 103.24(c)—Types of Reportable Accounts

FinCEN proposes to amend 31 CFR 103.24 by adding definitions of the accounts subject to reporting. Section 5314 authorizes the Secretary to require records or reports when a person "makes a transaction or maintains a relation for any person with a foreign financial agency." Although section 5314 authorizes the Secretary to address both transactions and relations, FinCEN is focusing in this rulemaking on relations. FinCEN believes that when a person maintains an account with a foreign financial institution, the person is maintaining a relation with a foreign financial agency. For this purpose, an account means a formal relationship with such person to provide regular services, dealings and other financial transactions. The length of the time for which service is being provided does not affect the fact that a formal account relationship has been established. For example, in the case of an escrow account, an individual may establish a relationship with a financial institution to service and maintain that account, albeit for a short period of time. However, an account is not established simply by conducting transactions such as wiring money or purchasing a money order where no relationship has otherwise been established.

FinCEN has chosen to define bank, securities, and other financial accounts with reference to the kinds of financial services for which a person maintains an account. FinCEN believes this is necessary because while the BSA provides guidance as to the definition of a financial institution, financial institutions under the BSA are largely defined by reference to United States law and terminology. For example, a financial institution is defined in the BSA to include an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act.[11] Accordingly, the proposed amendment to section 103.24 would include definitions of bank account, securities account, and other financial accounts.

D. Section 103.24(c)(1)—Bank Account

The term "bank account" means a savings deposit, demand deposit, checking, or any other account maintained with a person engaged in the business of banking. This definition includes time deposits such as certificates of deposit accounts that allow individuals to deposit funds with a banking institution and redeem the initial amount, along with interest earned after a prescribed period of time.

E. Section 103.24(c)(2)—Securities Account

The term "securities account" means an account maintained with a person in the business of buying, selling, holding, or trading stock or other securities.

F. Section 103.24(c)(3)—Other Financial Account

The term "other financial account" appears in current section 103.24. While FinCEN understands that the term "other financial account" is broad enough to cover a range of relationships with foreign financial agencies, FinCEN believes that compliance will be enhanced by more clearly delineating the types of relationships that must be reported.

Thus, the proposal would define "other financial account" to mean

- An account with a person that is in the business of accepting deposits as a financial agency;
- An account that is an insurance policy with a cash value or an annuity policy;
- An account with a person that acts as a broker or dealer for futures or options transactions in any commodity on or subject to the rules of a commodity exchange or association; or
- An account with a mutual fund or similar pooled fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions.

The proposed definition includes an account with a person that accepts deposits as a financial agency. FinCEN believes that it is necessary to include this provision to ensure that deposit accounts and similar relationships will be covered despite differences in terminology, operations of financial institutions, and legal frameworks in other countries.

The definition of other financial account also includes an account that is an insurance policy with a cash value or an annuity policy. Life insurance policies that have a cash surrender value are potential money laundering vehicles because cash value can be redeemed by a money launderer. Similarly, annuity contracts pose a money laundering risk because they allow a money launderer to exchange illicit funds for an immediate or deferred income stream or to purchase a deferred annuity and obtain clean funds upon redemption.

The definition of other financial account specifically includes an account with a mutual fund or similar pooled fund, or other investment fund. FinCEN believes that these types of companies fall within the definition of "investment company," which is a financial institution under the BSA.[12]

Mutual funds and similar pooled funds are offered to the general public and typically are identifiable by the ability of the account holder to redeem shares on a daily or otherwise regular basis. FinCEN believes that these types of accounts present risks for money laundering. As with other types of financial accounts, money launderers may use mutual fund accounts to layer their funds by sending and receiving money and wiring it quickly through several accounts and multiple institutions. Layering could also involve purchasing funds in the name of a fictitious corporation or an entity designed to conceal the true owner. Most importantly, mutual funds can also be used for integrating illegal income into legitimate assets, allowing illegal proceeds to appear to have a legitimate source when the shares of the fund are redeemed and deposited into a bank account.

FinCEN recognizes that outside of mutual funds and similar pooled funds, individuals may invest in other types of pooled investment companies, such as private equity funds, venture capital funds and hedge funds. Because these kinds of funds are privately offered funds, their characteristics vary greatly. In addition, the lack of functional regulation over these kinds of funds makes it difficult to define and distinguish certain types of these funds from others. FinCEN is aware, however, of pending legislative proposals that would apply additional regulation and oversight over the operations of some of these investment companies. Accordingly, FinCEN has determined that, at this time, the proposal should reserve the treatment of investment companies other than mutual funds or similar pooled funds. Treasury remains concerned about the use of, for example, hedge funds to evade taxes and FinCEN will continue to study this issue.[13]

on Investigations, Senate Comm. on Homeland Security and Governmental Affairs at 8 (July 17, 2008).

[11] *See* 31 U.S.C. 5312(a)(2)A.

[12] *See* 31 U.S.C. 5312(a)(2)I.

[13] Concerns about the use of hedge funds to evade taxes is discussed in The Report of the President's Working Group on Financial Market, *Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management* (April 1999). "In the tax area, the fact that a significant number of hedge funds are established in offshore financial centers that are tax havens has focused attention on whether offshore hedge funds are associated with illegal tax avoidance and are taking advantage of their offshore situs for other inappropriate purposes." Id. at 4. FinCEN is also aware of pending legislative proposals that would require United States individuals to annually report to the IRS with respect to foreign hedge funds and private equity funds, for example.

G. Section 103.24(c)(4)—Exceptions for Certain Accounts

Paragraph (c)(4) includes exceptions for certain accounts for which reporting will not be required by persons with a financial interest in or signature or other authority over the accounts. The following accounts are proposed to be excepted from reporting.

- An account of a department or agency of the United States; an Indian Tribe; or any State or any political subdivision of a State; or a wholly-owned entity, agency, or instrumentality of any of the foregoing is not required to be reported. In addition, reporting is not required with respect to an account of an entity established under the laws of the United States; of an Indian Tribe; of any State; or of any political subdivision of any State; or under an intergovernmental compact between two or more States or Indian Tribes that exercises governmental authority on behalf of the United States, an Indian Tribe, or any such State or political subdivision. For this purpose, an entity generally exercises governmental authority on behalf of the United States, an Indian Tribe, a State, or a political subdivision only if its authorities include one or more of the powers to tax, to exercise the power of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.
- An account of an international financial institution of which the United States government is a member is not required to be reported.
- An account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve United States government installations abroad is not required to be reported even though the United States military banking facility is located in a foreign country.
- Correspondent or nostro accounts that are maintained by banks and used solely for bank-to-bank settlements are not required to be reported.

The first three exceptions take into account the governmental status and functions of the entities and agencies. The last exception for nostro accounts takes into account the limited access to the account.

H. Section 103.24(d)—Foreign Country

Foreign country includes all geographical areas located outside of the United States as defined in 31 CFR 103.11(nn).

I. Section 103.24(e)—Financial Interest

Financial Interest When the United States Person Is the Owner of Record or Holder of Legal Title

A United States person has a financial interest in each bank, securities, or other financial account in a foreign country for which he is the owner of record or holds legal title regardless of whether the account is maintained for his own benefit or for the benefit of others. If an account is maintained in the name of more than one person, each United States person in whose name the account is maintained has a financial interest in that account.

Financial Interest When Another Is Acting on Behalf of the United States Person

A United States person also has a financial interest in each bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is a person acting on behalf of that United States person such as an attorney, agent or nominee with respect to the account.

Other Situations Giving Rise to a Financial Interest

Further, a United States person is deemed to have a financial interest in a bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is—

- A corporation in which the United States person owns directly or indirectly more than 50 percent of the voting power or the total value of the shares, a partnership in which the United States person owns directly or indirectly more than 50 percent of the interest in profits or capital, or any other entity (other than a trust) in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of the equity interest or assets, or interest in profits.
- A trust, if the United States person is the trust settlor and has an ownership interest in the account for United States federal tax purposes. See 26 U.S.C. 671–679 to determine if a settlor has an ownership interest in a trust's financial account for a year.
- A trust in which the United States person either has a beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.
- A trust that was established by the United States person and for which the United States person has appointed a trust protector that is subject to such person's direct or indirect instruction.[14]

Finally, a United States person that causes an entity to be created for a purpose of evading the reporting requirement shall have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title. The term "evading" as used in the anti-avoidance rule is not intended to apply to persons who make a good faith effort to comply with the regulations implementing section 5314.

The definition of financial interest includes certain instances where a United States person's ownership or control over the owner of record or holder of legal title rises to such a level that the person should be deemed to have a financial interest in the account. FinCEN believes that these rules are necessary to ensure that these financial interests of United States persons are reported on the FBAR regardless of how the interest is held or structured. Lastly, FinCEN has included an anti-avoidance rule to capture reporting in instances where persons seek to evade the requirement to file an FBAR through the use of devices such as transfer companies. Such devices have been documented in reports by the Senate Permanent Subcommittee on Investigations as methods by which United States persons have tried to hide ownership of foreign financial accounts.[15]

J. Section 103.24(f)—Signature or Other Authority

FinCEN has included in proposed section 103.24 provisions that would address signature or other authority over

[14] As described by the Senate Permanent Subcommittee on Investigations (PSI), Committee on Homeland Security and Governmental Affairs, in its 2006 report, *Tax Haven Abuses: the Enablers, the Tools and Secrecy,* Senate Hearing 109–797, 109th Cong., 2d Sess. (August 1, 2006), arrangements such as "trust protectors" have been employed by United States taxpayers to achieve substantial control over assets held in offshore trusts. In some cases trust protectors serve to safeguard trust assets from misappropriation. However, many offshore trusts are established with the intention of maintaining client control. In such cases trust protectors can serve as conduits of the client's instructions to the trustees, with the trustees merely rubber stamping the protectors' directions. Such an arrangement permits greater client control while maintaining the appearance of trustee independence.

[15] The PSI reported the use of transfer companies, single purpose companies used solely to disguise the transfer of funds from an entity controlled by a taxpayer to the account of another entity controlled by the taxpayer. *See Tax Haven Banks and U.S. Tax Compliance,* Staff Report, Permanent Subcommittee on Investigations, Senate Comm. on Homeland Security and Governmental Affairs, at 4, 65 (July 17, 2008).

a bank, securities, or other financial account in a foreign country.

Signature or Other Authority In General

Current section 103.24 requires reporting by United States persons with signature or other authority over bank, securities, or other financial accounts in a foreign country. The proposal would continue this requirement and would define signature or other authority. Signature or other authority means authority of an individual (alone or in conjunction with another) to control the disposition of money, funds, or other assets held in a financial account by delivery of instructions (whether communicated in writing or otherwise) directly to the person with whom the financial account is maintained.

Exceptions for Signature or Other Authority

FinCEN is including in the proposed rule certain exceptions for United States persons with signature or other authority over reportable accounts. These exceptions generally apply to officers and employees of financial institutions that have a federal functional regulator, and certain entities that are publicly traded on a United States national securities exchange, or that are otherwise required to register their equity securities with the Securities and Exchange Commission. FinCEN believes that such relief is appropriate in light of the federal oversight of these entities. These exceptions apply, however, only where the officer or employee has no financial interest in the reportable account. These institutions would still be obligated to report their financial interest in these reportable accounts. FinCEN is proposing the following exceptions.

- An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration need not report that he has signature or other authority over a foreign financial account owned or maintained by the bank if the officer or employee has no financial interest in the account.

This exception is available to officers or employees of banks examined by the federal banking agencies. Officers or employees can avail themselves of this exemption without receiving notice from the bank that the bank has filed an FBAR with respect to the reportable accounts over which it has a financial interest.

- An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report that he has signature or other authority over a foreign financial account owned or maintained by such financial institution if the officer or employee has no financial interest in the account.

This exception is available to officers or employees of financial institutions such as securities broker dealers or futures commission merchants which are registered with and examined by, the Securities and Exchange Commission or Commodity Futures Trading Commission. Again, officers or employees of such financial institutions can avail themselves of this exemption without receiving a notice from the employer.

- An officer or employee of an Authorized Service Provider need not report that he has signature or other authority over a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission if the officer or employee has no financial interest in the account. "Authorized Service Provider" means an entity that is registered with and examined by the Securities and Exchange Commission and provides services to an investment company registered under the Investment Company Act of 1940.

This exception has been included to address the fact that mutual funds do not have employees of their own. Instead, the day-to-day operations of such a fund are performed by individuals who are employed by fund service providers, such as investment advisors. Officers or employees of an Authorized Service Provider which is registered with and examined by the Securities and Exchange Commission may avail themselves of this exemption without receiving notice from the employer provided that the fund they service is also registered with the Securities and Exchange Commission. FinCEN believes that this exception is appropriate in light of the requirement that both the service provider and the fund are registered with the Securities and Exchange Commission.

- An officer or employee of an entity with a class of equity securities listed on any United States national securities exchange need not report that he has signature or other authority over a foreign financial account of such entity if the officer or employee has no financial interest in the account. An officer or employee of a United States subsidiary of such entity need not file a report concerning signature or other authority over a foreign financial account of the subsidiary if he has no financial interest in the account and the United States subsidiary is named in a consolidated FBAR report of the parent filed under proposed paragraph (g)(3) of 31 CFR 103.24.

This exception is available to officers and employees of entities which are listed upon a United States national securities exchange, regardless of whether the entity is domestic or foreign. Officers and employees of a United States subsidiary of such listed entities are also covered by this exception if the United States subsidiary is named in a consolidated FBAR report of the parent.

- An officer or employee of a United States corporation that has a class of equity securities registered under section 12(g) of the Securities Exchange Act need not report that he has signature or other authority over the foreign financial accounts of such corporation if he has no financial interest in the accounts.

This exception applies to officers and employees of United States corporations whose size in terms of assets and shareholders [16] requires them to register their stock with the Securities and Exchange Commission and makes them subject to reporting under the Securities Exchange Act.

K. 103.24(g)—Special Rules

FinCEN is proposing special rules to simplify FBAR filings in certain cases.

- *25 or more foreign financial accounts.* A United States person having a financial interest in 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate. Similarly, a United States person having signature or other authority over 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.
- *Consolidated reports.* An entity that is a United States person and owns directly or indirectly more than a 50 percent interest in an entity required to

[16] Currently, these are corporations which have more than $10 million in assets and more than 500 shareholders of record. *See* 15 U.S.C. 78l(g) (2006) and the regulations thereunder.

report under this section will be permitted to file a consolidated report on behalf of itself and such other entity.

• *Participants and beneficiaries in certain retirement plans.* Participants and beneficiaries in retirement plans under sections 401(a), 403(a) or 403(b) of the Internal Revenue Code as well as owners and beneficiaries of individual retirement accounts under section 408 of the Internal Revenue Code or Roth IRAs under section 408A of the Internal Revenue Code will not be required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan or IRA. [17]

• *Certain trust beneficiaries.* A beneficiary of a trust described in proposed paragraph (e)(2)(iv) is not required to report the trust's foreign financial accounts if the trust, trustee of the trust, or agent of the trust is a United States person that files an FBAR disclosing the trust's foreign financial accounts and provides any additional information as required by the report.[18]

In addition, FinCEN anticipates that in the case of United States persons who are employed in a foreign country and who have signature or other authority over foreign financial accounts owned or maintained by their employer, the instructions to the FBAR form will prescribe a modified form of reporting for such persons.

IV. Proposed Changes to the FBAR Instructions

The changes proposed by this notice of proposed rulemaking, if adopted as a final rule, would also require changes to the instructions to the FBAR. A draft of revised changes to the FBAR instructions appears as an attachment at the end of this notice of proposed rulemaking.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), FinCEN certifies that these proposed regulation revisions will not have a significant economic impact on a substantial number of small entities. The proposed rule revises an existing rule that requires reports to be made to Treasury with respect to certain foreign financial accounts. Because this proposal clarifies the existing rules and narrows the scope of individuals and entities subject to reporting and recordkeeping requirements, we will reduce regulatory obligations overall.

The proposed rule will not affect a substantial number of small entities. The proposed rule applies to United States persons, a term which includes entities of all sizes, if they have reportable accounts under this rule. However, we expect that small entities will be less likely to have reportable foreign financial accounts or to have many such accounts unlike larger entities, which have a broader base of business operations.

In any event, the proposed rule will not have a significant economic impact on small entities. As explained above, the proposed rule revises an existing rule that requires reports to be made to Treasury with respect to certain foreign financial accounts. Filing the reports will require entities to transfer basic information that they will have received on account statements from the foreign financial institution at which the account is opened and maintained. Those statements will provide the entity with the information about the account needed to file the FBAR. No special accounting or legal skills would be necessary to transfer the basic information required to be reported, such as the name of the foreign financial institution, the type of account, and the account number, to the FBAR. Furthermore, the proposed rule continues a simplified reporting method for persons with a financial interest in 25 or more foreign financial accounts and extends the relief of this simplified reporting method to persons with signature or other authority over 25 or more foreign financial accounts. FinCEN requests comments on the accuracy of the statement that the regulations in this document will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act Notices

The reporting requirement contained in this proposed rule (31 CFR 103.24) is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). This proposed rulemaking seeks to clarify the scope of existing definitions and related rules. By making requirements clearer for reporting persons, there is a potential that certain reporting persons may see an increase in the collection and reporting of information, but any such potential increase may likely be offset by the corresponding exceptions and clarifications in the proposal. Moreover, to the extent that we have clarified the existing rules and narrowed the scope of individuals or entities subject to reporting or recordkeeping requirements, we will have reduced regulatory obligations overall.[19]

Comments concerning the estimated burden and other questions should be sent to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 with a copy to FinCEN and the IRS SBSE by mail or comments may also be submitted by e-mail to *oira_submission@omb.eop.gov.* Please submit comments by one method only. Comments are welcome and must be received by April 27, 2010.

Amendment to the Bank Secrecy Act Regulations—Reports of Foreign Bank and Financial Accounts

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information of the Amendment to the Bank Secrecy Act Regulations—Reports of Foreign Bank and Financial Accounts is presented to assist those persons wishing to comment on the information collection.

Description of Affected Filers: Individuals and certain entities that maintain foreign financial accounts reportable under 31 CFR 103.24.

Estimated Number of Affected Filing Individuals and Entities: 400,000.

Estimated Average Annual Burden Hours per Affected Filer: The estimated average burden associated with the recordkeeping requirement in this proposed rule will vary depending on the number of reportable accounts. We estimate that the recordkeeping burden will range from five minutes to sixty minutes, and that the average burden will be thirty minutes. The estimated average burden associated with the reporting requirement (FBAR form completion) will also vary depending on the number of reportable accounts and whether the filer will be able to take

[17] This proposed exemption is not intended to affect the filing requirements with respect to qualified pension plans or individual retirement accounts. FinCEN believes that, in most cases, such entities (which are subject to a number of statutory requirements and limitations) are in a better position to be aware of the presence of a foreign financial account). An IRA is an individual retirement account described in section 408 of the Internal Revenue Code (i.e., a traditional IRA, IRA annuity, SEP IRA, SIMPLE IRA, or deemed IRA) or a Roth IRA (including a Roth IRA annuity or a deemed Roth IRA) described in section 408A of the Internal Revenue Code.

[18] FinCEN believes that, in most cases, the trust or its trustees are in a better position than the beneficiaries to be aware of the presence of a foreign financial account and the information needed to file the FBAR as well as whether individual beneficiaries exceed the 50 percent threshold.

[19] This proposed amendment to 31 CFR 103.24 clarifies the filing requirement for certain foreign persons thereby reducing the overall burden of BSA recordkeeping and reporting requirements.

advantage of the exceptions provided in this proposed rule. We estimate that the average reporting burden will range from approximately twenty minutes to one hour and that the average reporting burden will be approximately 45 minutes. The reporting burden is reflected in the burden listed for completing TD–F 90–22.1 (See OMB Control Number 1506–0009/1545–2038). The burden associated with reporting a financial interest in or signature or other authority over a foreign financial account to the Commissioner of Internal Revenue is reflected in the burden for the appropriate income tax return or schedule.

Estimated Total Annual Burden: 500,000 hours.

VII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance the proposals in the Notice of Proposed Rulemaking provide the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Amendment

For the reasons set forth above in the preamble, 31 CFR Part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

2. Section 103.24 is revised to read as follows:

§ 103.24 Reports of foreign financial accounts.

(a) *In general.* Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists and shall provide such information as shall be specified in a reporting form prescribed under 31 U.S.C. 5314 to be filed by such persons. The form prescribed under section 5314 is the Report of Foreign Bank and Financial Accounts (TD–F 90–22.1), or any successor form. *See* paragraphs (g)(1) and (g)(2) of this section for a special rule for persons with a financial interest in 25 or more accounts, or signature or other authority over 25 or more accounts.

(b) *United States person.* For purposes of this section, the term "United States person" means—

(1) A citizen of the United States;

(2) A resident of the United States. A resident of the United States is an individual who is a resident alien under 26 U.S.C. 7701(b) and the regulations thereunder but using the definition of "United States" provided in 31 CFR 103.11(nn) rather than the definition of "United States" in 26 CFR 301.7701(b)–1(c)(2)(ii); and

(3) An entity, including but not limited to a corporation, partnership, trust, or limited liability company created, organized, or formed under the laws of the United States, any State, the District of Columbia, the Territories and Insular Possessions of the United States, or the Indian Tribes.

(c) *Types of reportable accounts*—(1) *Bank account.* The term "bank account" means a savings deposit, demand deposit, checking, or any other account maintained with a person engaged in the business of banking.

(2) *Securities account.* The term "securities account" means an account with a person engaged in the business of buying, selling, holding or trading stock or other securities.

(3) *Other financial account.* The term "other financial account" means—

(i) An account with a person that is in the business of accepting deposits as a financial agency;

(ii) An account that is an insurance policy with a cash value or an annuity policy;

(iii) An account with a person that acts as a broker or dealer for futures or options transactions in any commodity on or subject to the rules of a commodity exchange or association; or

(iv) An account with—

(A) *Mutual fund or similar pooled fund.* A mutual fund or similar pooled fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions; or

(B) *Other investment fund.* [RESERVED].

(4) *Exceptions for certain accounts.*

(i) An account of a department or agency of the United States, an Indian Tribe, or any State or any political subdivision of a State, or a wholly-owned entity, agency or instrumentality of any of the foregoing is not required to be reported. In addition, reporting is not required with respect to an account of an entity established under the laws of the United States, of an Indian Tribe, of any State, or of any political subdivision of any State, or under an intergovernmental compact between two or more States or Indian Tribes that exercises governmental authority on behalf of the United States, an Indian Tribe, or any such State or political subdivision. For this purpose, an entity generally exercises governmental authority on behalf of the United States, an Indian Tribe, a State, or a political subdivision only if its authorities include one or more of the powers to tax, to exercise the power of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.

(ii) An account of an international financial institution of which the United States government is a member is not required to be reported.

(iii) An account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve United States government installations abroad is not required to be reported even though the United States military banking facility is located in a foreign country.

(iv) Correspondent or nostro accounts that are maintained by banks and used solely for bank-to-bank settlements are not required to be reported.

(d) *Foreign country.* A foreign country includes all geographical areas located outside of the United States as defined in 31 CFR 103.11(nn).

(e) *Financial interest.* A financial interest in a bank, securities or other financial account in a foreign country

means an interest described in this paragraph (e):

(1) *Owner of record or holder of legal title.* A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which he is the owner of record or has legal title whether the account is maintained for his own benefit or for the benefit of others. If an account is maintained in the name of more than one person, each United States person in whose name the account is maintained has a financial interest in that account.

(2) *Other financial interest.* A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which the owner of record or holder of legal title is—

(i) A person acting as an agent, nominee, attorney or in some other capacity on behalf of the United States person with respect to the account;

(ii) A corporation in which the United States person owns directly or indirectly more than 50 percent of the voting power or the total value of the shares, a partnership in which the United States person owns directly or indirectly more than 50 percent of the interest in profits or capital, or any other entity (other than an entity in paragraphs (e)(2)(iii) through (v) of this section) in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of the equity interest or assets, or interest in profits;

(iii) A trust, if the United States person is the trust settlor and has an ownership interest in the account for United States federal tax purposes. See 26 U.S.C. 671–679 and the regulations thereunder to determine if a settlor has an ownership interest in a trust's financial account for a year;

(iv) A trust in which the United States person either has a beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the income; or

(v) A trust that was established by the United States person and for which the United States person has appointed a trust protector that is subject to such person's direct or indirect instruction.

(3) *Anti-avoidance rule.* A United States person that causes an entity, including but not limited to a corporation, partnership, or trust, to be created for a purpose of evading this section shall have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title.

(f) *Signature or other authority*—(1) *In general.* Signature or other authority means authority of an individual (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by delivery of instructions (whether communicated in writing or otherwise) directly to the person with whom the financial account is maintained.

(2) *Exceptions*—(i) An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration need not report that he has signature or other authority over a foreign financial account owned or maintained by the bank if the officer or employee has no financial interest in the account.

(ii) An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report that he has signature or other authority over a foreign financial account owned or maintained by such financial institution if the officer or employee has no financial interest in the account.

(iii) An officer or employee of an Authorized Service Provider need not report that he has signature or other authority over a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission if the officer or employee has no financial interest in the account. "Authorized Service Provider" means an entity that is registered with and examined by the Securities and Exchange Commission and that provides services to an investment company registered under the Investment Company Act of 1940.

(iv) An officer or employee of an entity with a class of equity securities listed on any United States national securities exchange need not report that he has signature or other authority over a foreign financial account of such entity if the officer or employee has no financial interest in the account. An officer or employee of a United States subsidiary of such entity need not file a report concerning signature or other authority over a foreign financial account of the subsidiary if he has no financial interest in the account and the United States subsidiary is included in a consolidated report of the parent filed under this section.

(v) An officer or employee of a United States entity that has a class of equity securities registered under section 12(g) of the Securities Exchange Act need not report that he has signature or other authority over the foreign financial accounts of such entity if he has no financial interest in the accounts.

(g) *Special rules*—(1) *Financial interest in 25 or more foreign financial accounts.* A United States person having a financial interest in 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

(2) *Signature or other authority over 25 or more foreign financial accounts.* A United States person having signature or other authority over 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

(3) *Consolidated reports.* An entity that is a United States person and which owns directly or indirectly more than a 50 percent interest in one or more other entities required to report under this section will be permitted to file a consolidated report on behalf of itself and such other entities.

(4) *Participants and beneficiaries in certain retirement plans.* Participants and beneficiaries in retirement plans under sections 401(a), 403(a) or 403(b) of the Internal Revenue Code as well as owners and beneficiaries of individual retirement accounts under section 408 of the Internal Revenue Code or Roth IRAs under section 408A of the Internal Revenue Code are not required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan or IRA.

(5) *Certain trust beneficiaries.* A beneficiary of a trust described in paragraph (e)(2)(iv) of this section is not required to report the trust's foreign financial accounts if the trust, trustee of the trust, or agent of the trust is a United States person that files a report under this section disclosing the trust's foreign financial accounts.

Dated: February 23, 2010.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

Note: The following attachment will not appear in the Code of Federal Regulations. Attachment: Draft instructions to the Report of Foreign Bank and Financial Accounts—Form TDF90–22.1(FBAR)

General Instructions

Form TD F 90–22.1 (the "FBAR") is used to report a financial interest in or signature authority over a foreign financial account. The FBAR must be received by the Department of the Treasury on or before June 30th of the year immediately following the calendar year being reported. Unlike the filing date for an income tax return, the June 30th filing date for the FBAR may not be extended.

Who Must File an FBAR.

The following persons are required to file an FBAR:

A United States citizen;

A United States resident;

An entity, including but not limited to, a corporation, partnership, or limited liability company created or organized in the United States or under the laws of the United States; and

A trust or estate formed under the laws of the United States.

See definition of United States below.

If the person has:

A financial interest in or signature authority over any foreign financial account and the aggregate value of the financial account(s) exceeds $10,000 at any time during the calendar year. See Part II, Item 15, regarding the $10,000 threshold.

The tax treatment of an entity does not determine whether the entity has an FBAR filing requirement. For example, an entity that is disregarded for purposes of Title 26 of the United States Code must still file an FBAR, if otherwise required to do so. Similarly, a trust for which the trust income, deductions, or credits are taken into account by another person for purposes of Title 26 of the United States Code must file an FBAR, if otherwise required to do so.

See Exceptions below.

General Definitions

Financial Account. A financial account includes, but is not limited to, a securities, brokerage, savings, demand, checking, deposit, time deposit, or other account maintained with a financial institution (or other person performing the services of a financial institution). A financial account also includes a commodity futures or options account, an insurance policy with a cash surrender value (such as a variable annuity or a whole life insurance policy), an annuity, and shares in a mutual fund or similar pooled fund (i.e., a fund with a regular net asset value determination and redemptions).

Foreign Financial Account. A foreign financial account is a financial account that is located outside of the United States. For example, an account maintained with a foreign branch of a United States bank is a foreign financial account. An account maintained with a United States branch of a foreign bank is not a foreign financial account. An insurance or annuity policy that is purchased outside of the United States, as defined in 31 CFR § 103.11(nn), from a non-United States issuer is a foreign financial account.

Financial Interest. A person has a financial interest in each financial account for which

(1) the person is the owner of record or holder of legal title, regardless of whether the account is maintained for that person's benefit or for the benefit of another person; or

(2) the owner of record or holder of legal title is one of the following:

(a) An agent, nominee, attorney, or a person authorized to act on behalf of the person with respect to the account;

(b) A corporation in which the person owns directly or indirectly: (i) more than 50 percent of the total value of shares of stock or (ii) more than 50 percent of the voting power of all shares of stock;

(c) A partnership in which the person owns directly or indirectly: (i) an interest in more than 50 percent of the partnership's profits (distributive share of partnership income taking into account any special allocation agreement) or (ii) an interest in more than 50 percent of the partnership capital;

(d) A trust, if the person: (i) is the trust settlor; and (ii) has an ownership interest in the trust for United States federal tax purposes. See 26 U.S.C. §§ 671 through 679 to determine if a person has an ownership interest in a trust for a year for United States federal tax purposes;

(e) A trust, if the person has more than a 50 percent beneficial interest in the assets or income of the trust for the calendar year, as determined under all of the facts and circumstances, including the terms of the trust and any accompanying documents;

(f) A trust that was established by the person and for which the person has appointed a trust protector that is subject to such person's direct or indirect instruction; or

(g) Any other entity, if the person owns directly or indirectly more than 50 percent of the voting power, total value of equity interest or assets, or interest in profits.

Person. A person includes an individual and all legal entities including, but not limited to, limited liability companies, corporations, partnerships, trusts, and estates.

Signature Authority. Signature authority is the authority (alone or in conjunction with any other individual) to control the disposition of money, funds, or other assets held in a financial account by delivery of instructions (whether communicated in writing or otherwise) directly to the financial institution (or other person performing the services of a financial institution), with which the financial account is maintained. See Exception for Signature Authority.

United States. For FBAR purposes, the United States includes the States, the District of Columbia, all territories and possessions (for example American Samoa, the Commonwealth of the Northern Marianas Islands, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands), and the Indian lands as defined in the Indian Gaming Regulatory Act. References to the laws of the United States include the laws of the United States federal government and the laws of all places listed in this definition.

United States Resident. A United States resident is an alien residing in the United States. To determine if the filer is a resident of any place listed in the definition of United States, apply the residency tests in 26 U.S.C. § 7701(b).

Exceptions

Certain Accounts Jointly Owned by Spouses. The spouse of an individual who files an FBAR is not required to file a separate FBAR if the following conditions are met: (1) all the financial accounts that the spouse is required to report are jointly owned with the filing spouse; (2) the filing spouse reports the jointly owned accounts on a timely filed FBAR; and (3) both spouses sign the FBAR in Item 44. See Explanations for Specific Items, Part III, Items 25–33. If the filer's spouse is required to file an FBAR for any account that is not jointly owned with the filer, the filer's spouse must file a separate FBAR for all accounts, including those owned jointly with the filing spouse.

Consolidated FBAR. If a person is named in a consolidated FBAR filed by a more than 50 percent owner, the person is not required to file a separate FBAR. See Explanations for Specific Items, Part V.

Correspondent/Nostro Account. Correspondent or nostro accounts (which are maintained by banks and used solely for bank-to-bank settlements) are not required to be reported on an FBAR.

Governmental Entity. A foreign financial account of any governmental entity is not required to be reported on an FBAR by any person. For purposes of this form, governmental entity includes: (1) a college or university that is an agency or instrumentality of, or owned or operated by, a governmental entity; and (2) an employee retirement or welfare benefit plan of a governmental entity.

International Financial Institution. A foreign financial account of any international financial institution of which the United States is a member is not required to be reported on an FBAR by any person.

IRA Owners and Beneficiaries. An owner or beneficiary of an IRA is not required to file an FBAR with respect to a foreign financial account held in the IRA.

Participants in and Beneficiaries of Tax-Qualified Retirement Plans. A participant in or beneficiary of a retirement plan described in Internal Revenue Code § 401(a), 403(a), or 403(b) is not required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan.

Signature Authority. Signature authority over a foreign financial account need not be reported on an FBAR by an individual with no financial interest in the foreign financial account in the following situations:

(1) An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration need not report signature authority over a foreign financial account owned or maintained by the bank.

(2) An officer or employee of a financial institution that is registered with and regulated or examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report

signature authority over a foreign financial account owned or maintained by the financial institution.

(3) An officer or employee of an Authorized Service Provider need not report signature authority over a foreign financial account that is owned or maintained by an investment company that is registered with the Securities and Exchange Commission. Authorized Service Provider means an entity that is registered with and examined by the Securities and Exchange Commission and provides services to an investment company registered under the Investment Company Act of 1940.

(4) An officer or employee of an entity whose class of equity securities is listed on any United States national securities exchange need not report signature authority over a foreign financial account in which the entity has a financial interest. An officer or employee of a United States subsidiary of such entity need not report signature authority over a foreign financial account of the subsidiary.

(5) An officer or employee of a United States entity that has a class of securities registered under section 12(g) of the Securities and Exchange Act need not report signature authority over a foreign financial account of such corporation.

Trust Beneficiaries. A trust beneficiary with a financial interest described in section (2)(f) is not required to report the trust's foreign financial accounts on an FBAR if the trust, trustee of the trust, or agent of the trust: (1) is a United States citizen, a United States resident, an entity created or organized in the United States or under the laws of the United States, or a trust formed under the laws of the United States; and (2) files an FBAR disclosing the trust's foreign financial accounts.

United States Military Banking Facility. An FBAR need not be filed for a financial account maintained with a financial institution located on a United States military installation, even if that military installation is outside of the United States.

Filing Information—Do NOT file with Federal Income Tax Return

When and Where to File. The FBAR is an annual report and must be received by the Department of the Treasury on or before June 30th of the year following the calendar year being reported.

File by mailing the FBAR to:

Department of the Treasury, Post Office Box 32621, Detroit, MI 48232–0621

If an express delivery service is used, file by mailing to:

IRS Enterprise Computing Center, ATTN: CTR Operations Mailroom, 4th Floor, 985 Michigan Avenue, Detroit, MI 48226

The FBAR may be hand delivered to any local office of the Internal Revenue Service for forwarding to the Department of the Treasury, Detroit, MI. The FBAR may also be delivered to the Internal Revenue Service's tax attaches located in United States embassies and consulates for forwarding to the Department of Treasury, Detroit, MI. The FBAR is not considered filed until it is received by the Department of the Treasury in Detroit, MI.

No Extension of Time to File. There is no extension of time available for filing an FBAR. Extensions of time to file federal tax returns do NOT extend the time for filing an FBAR. If a delinquent FBAR is filed, attach a statement explaining the reason for the late filing.

Verification of Filing. Ninety days after the date of filing, the filer can request verification that the FBAR was received. An FBAR filing verification request may be made by calling 1–800–800–2877 and selecting option 2. Up to five documents may be verified over the phone. There is no fee for this verification. Alternatively, an FBAR filing verification request may be made in writing and must include the filer's name, taxpayer identification number, and the filing period. There is a $5.00 fee for verifying five or fewer FBARs and a $1.00 fee for each additional FBAR. A copy of the filed FBAR can be obtained at a cost of $0.15 per page. Check or money order should be made payable to the United States Treasury.

The request and payment should be mailed to:

IRS Enterprise Computing Center/Detroit, ATTN: Verification, P.O. Box 32063, Detroit, MI 48232

Record Keeping Requirements. Persons required to file an FBAR must retain records that contain the name in which each account is maintained, the number or other designation of the account, the name and address of the foreign financial institution that maintains the account, the type of account, and the maximum account value of each account during the reporting period. The records must be retained for a period of five years from June 30th of the year following the calendar year reported and must be available for inspection as provided by law. Persons filing an FBAR should retain a copy for their records.

Explanations for Specific Items

Part I

Item 1. The FBAR is an annual report. Enter the calendar year being reported.

To amend a filed FBAR, check the "Amended" box in the upper right hand corner of the first page of the FBAR, make the needed additions or corrections, attach a statement explaining the additions or corrections, and staple a copy of the original FBAR to the amendment. An amendment should not be made until at least 90 calendar days after the FBAR is filed. Follow the instructions in "When and Where to File" to file an amendment.

Item 2. Check the appropriate box describing the filer. Check only one box. Individuals filing based on signature authority, check box "a." If filing a consolidated FBAR, check box "d." To determine if a consolidated FBAR can be filed, see Part V. If the type of filer is not listed in boxes "a" through "c," check box "e" and enter type of filer. Persons that should check box "e" include, but are not limited to, trusts, estates, limited liability companies, and tax-exempt entities (even if the entity is organized as a corporation). A disregarded entity must check box "e" and enter its type of person and the term "(D.E.)." For example, a limited liability company that is disregarded for United States federal tax purposes would enter "limited liability company (D.E.)."

Item 3. Provide the filer's taxpayer identification number. Generally, this is the filer's United States social security number (SSN), United States individual taxpayer identification number (ITIN), or employer identification number (EIN). Numbers should be entered with no spaces, dashes, or other punctuation throughout the FBAR. If the filer does NOT have a United States taxpayer identification number, complete Item 4.

Item 4. Complete Item 4 only if the filer does NOT have a United States taxpayer identification number. Item 4 requires the filer to provide information from an official foreign government document to verify the filer's nationality or residence. Enter the document number followed by the country of issuance, check the appropriate type of document, and if "other" is checked, provide the type of document.

Item 5. If the filer is an individual, enter the filer's date of birth, using the month, day, and year convention.

Items 9, 10, 11, 12 and 13. Enter the filer's address. An individual residing in the United States must enter the street address of the individual's United States residence, not a post office box. An individual residing outside the United States must enter the individual's United States mailing address. If the individual does not have a United States mailing address, the individual must enter a foreign residence address.

An entity must enter its United States mailing address. If the entity does not have a United States mailing address, the entity must enter its foreign mailing address.

Item 14. If the filer has a financial interest in 25 or more foreign financial accounts, check "Yes" and enter the number of accounts. Do not complete Part II (Continuation of Separate Accounts) or Part III (Joint Accounts) of the Report.

If filing a consolidated FBAR, only complete Part V, Items 34 through 42, for each person included in the consolidated FBAR.

Note: If the filer has signature authority over 25 or more foreign financial accounts, only complete Part IV (for signature authority), Items 34–43, for each person for which the filer has signature authority, and check "No" in Part I, Item 14.

The filer must retain the detailed account information otherwise required by the FBAR for five years from June 30th of the year following the calendar year reported. The information must be available for inspection. See Filing Information, Record Keeping Requirements.

Part II

Enter information in the applicable parts of the form only. If there is not enough space to provide all account information, copy and complete additional pages of the required Part as necessary. Do not use any attachments unless otherwise specified in the instructions.

Item 15.

Determining Maximum Account Value. *Step 1.* Determine the maximum value of

each account (in the currency of that account) during the calendar year being reported. The maximum value of an account is a reasonable approximation of the greatest value of currency or nonmonetary assets in the account during the calendar year. Periodic account statements may be relied on to determine the maximum value of the account provided that the statements fairly reflect the maximum account value during the calendar year. For Item 15, if the filer had a financial interest in more than one account, each account is to be valued separately.

Step 2. In the case of non-United States currency, convert the maximum account value for each account into United States dollars. Convert foreign currency by using the Treasury's Financial Management Service rate (this rate may be found at www.fms.treas.gov) from the last day of the calendar year. If no Treasury Financial Management Service rate is available, use another verifiable exchange rate and provide the source of that rate. In valuing currency of a country that uses multiple exchange rates, use the rate that would apply if the currency in the account were converted into United States dollars on the last day of the calendar year.

If the aggregate of the maximum account values exceeds $10,000, an FBAR must be filed. An FBAR is not required to be filed if the person did not have $10,000 of aggregate value in foreign financial accounts at any time during the calendar year.

For persons with a financial interest in or signature authority over fewer than 25 accounts that are unable to determine if the aggregate maximum account values of the accounts exceeded $10,000 at any time during the calendar year, complete Part II, III, IV, or V, as appropriate, for each of these accounts and enter "value unknown" in Item 15.

If a foreign financial account is jointly owned by two or more persons, each person must report the entire value of the account.

Item 16. Indicate the type of account. Check only one box. If "Other" is selected, describe the account.

Item 17. Provide the name of the financial institution with which the account is held.

Item 18. Provide the account number that the financial institution uses to designate the account.

Items 19–23. Provide the complete mailing address of the financial institution where the account is located.

If the foreign address does not include a state (e.g., province) or postal code, leave the box(es) blank.

Part III

Enter information in the applicable parts of the form only. If there is not enough space to provide all account information, copy and complete additional pages of the required Part as necessary. Do not use any attachments unless otherwise specified in the instructions.

For Items 15–23, see Part II.

Item 24. Enter the number of joint owners for the account. If the exact number is not known, provide an estimate. Do not count the filer when determining the number of joint owners.

Items 25–33. Use the identity information of the principal joint owner (excluding the filer) to complete Items 25–33. Leave blank items for which no information is available. A spouse having an interest in a jointly owned account with the filing spouse is the principal joint owner. Enter the term "(spouse)" on Line 26 after the last name of the joint spousal owner.

If the filer's spouse is required to report only jointly owned financial accounts that are reported on the filer's FBAR, the filer's spouse need not file a separate FBAR but must also sign the filer spouse's FBAR to fulfill his or her reporting obligation. See Items 44–46 on page one. If the filer's spouse is required to file an FBAR for any account that is not jointly owned with the filer, the filer's spouse must file a separate FBAR for all of the accounts, including those owned jointly with the other spouse.

Part IV—Signature Authority

Enter information in the applicable parts of the form only. If there is not enough space to provide all account information, copy and complete additional pages of the required Part as necessary. Do not use any attachments unless otherwise specified in the instructions.

25 or More Foreign Financial Accounts. Filers with signature authority over 25 or more financial accounts must complete only Items 34–43 for each person on whose behalf the filer has signature authority.

For Items 15–23, see Part II.

Items 34–42. Provide the name, address, and identifying number of the owner of a foreign financial account for which the individual has signature authority but no financial interest. If there is more than one owner of the account for which the individual has signature authority, provide the information in Items 34–42 for the principal joint owner (excluding the filer). If account information is completed for more than one account of the same owner, identify the owner only once and write "Same Owner" in Item 34 for the succeeding accounts of the same owner.

Item 43. Enter filer's title for the position that provides signature authority (e.g., treasurer).

A United States person who is employed in a foreign country and who has signature authority over a foreign financial account that is owned or maintained by the individual's employer should only complete Part 1 and Part IV, Items 34–43 of the FBAR. Part IV, Items 34–43 should only be completed one time with information about the individual's employer.

Part V—Consolidated FBAR

Enter information in the applicable parts of the form only. If there is not enough space to provide all account information, copy and complete additional pages of the required Part as necessary. Do not use any attachments.

Who Can File a Consolidated FBAR. An entity that owns directly or indirectly more than a 50 percent interest in a legal entity that is required to file an FBAR is permitted to file a consolidated FBAR on behalf of itself and such other legal entity. Check box "d" in Part I, Item 2 and complete Part V. If filing a consolidated FBAR and reporting 25 or more financial accounts, complete only Items 34–42 for each person included in the consolidated FBAR.

For Items 15–23, see Part II.

Items 34–42. Provide the name, taxpayer identification number, and address of the owner of the foreign financial account as shown on the books of the financial institution. If account information is completed for more than one account of the same owner, identify the owner only once and write "Same Owner" in Item 34 for the succeeding accounts of the same owner.

Signatures

Items 44–46. The FBAR must be signed by the filer named in Part I. If the FBAR is being filed on behalf of a partnership, corporation, limited liability company, trust, estate, or other legal entity, it must be signed by an authorized individual. The authorized individual's title is entered in Item 45. An authorized official of the person filing the consolidated FBAR must sign the FBAR.

An individual must leave "Filer's Title" blank, unless the individual is filing an FBAR due to the individual's signature authority. If an individual is filing because the individual has signature authority over a foreign financial account, the individual should enter the title upon which his or her authority is based in Item 45.

A spouse included as a joint owner, who does not file a separate FBAR in accordance with the instructions in Part III, must also sign the FBAR (in Item 44) for the jointly owned accounts. See the instructions for Part III.

Penalties

A person who is required to file an FBAR and fails to properly file may be subject to a civil penalty not to exceed $10,000. If there is reasonable cause for the failure and the balance in the account is properly reported, no penalty will be imposed. A person who willfully fails to report an account or account identifying information may be subject to a civil monetary penalty equal to the greater of $100,000 or 50 percent of the balance in the account at the time of the violation. See 31 U.S.C. § 5321(a)(5). Willful violations may also be subject to criminal penalties under 31 U.S.C. § 5322(a), 31 U.S.C. § 5322(b), or 18 U.S.C. § 1001.

[FR Doc. 2010–4042 Filed 2–25–10; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

[Docket ID ED–2010–OESE–0001]

RIN 1810–AB08

Teacher Incentive Fund Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, definitions, and selection criteria.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.385 and 84.374.

SUMMARY: The Secretary of Education (Secretary) proposes priorities, requirements, definitions, and selection criteria under the Teacher Incentive Fund (TIF) program. These proposed priorities, requirements, definitions, and selection criteria are designed to be used in two separate and distinct TIF grant competitions: The Main TIF competition, which will provide TIF funding to eligible entities to support their implementation of performance-based compensation systems (PBCSs) in accordance with the priorities, the Main TIF requirements, the definitions, and the selection criteria proposed in this document, and the TIF Evaluation competition, which will provide, in accordance with the priorities, the Main TIF requirements, the definitions, and the selection criteria as well as the Evaluation requirements proposed in this document, TIF funding to help pay for the costs of implementing these eligible entities' PBCS in exchange for an agreement to participate in the national evaluation. The Secretary may use these proposed TIF priorities, requirements, definitions, and selection criteria in fiscal year (FY) 2010 and subsequent years. We intend the proposed priorities, requirements, definitions, and selection criteria to improve student achievement in high-need schools by creating incentives for effective teachers and principals in these schools.

DATES: We must receive your comments on or before March 29, 2010.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or e-mail. Please submit your comments only one time in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID and the term "Teacher Incentive Fund" at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site." A direct link to the docket page is also available at *http://www.ed.gov/programs/teacherincentive.*
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed priorities, requirements, definitions, and selection criteria, address them to: Office of Elementary and Secondary Education (Attention: Teacher Incentive Fund Comments), U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E120, Washington, DC 20202.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: April Lee. Telephone: (202) 205–5224, or by e-mail: *TIF@ed.gov.* Note that we will not accept comments by e-mail.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person, in Room 3E120, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the TIF program is to support projects that develop and implement PBCSs for teachers and principals in order to increase educator effectiveness and student achievement in high-need schools.

Program Authority: The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, Division G, Title III, Pub. L. 110–161; Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2010, Division D, Title III, Pub. L. 111–117; and the American Recovery and Reinvestment Act of 2009, Division A, Title VIII, Pub. L. 111–5 (the ARRA).

Background

The Statutory Requirements

Statutory provisions that govern the use of TIF funds are contained in the Department's annual congressional appropriations and in the ARRA. In this regard, Public Law 111–117, which contains the Department's fiscal year (FY) 2010 appropriation, authorizes the Department to use TIF funds to make competitive grants to eligible entities to develop and implement PBCSs in high-need schools. Eligible entities for these funds are:

(a) Local educational agencies (LEAs), including charter schools that are LEAs.

(b) States.

(c) Partnerships of—

(1) An LEA, a State, or both; and

(2) At least one non-profit organization.

Under Public Law 111–117, eligible entities must use TIF funds to develop and implement in high-need schools PBCSs that—

(a) Consider gains in student academic achievement as well as classroom evaluations conducted multiple times during each school year among other factors, and

(b) Provide educators with incentives to take on additional responsibilities and leadership roles.

Public Law 111–117 further provides that grant recipients (1) must demonstrate that their PBCSs are developed with the input of teachers and school leaders in the schools and LEAs the grants will serve, and (2) may use TIF funds to develop or improve systems and tools (which may be developed and used either for the entire LEA or only for schools served under

the grant) that would enhance the quality and success of the PBCS, such as high-quality teacher evaluations and tools to measure growth in student achievement. In addition, Public Law 111–117 provides that applications for TIF grants must include a plan for the financial sustainability of the activities conducted and systems developed under the grant once the grant period has expired.

Funds for this program, including funds for a required national evaluation, were also appropriated as part of the ARRA. Recipients of awards made with ARRA funds must meet specific reporting requirements established by the ARRA. The following link provides guidance on these reporting requirements: *http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf.*

Note: Provisions of the ARRA that govern use of TIF funds require use of funds consistent with substantive requirements in the Department's FY 2008 appropriations act, Public Law 110–161. The Department's FY 2009 and FY 2010 appropriations acts contain comparable provisions governing eligible grantees and the need to use TIF funds to develop and implement PBCSs in high-need schools. Although Public Law 110–161 and Public Law 111–115 provide that Federal TIF funds may support PBCSs only for teachers and principals, grantees may extend their PBCSs to all school personnel by using non-TIF funds to pay for additional compensation for non-instructional personnel.

Under the program, grantees may only use TIF funds for expenses related to the development and implementation of their PBCS in high-need schools identified in the applicant's proposal. However, in addition to the financial incentives given to teachers and principals based on their effectiveness and their assumption of additional responsibilities or leadership roles (as defined in this notice), TIF funds also may be used to support a variety of activities either for the entire LEA or only for high-need schools served under the grant, that are related to the PCBS. These activities include professional development activities, evaluation and research analysis, costs of developing or improving systems and tools that would enhance the quality and success of the PBCS, such as high-quality teacher evaluations and tools to measure growth in student achievement, reasonable travel expenses related to the TIF program, data system enhancement or development, and other reasonable and necessary costs.

With regard to payments for financial incentives, while the Department is not proposing to establish a minimum percentage that grantees would need to expend, it would expect that as an LEA's PBCS becomes institutionalized, the percentage of its budget that is used for incentive payments would increase throughout the five-year grant period. In addition, while the salaries of certain staff outside of the PBCS (such as salaries of a school's master, mentor or lead teacher) could conceivably be legitimate costs of a TIF project, given the purpose of the program the Department expects to continue to limit its approval of the number of such staff whose salaries may be paid with TIF funds. Grantees, however, would be able to use TIF funds towards the costs of bonuses paid to any number of these staff if they assume additional responsibilities under the PBCS.

Background: Signed into law by President Obama on February 17, 2009, the ARRA constitutes an unprecedented effort to revive the Nation's economy, create or save millions of jobs, and address long-neglected challenges so the Nation can thrive in the 21st century.

In addition to measures that modernize the Nation's infrastructure, enhance energy independence, preserve and improve affordable health care, provide tax relief, and protect those in greatest need, the ARRA provides an unprecedented sum—approximately $100 billion dollars—to fundamentally transform our public education system. Section 14005(d) of the ARRA requires that this funding be used to promote effective school reform in four assurance areas: (1) Adopting internationally benchmarked standards and assessments that prepare students for success in college and the workplace; (2) Building data systems that measure student success and inform teachers and principals in how they can improve their practices; (3) Increasing teacher effectiveness and achieving equity in teacher distribution; and (4) Turning around our lowest achieving schools.

The ARRA's second and third assurances are based upon evidence that teachers are the single most critical factor in improving student achievement. However, too many students, particularly those attending high-need schools, are provided instruction by ineffective teachers. Accordingly, the ARRA requires the Department to promote efforts that ensure equitable distribution of effective teachers between high and low poverty schools so that economically disadvantaged students have the same access to effective teachers as other students.

TIF is one such effort. By requiring its grantees to draw distinctions in how teachers are retained, promoted and rewarded, TIF, as implemented by the Department, advances the ARRA's third assurance of recruiting, developing and retaining effective teachers. To accomplish these goals, the ARRA provides TIF with an additional $200 million dollars of funding.

The Department proposes, to the extent feasible and appropriate, to align TIF with the requirements contained in the other ARRA programs, including the State Fiscal Stabilization Fund, Race to the Top, and the Title I School Improvement Grants. The Department's intention in doing so is to encourage applicants to develop plans for evaluating educator effectiveness and for providing educators the professional development needed to improve classroom practice and student achievement that complement, and are consistent with, plans developed across these other ARRA programs.

Along with authorizing TIF funds to be used to support projects that implement PBCSs, the ARRA also requires the Department to use the appropriated funds to conduct a "rigorous national evaluation * * * utilizing randomized controlled methodology to the extent feasible, that assess the impact of performance-based teacher and principal compensation systems supported by the funds provided in this Act on teacher and principal recruitment and retention in high-need schools and subjects." The ARRA thus requires the Department to award funds in a way that will ensure adequate participation of both a treatment group and control group in the national evaluation. Our proposal for the TIF Evaluation Competition, and the questions on which we specifically request public comment, are designed to permit the Department to meet this responsibility, and at the same time to seek answers to research questions about the effect of PBCSs on student achievement in high-need schools that are of great importance to those who would implement such systems.

Proposed Priorities

This notice contains five proposed priorities. The Secretary intends to use all five proposed priorities for the Main TIF competition and the TIF Evaluation competition.

Types of Priorities

The Secretary proposes five priorities for the Main TIF competition and the TIF Evaluation competition. Proposed Priority 1 through 3 are absolute priorities. Proposed Priorities 4 and 5 are proposed as competitive preference priorities and are aligned with other key education reform goals of the Department.

We may choose, in the notice of final priorities, requirements, definitions, and selection criteria, to change the designation of any of these priorities to absolute, competitive preference, or invitational priorities, or to include the substance of these priorities in the requirements or the selection criteria. We may also decide to include the substance of the requirements or the selection criteria in the priorities.

With an invitational priority, we would signal our interest in receiving applications that meet the priority; however, consistent with 34 CFR 75.105(c)(1), we would not give an application that meets an invitational priority preference over other applications.

Under an absolute priority, as specified by 34 CFR 75.105(c)(3), we would consider only applications that meet the priority. Under a competitive preference priority, we would give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Proposed Priority 1 (Absolute)—Differentiated Levels of Compensation for Effective Teachers and Principals

Background

The quality of classroom teachers is the most important factor under a school's control that affects student achievement.[1] Studies using value-added assessments indicate that individual teachers make a significant difference in student achievement and that teacher effectiveness varies considerably, even after adjusting for student characteristics such as prior performance, race or income.[2]

Yet one of the greatest obstacles to achieving the President's ambitious goal of providing a high-quality education for all children is that too few students, particularly low-income, minority, and low-achieving students, are provided instruction by effective teachers. And because LEAs typically do not pay teachers and principals based on their effectiveness, but instead on a single salary schedule that pays all teachers and principals the same based on experience and level of education, LEAs rarely provide highly effective teachers and principals in public school systems compensation that differs from what they provide to less effective teachers and principals.

Moreover, LEAs typically provide no additional incentive for the most effective teachers or principals to enter or remain in high-need schools. On the contrary, by providing the same amount of compensation based on credential and years of experience, and offering more experienced educators a priority in transfer options, LEA personnel systems often create at least implicit incentives for teachers and principals to move into schools and classrooms that present the fewest challenges. The failure to reward good performance by teachers and principals and to encourage effective teachers and principals to work in the most challenging schools makes it difficult to create a culture in high-need schools that focuses on continued excellence and results.

The Secretary believes that LEAs with high-need schools that implement a PBCS that (1) rewards teachers and principals who demonstrate their effectiveness by improving student achievement and (2) provides opportunities for highly effective teachers to take on additional roles and responsibilities, will increase overall teacher and principal quality and will attract outstanding educators to these schools. The Secretary also believes that these PBCSs will foster the creation of schools that use evidence of student achievement and of effective teacher practice to continuously improve teaching and learning.

Assuming that all funded projects are of sufficient quality, the Department intends to fund a variety of approaches to implement a PBCS including individual-based, school- or group-based awards, and a combination of the two. Each applicant should propose a method or methods that best meet the needs of its principals, teachers and students in its high-need schools.

Proposed Absolute Priority

To meet this proposed absolute priority, an applicant must demonstrate, in its application, that it will develop and implement a PBCS that rewards, at differentiated levels, teachers and principals who demonstrate their effectiveness by improving student achievement (as defined in this notice) as part of the LEA's coherent and integrated approach to strengthening the educator workforce.

In determining teacher and principal effectiveness as part of the PBCS, the LEA—

(a) Must give significant weight to student growth (as defined in this notice) based on objective data on student performance;

(b) Must include observation-based assessments of teacher performance at multiple points in the year, carried out by evaluators trained in using objective evidence-based rubrics for observation, aligned with professional teaching standards; and, if applicable, as part of the LEA's coherent and integrated approach to strengthening the educator workforce; and

(c) May include other measures such as evidence of leadership roles that increase the effectiveness of other teachers in the school or LEA.

In determining principal effectiveness as part of a PBCS, the LEA must give significant weight to student growth and may include supplemental measures such as high school graduation and college enrollment rates.

In addition, the applicant must demonstrate that the differentiated effectiveness incentive payments will provide incentive amounts that are substantial and provide justification for the level of incentive amounts chosen. While the Department does not propose a minimum incentive amount, the Department encourages applicants to be thorough in their explanation of why the selected incentive amounts are likely high enough to create change in the behavior of current and prospective teachers and principals.

Proposed Priority 2 (Absolute)—Fiscal Sustainability of the Performance-Based Compensation System (PBCS)

Background

One of the most important steps that LEAs and States must take when developing and implementing a PBCS is to accurately project program costs and to plan for fiscal sustainability.[3]

Accurate cost projections at the development stage of a PBCS are critical, especially if an LEA or State plans to expand a PBCS from just a few schools to all schools in the LEA or to all LEAs in the State.[4] Ample evidence suggests that States and LEAs frequently underestimate both the overall costs of

[1] Goldhaber, D. (2007). *Thoughts on Teacher Pay Reform.* Washington, DC: National Comprehensive Center on Teacher Quality.

[2] Sanders, W. (2006, November). *Cumulative and Residual Effects of Teachers on Future Student Academic Achievement.* Knoxville, TN: University of Tennessee; and Rivkin, S., Hanushek, E., and Kain, J. (2005, March). "Teachers, Schools, and Academic Achievement." *Econometrica,* 73, 417–458.

[3] Guthrie, J.W., and Prince, C.D. (2008). *Paying for and Sustaining a Performance-based Compensation System.* Washington, DC: Center for Educator Compensation Reform. U.S. Department of Education, Office of Elementary and Secondary Education.

[4] Hassel, B. (2002, May). *Better pay for better teaching: Making teacher compensation pay off in the age of accountability.* Washington, DC: Progressive Policy Institute.

PBCSs for teachers and principals and the number of teachers and principals that will qualify for awards under the chosen PBCS.[5]

Public Law 111–117 requires that applicants must "include a plan to sustain financially the activities conducted and systems developed under the grant once the grant period has expired." This absolute priority is intended to ensure that applicants effectively estimate the future costs of the particular PBCS they plan to implement, and that they are prepared to pay financial awards to everyone who earns them under the system. In addition to the direct costs of performance-based payments made as part of the PBCS that applicants should expect, there can be extra costs associated with administering a PBCS. These costs include both (1) employee benefits, such as premiums toward employee retirement, State taxes, and Federal withholdings, and (2) the costs of measuring employee effectiveness, such as costs associated with developing measures of teacher effectiveness, effective teacher and principal evaluation systems, incentives for career development, and longitudinal data systems capable of linking individual educators with student outcomes.

The Secretary seeks to promote the fiscal sustainability of effective PBCSs by focusing applicants on the need to find additional and alternative sources of funding in order to provide an increasing share of matching funds (non-TIF funds) in those project years when differentiated compensation is paid to teachers and principals. The various strategies that States and LEAs might consider for securing sustainable funding for their PBCSs include:

(a) Redeploying current State, LEA, or school resources, including resources that currently contribute to salary increments based on the accumulation of graduate credits and degrees.

(b) Redirecting expected future resources.

(c) Redirecting State and Federal categorical program assistance so State or Federal program funds, where authorized, are used to assist in paying for the expenses of the chosen PBCS.

(d) Seeking additional public funding.

(e) Seeking philanthropic or corporate support.

In this proposed priority, we are asking that applicants (1) demonstrate that they have projected costs associated with the development and implementation of the PBCS, and (2) provide evidence that they will be able to sustain a financial commitment to their PBCS through the commitment of funds other than those provided under the TIF grant, during and beyond the life of the TIF project.

Proposed Absolute Priority

To meet this proposed absolute priority, the applicant must provide, in its application, evidence that:

(a) The applicant has projected costs associated with the development and implementation of the PBCS, during the project period and beyond, and the LEA has accepted responsibilities to provide such performance-based compensation to teachers and principals who earn them under the system; and

(b) The applicant will provide from non-TIF funds over the course of the five-year project period an increasing share of performance-based compensation paid to teachers and principals in those project years in which the LEA provides such payments as part of its PBCS.

Proposed Priority 3 (Absolute)—Programmatic Sustainability of the Performance-Based Compensation System (PBCS)

Background

The Secretary seeks to focus applicants on the need to plan for the programmatic sustainability of the chosen PBCS. Evidence suggests that programmatic sustainability can best be accomplished when the PBCS is aligned with the LEA's or State's strategies for increasing teachers' and principals' effectiveness in high-need schools. Ideally, a PBCS supports and reinforces a coherent and integrated approach to strengthening the educator workforce, including teacher and principal recruitment, induction, professional development, evaluation, retention, and advancement into instructional leadership roles. When the PBCS's implementation becomes embedded into the core of a LEA's larger improvement strategy and operations, it will have a much greater likelihood of financial sustainability over the long term.[6]

Thus, through this proposed priority, we are asking that applicants demonstrate that the proposed PBCS is aligned with a coherent strategy for strengthening the educator workforce in the LEA(s) participating in the project.

Proposed Absolute Priority

To meet this proposed absolute priority, the applicant must provide, in its application, evidence that the proposed PBCS is aligned with a coherent and integrated strategy, including the use of data and evaluations for professional development, retention and tenure decisions, for continuing to strengthen the educator workforce in the LEA(s) participating in the project after the end of the TIF project period.

Proposed Priority 4 (Competitive Preference)—Use of Value-Added Measures of Student Achievement

Background

The Secretary supports the use of "value-added" measures of teacher and principal effectiveness for purposes of determining differentiated levels of compensation in a PBCS. Value-added measures seek to statistically isolate the contribution of teachers and principals to growth in student achievement between two or more points in time from other factors contributing to student achievement growth, including prior student achievement and student and family characteristics. Research indicates that value-added measures are a promising means of assessing the contributions of a school, teacher, or principal, while filtering out the non-school factors that may also contribute to growth in student achievement.[7]

Through this priority, the Secretary seeks to promote the use of value-added measures in PBCSs for teachers and principals. Value-added measures of educational performance can provide a useful, objective measure of teacher and principal effectiveness. The use of a value-added measure under this priority would need to be implemented consistent with the requirements in Proposed Absolute Priority 1 (Differentiated Levels of Compensation for Effective Teachers and Principals), which would require observation-based assessments of teacher performance at least twice a year.

Given the complexity of models that use value-added measures, the Secretary seeks to ensure that applicants have a plan for (1) ensuring that they have the capacity to implement the value-added model effectively (*e.g.,* that they have appropriate data systems and measures

[5] Odden, A., and Wallace, M. (2007, February). *Rewarding Teacher Excellence: A Teacher Compensation Handbook for State and Local Policy Makers.* Madison, WI: Wisconsin Center for Education Research, University of Wisconsin-Madison.

[6] Guthrie, J.W., & Prince, C.D. (2008). *Paying for and sustaining a performance-based compensation system.* Washington, DC: Center for Educator Compensation Reform. U.S. Department of Education, Office of Elementary and Secondary Education.

[7] Goe, L. (May 2008). *Key issue: Using value-added models to identify and support highly effective teachers.* National Comprehensive Center for Teacher Quality.

to ensure data quality), and (2) clearly explaining the chosen value-added model to teachers to enable them to use the data generated through the models to improve classroom practices.

Proposed Competitive Preference Priority

To meet this proposed competitive preference priority, the applicant must demonstrate, in its application, that the proposed PBCS for teachers and principals will use a value-added measure of the impact on student growth as a significant factor in calculating differentiated levels of compensation provided to teachers and principals.

Under this proposed priority, the applicant must also demonstrate that it has a plan to ensure that, as part of the PBCS, it has the capacity to (1) implement the proposed value-added model (*e.g.,* through robust data systems that collect the necessary data and ensure data quality), and (2) educate teachers and principals on the chosen value-added model and how it would be implemented.

Proposed Priority 5 (Competitive Preference)—Increased Recruitment and Retention of Teachers in Hard-to-Staff Subjects and Specialty Areas in High-Need Schools

Background

This proposed competitive preference priority is intended to ensure that LEAs focus on recruiting and retaining effective teachers of hard-to-staff subjects and specialty areas in high-need schools. High-need schools are likely to have a higher proportion of vacancies, novice teachers, out-of-field teachers, and ineffective teachers than other schools in the LEA or State educational agency.[8] In many LEAs, recruiting and retaining effective secondary mathematics and science teachers and teachers with the knowledge and skills to effectively accelerate the learning of English language learners and students with disabilities is particularly challenging. Providing incentives to hire and retain teachers who are effective, or likely to be effective, in teaching hard-to-staff subjects and specialty areas in high-need schools can be a valuable tool for ensuring that students in those schools are taught by effective teachers.

The availability of such incentives should be communicated broadly to current teachers in the LEA, as well as to potential recruits, to increase the likelihood that effective teachers within the LEA, as well as new teachers with relevant backgrounds, will apply for hard-to-staff subjects and specialty areas in high-need schools.

Proposed Competitive Preference Priority

To meet this proposed competitive preference priority, the applicant must demonstrate in its application that its proposed PBCS is designed to assist high-need schools to (1) Serve high-need students (as defined in this notice), (2) retain effective teachers in teaching positions in hard-to-staff subjects and specialty areas, such as mathematics, science, special education, and English language acquisition, and (3) fill vacancies with teachers of those subjects or specialty areas who are effective or likely to be effective. Applicants would be required to provide an explanation for how they will determine a teacher filling a vacancy is effective or likely to be effective. In addition, applicants would be required to demonstrate, in their applications, the extent to which the subject areas or specialty areas they propose to target are hard-to-staff. Lastly, applicants would need to demonstrate, in their applications, that they will implement a process for effectively communicating to teachers which of the LEA's schools are high-need and which subjects and specialty areas are considered hard-to-staff.

Requirements

The following sections provide requirements for both the Main TIF and Evaluation TIF competitions.

Proposed Requirements for the Main TIF Competition

Background

In order to promote successful projects that meet the objectives Congress has established for the TIF program, the Secretary proposes to establish the following requirements for the Main TIF competition:

(a) A requirement that an applicant may submit an application for the Main TIF competition or the Evaluation competition. Applicants not funded under the Evaluation competition are automatically eligible under the Main TIF competition, and thus need not apply to both.

(b) A requirement that each applicant describe in its application how its proposed PBCS will provide educators with incentives to take on additional responsibilities and leadership roles, as defined in this notice.

(c) A requirement that every applicant have five core elements (as described below) of its PBCS in place or it must implement a planning period.

(d) A requirement that the proposed PBCS provide participating teachers and principals high quality professional development which is targeted to needs identified through the evaluation process and shown to be effective.

(e) A requirement that the applicant document that all participating schools are high-need schools.

(f) A requirement that limits eligibility for both competitions to applicants that propose to serve schools not already served (or to be served) by current TIF grants.

The following describes the Department's rationale for proposing these requirements:

Selection of Competition. To ensure that there is a sufficient sample for the national evaluation, we propose to select applicants from the Evaluation competition before selecting applicants from the Main TIF competition. In order to not disadvantage the Evaluation competition applicants, we further propose that any Evaluation competition applicants not funded in the Evaluation competition would be automatically eligible for the Main TIF competition.

Application Requirement. Public Law 111–8 requires that any PBCS funded under the TIF program provide educators with incentives to take on additional responsibilities and leadership roles.

The Secretary views this requirement as a critical component for successful PBCSs and wants to ensure that each applicant has a plan in place that details how its proposed PBCS will provide these incentives.

Core Elements of a PBCS and a Potential Planning Period. The Secretary has identified five core elements that he believes are essential to the success of any effective PBCS. We, therefore, propose to require each TIF grantee to have:

(a) A plan for effectively communicating to teachers, administrators, other school personnel, and the community at-large about the components of the PBCS.

(b) The involvement and support of teachers, principals, and other certified personnel (including input from teachers and principals in the schools and LEAs to be served by the grant) and the involvement and support of unions in participating LEAs where they are the designated exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant.

[8] Imazeki, J. and Goe, L. (2009). The Distribution of Highly Qualified, Experienced Teachers: Challenges and Opportunities. Washington, DC: National Comprehensive Center on Teacher Quality.

(c) Rigorous, transparent, and fair evaluation systems for teachers and principals that differentiate effectiveness using multiple rating categories that take into account student achievement growth as a significant factor, as well as classroom observations conducted at least twice during the school year. The classroom observation process must: (1) Use an objective, evidence-based rubric aligned with professional teaching standards and the LEA'S coherent and integrated approach to strengthening the educator workforce; (2) provide for observations of each teacher or principal multiple times during the school year by individuals (who may include peer reviewers), who are provided specialized training; (3) incorporate the collection and evaluation of additional forms of evidence; and (4) ensure a high degree of inter-rater reliability (*i.e.,* agreement among two or more raters who score approximately the same) across the evaluators.

(d) A data-management system, consistent with the LEA's proposed PBCS, that can link student achievement data to teacher and principal payroll and human resources systems.

(e) A plan for ensuring that teachers and principals understand the specific measures of teacher and principal effectiveness included in the PBCS, and receive professional development that enables them to use data generated by these measures to improve their practice.

The Secretary recognizes that not every applicant will be able to demonstrate in its application that it has in place all five core elements necessary to ensure effective implementation of its PBCS. Based on the Department's experience with current TIF grantees, however, we believe that having these required core elements in place before beginning to build a PBCS leads to a much more efficient and successful implementation of that system. Therefore, the Secretary proposes to require any applicant that cannot demonstrate in its application that it has in place each of these five core elements to agree, as part of its application, to implement a planning period of up to one year, during which it would use its TIF funds to develop the core element or elements it lacks. Because of the importance of the core elements, a grantee would be prohibited from using TIF program funds to provide incentive payments to teachers or principals until the Secretary is satisfied that it has implemented all five elements (as demonstrated in the grantee's reports to the Department during the project period).

Professional Development. The Secretary believes that high-quality professional development, tied to the evaluation systems described above, is a key component of any successful and enduring PBCS for teachers and principals. Among other things, professional development enables all teachers and principals in high-need schools to learn how to generate, examine, and use student growth data to improve their practices in the classroom and in their schools, and thereby raise student achievement. For this reason, the Secretary proposes to require each applicant to demonstrate, in its application, that it has a system in place, or a specific plan for developing one, to (1) provide high-quality professional development that is aligned with the PBCS for teachers and principals consistent with the definition of the term *professional development* in section 9101(34) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) and targeted to needs identified in the evaluation process; and (2) regularly assess the effectiveness of this professional development in improving teacher practice and student achievement and make modifications necessary to improve its effectiveness.

High-Need Schools Documentation. Consistent with the requirement that all schools served through the TIF program be "high-need," the Secretary proposes to require that each applicant demonstrate, in its application, that it will implement the proposed PBCS in high-need schools (as defined in this notice). The Secretary proposes this requirement to enable the Department to ensure that all applicants are eligible to receive funding under this program. This requirement would specify that applicants must identify the schools in which the PBCS would be implemented, and provide school-level data that demonstrate that each school to be served is a high-need school. We would require school-level data as opposed to LEA or State-level data because the TIF authorizing statute requires poverty data be identified at the school level.

Additional Eligibility Requirement. Finally, the Secretary proposes to limit eligibility for the Main TIF competition and the Evaluation competition to applicants that are serving schools not already served (or to be served) by current TIF grants. We propose to establish this eligibility requirement (1) in order to expand the number of LEAs and schools that are able to take advantage of PBCSs funded under the TIF program; and (2) because we believe that the projects currently funded under the TIF program should successfully complete the activities described in their approved application before seeking additional TIF funds to enhance their current projects in schools already served. Nothing in this proposed eligibility requirement would preclude current TIF grantees from applying for a new award to expand their TIF-supported PBCS into other high-need schools in the participating LEA.

Proposed Requirements for Main TIF Competition

For the reasons outlined in the preceding *Background* section, the Secretary proposes the following requirements for the Main TIF competition.

Selection of Competition. An applicant may submit an application for either the Main TIF competition or the Evaluation competition. Each applicant must identify in its application the competition for which it is applying. The Evaluation competition will be funded prior to the Main TIF competition. Any Evaluation applicants not funded in the Evaluation competition will be automatically eligible for the Main TIF competition.

Application Requirement. Each applicant must describe in its application how its proposed PBCS will provide educators with incentives to take on additional responsibilities and leadership roles, as defined in this notice.

Core Elements of a PBCS and a Potential Planning Period. Each applicant must either—

(a) Demonstrate in its application that it has in place each of the following five core elements; or

(b) If the applicant cannot demonstrate in its application that it has in place each of these five core elements—

(1) Agree, as part of its application, to implement a planning period of up to one year, during which it will use its TIF funds to develop the core element or elements it lacks; and

(2) Include a plan for how it will implement the core element or elements it lacks during the planning period.

Core Elements.

(a) A plan for effectively communicating to teachers, administrators, other school personnel, and the community at-large the components of the PBCS;

(b) The involvement and support of teachers, principals, and other certified personnel (including input from teachers and principals in the schools and LEAs to be served by the grant) and the involvement and support of unions in participating LEAs where they are the

designated exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant;

(c) Rigorous, transparent, and fair evaluation systems for teachers and principals that differentiate effectiveness using multiple rating categories that take into account student achievement growth as a significant factor, as well as classroom observations conducted at least twice during the school year. The evaluation process must: (1) Use an objective, evidence-based rubric aligned with professional teaching standards and the LEA's coherent and integrated approach to strengthening the educator workforce; (2) provide for observations of each teacher or principal multiple times during the school year by individuals (who may include peer reviewers), who are provided specialized training; (3) incorporate the collection and evaluation of additional forms of evidence; and (4) ensure a high degree of inter-rater reliability (*i.e.,* agreement among two or more raters who score approximately the same);

(d) A data-management system that can link student achievement data to teacher and principal payroll and human resources systems; and

(e) A plan for ensuring that teachers and principals understand the specific measures of teacher and principal effectiveness included in the PBCS, and receive professional development that enables them to use data generated by these measures to improve their practice.

Planning Period Requirements. Each grantee that implements a planning period to develop the core element or elements it lacks, would be—

(a) Required to demonstrate in its annual performance report or other interim performance report that it has implemented any of the five core elements it had lacked; and

(b) Prohibited from using TIF program funds to provide incentive payments to teachers or principals until it has implemented a PBCS that, to the Secretary's satisfaction, has all five core elements.

Professional Development. Each applicant must demonstrate, in its application, that its proposed PBCS will include a high-quality professional development component for teachers and principals consistent with the definition of the term *professional development* in section 9101(34) of the ESEA.

The applicant must demonstrate that its PBCS has a professional development component in place, or a specific plan for developing one that is directly linked to the specific measures of teacher and principal effectiveness included in the PBCS. The professional development component of the PBCS must—

(1) Be based on needs assessed either at the high-need schools participating in the applicant's proposed PBCS or LEA-wide;

(2) Be targeted to individual teachers' and principals' needs as identified in the evaluation process;

(3) Provide—

(a) Those teachers and principals who do not receive differentiated compensation based on effectiveness under the PBCS with the tools and skills they need to improve their effectiveness in the classroom or school and be able to raise student achievement; and

(b) Those teachers and principals who are deemed to be effective and who, therefore, receive differentiated compensation under the PBCS, with the tools and skills they need to (1) continue effective practices in the classroom or school and raise student achievement, and (2) successfully assume additional responsibilities and leadership roles; and

(4) Include helping teachers and principals to better understand and use the measures of effectiveness in the PBCS to improve practice and student achievement.

(5) Include a process for regularly assessing the effectiveness of this professional development in improving teacher practice and student achievement and making modifications necessary to improve its effectiveness.

High-Need Schools Documentation. Each applicant must demonstrate, in its application, that the schools to be served by the proposed PBCS are high-need schools, as defined in this notice. Each applicant must provide, in its application, a list of schools in which the proposed PBCS will be implemented as well as the most current data on the percentage of each identified school's students who are eligible for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that the LEA uses (*see* section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5))). Data provided to demonstrate eligibility as a high-need school must be school-level data; the Department will not accept LEA- or State-level data for purposes of documenting whether a school is a high-need school.

Additional Eligibility Requirement. An applicant must demonstrate, in its application, that it will implement the proposed PBCS only in schools that are not being served (or are not to be served) by current TIF grants.

Proposed Requirements for the TIF Evaluation Competition

Background

The ARRA requires the Department's Institute of Education Sciences (IES) to conduct a rigorous national evaluation, utilizing randomized controlled methodology to the extent feasible, to assess the impact that PBCSs for teachers and principals that are supported by program funds have on teacher and principal recruitment and retention in high-need schools and subjects. IES intends to implement this requirement, as well as to conduct related research on important issues that concern the effect of PBCSs on increased student achievement, by conducting a national random-assignment impact evaluation of TIF grantees (the Evaluation) that will provide researchers, policy-makers, school administrators, and teachers with important information about the teacher and principal differentiated effectiveness incentives component of the PBCS. Moreover, to meet its statutory responsibility to conduct this evaluation, the Department needs to be able to ensure it is able to assess the impact of differentiated effectiveness incentives component PBCSs using a sufficient number of high-need schools in comparison to high-need schools in which differentiated effectiveness incentives component PCBSs are not being implemented.

In order to select both appropriate grantees (consistent with the objectives of the evaluation) and a sufficient number of participating LEAs and schools for the evaluation, the Department proposes to hold a separate competition under the TIF program—the TIF Evaluation competition—and to select applicants for an award under the Evaluation competition prior to selecting any applicants for an award under the Main competition. Under the TIF Evaluation competition, applicants must address all of the requirements and absolute priorities in the Main TIF competition, as well as additional requirements that are specific to the TIF Evaluation competition. The following describes the Evaluation that IES would conduct as well as the competition the Secretary would hold to select participants in the Evaluation.

Description of the Evaluation

Through the Evaluation, IES would study a select group of PBCSs implemented in one or more LEAs, in which the PBCS—

(a) Determines the amount of teacher incentives for differentiated

effectiveness using one of the following two models:

(1) An individual-based incentive pay model, defined as a PBCS that uses individual performance criteria for determining differentiated effectiveness incentive payments.

(2) A mixed-group incentive model, defined as a PBCS that determines differentiated effectiveness incentive payments using performance criteria to evaluate a group, such as a grade-level team of teachers or an entire school group, or using a mixture of individual and group performance criteria;

(b) Determines the amount of principal differentiated effectiveness incentive payments using any incentive model determined appropriate by the applicant and proposed in the applicant's application; and

(c) Requires an LEA to make substantial and differentiated effectiveness incentive payments at the following levels—

(1) For differentiated effectiveness incentive payments provided to principals, (i) the average principal payout (defined as the total amount of principal payments divided by the total number of principals in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (*e.g.,* 5% of the average principal salary), (ii) the criteria for determining whether a principal is eligible for payment are challenging (*e.g.,* payments are only made to those who perform significantly better than the current average performance among study schools within the district), and (iii) there is an expectation of meaningful differences in resulting principal pay (*e.g.,* at least some principals could reasonably expect to receive an incentive payment of three times the average principal payout) and the applicant's documentation of cost projections is consistent with this expectation; and

(2) For differentiated effectiveness incentive payments provided to teachers, (i) The average teacher payout (defined as the total amount of teacher payments divided by the total number of teachers in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (*e.g.,* 5% of the average teacher salary), (ii) the criteria for determining whether a teacher is eligible for payment are challenging (*e.g.,* payments are only made to those who perform significantly better than the current average performance among study schools within the district), and (iii) there is an expectation of meaningful differences in resulting teacher pay (*e.g.,* at least some teachers could reasonably expect to receive an incentive payment of three times the average teacher payout) and the applicant's documentation of cost projections is consistent with this expectation.

The Department intends to assess the performance component of a PBCS described in paragraph (c) in relation to a comparison group. This notice describes two possible options for a comparison group. A decision about whether to use either of these comparison designs, or a different approach, will be made after review of public comment on this notice. Accordingly, we specifically request comment on these proposed designs as well as alternatives.

The two comparison designs are as follows:

(a) *Comparison design 1:* The differentiated effectiveness incentive component of the PBCS would be compared to a PBCS with no differentiated effectiveness incentive component. Thus, under this design, all non-performance pay components of the PBCS (*e.g.,* the professional development component, incentives for leadership roles component, and incentives for taking on additional responsibilities) would be implemented in all schools participating in the evaluation and the performance pay component of the PBCS would be implemented only in those schools designated by the evaluation contractor;

(b) *Comparison design 2:* The differentiated effectiveness incentive component of the PBCS would be compared to a PBCS with an across-the-board salary increase of an amount equivalent to the expected average payout in the differentiated effectiveness incentive payment (*e.g.,* if the expected average teacher payout is 5% of the average teacher salary, then one-half of the schools participating in the evaluation, as designated by the evaluation contractor, would implement the applicant's proposed performance component of the PBCS while the other half of the schools participating in the evaluation would implement an across-the-board salary increase equivalent to the proposed applicant's expected average payout, 5% in this example).

In evaluating the selected PBCSs, the Evaluation would address the following research questions:

(a) *Under comparison design 1:* What is the effect on student achievement of an LEA's PBCS that includes a performance component of a PBCS that includes differentiated pay and in which the incentive has a substantive average payout (*e.g.,* 5% of the average teacher salary for teachers)? What is the effect of such a PBCS component on the composition and effectiveness of teachers and principals eligible for the incentive payments? What is the effect on recruitment and retention of eligible teachers and principals?

(b) *Under comparison design 2:* What is the effect on student achievement of a performance based increase in wages compared to an across-the-board increase in teacher and principal salary in which the expected payouts are equivalent? Are there differences in the composition and effectiveness of teachers and principals between these two methods of increasing wages? Are there any differential effects on recruitment and retention of teachers and principals?

(c) What is the relationship between the effect on student achievement of individual-based and mixed-group incentive pay models (*i.e.,* is the differentiated effectiveness incentive of an individual-based incentive pay model more likely to be associated with an effect on student achievement)?

(d) What features of PBCSs (*e.g.,* relative emphasis on student achievement or teacher/principal observations incentives based on absolute versus relative standards; and the extent of staff eligibility) are associated with improved teacher and principal effectiveness and student achievement?

(e) What are the implementation challenges associated with PBCSs, and what strategies do grantees use to overcome them?

TIF Evaluation Competition

Grantees funded under the TIF Evaluation competition would be awarded at least an additional $1 million over the 5-year grant period (above the amount of funding awarded to them to implement the PBCS proposed in its application) to help pay for any additional costs of implementing activities associated with their TIF project. These costs might include those associated with developing value-added measures of student achievement, and professional development and expenses related to release time for teachers to attend professional development that is designed to support or complement the PBCS, and available to staff working on the grant or district-wide. In addition, while under the Main TIF competition the Department would continue its practice of permitting TIF funding to be used to pay the salary of only one Master, Mentor, or Lead Teacher or academic coach per school, recipients of awards under the Evaluation competition would be permitted to use

the additional $1 million for salaries of other academic coaches such as math and reading coaches, and of other Master, Mentor, or Lead Teachers. Finally, TIF Evaluation grantees could also use the additional $1 million award to pay for costs of securing data, including data linked to student achievement, needed by the evaluation contractor.

In order to be eligible to receive this additional funding, applicants seeking awards under the TIF Evaluation competition must agree to certain additional requirements. The following describes the Department's rationale for proposing these additional requirements for applicants under the TIF Evaluation competition:

Budget Information. The Secretary proposes to require each applicant under the TIF Evaluation competition to include the additional $1 million funds available in its proposed budget accompanying the application for funding, and indicate the activities it plans to implement using these additional funds. This application requirement would assist the Department in conducting the necessary budget analysis before grant funding is awarded and ensure the Department has adequate budget information to fiscally manage the grant throughout the five-year project period.

Two Incentive Models for Determining Teacher Incentive Payments. Each TIF Evaluation competition grantee would be required to implement, in at least one LEA, a PBCS that determines teacher differentiated effectiveness incentive payments using either an individual-based incentive pay model or a mixed-group incentive pay model.

The two proposed models would allow the Evaluation to separately test two prominent models of incentive pay and allow for analyses that will provide information about core aspects of differentiated effectiveness incentive pay to inform policy. An individual-based incentive pay model, which we would define as a PBCS that uses individual performance criteria for determining incentive payments, would provide the most direct incentive to teachers to improve their own effectiveness, and thus the student achievement of the students they teach. Under this model, the amount of a teacher's incentive payment would be directly linked to the teacher's individual performance, as measured against the criteria established for the PBCS. One possible downside of using an individual-based incentive model is that, given its focus on the individual, it may undermine collaboration among teachers.

A mixed-group incentive pay model, which we would define as a PBCS that determines differentiated effectiveness incentive payments using performance criteria to evaluate a group, such as a grade-level team of teachers or an entire school group, or using a mixture of individual and group performance criteria, acknowledges the importance of collaboration but may weaken the incentive for individual teachers to perform better, because the performance criteria are, at least in part, based on the performance of others. The use of individual teacher performance criteria in addition to group performance criteria in a mixed-group incentive pay model allows the grantee to use individual performance criteria, which could lead to individual teacher differentiated effectiveness incentive payments that differ by individuals within the group. (If the PBCS only used group performance criteria, then teachers within a group meeting the group performance criteria all receive the same incentive payments. If, on the other hand, the PBCS uses a mix of group and individual performance criteria, then incentive payments for individual teachers within the group can differ from teacher to teacher.)

Including in the Evaluation some LEAs with PBCSs that use an individual-based incentive pay model and some LEAs with PBCSs that use a mixed-group incentive pay model to determine teacher differentiated effectiveness incentive payments would allow IES to analyze separately each model. It also would allow the Evaluation to focus on the relationship between various PBCS features (*e.g.,* relative emphasis on student achievement or teacher/principal observations as a performance criterion; incentives based on absolute versus relative performance criteria standards; and the extent of staff eligibility) and their effect on teacher and student outcomes.

There is no analogous proposed choice of models for the principal differentiated effectiveness incentive pay because, by its nature, principal performance is a group performance measure related to the performance of each principal's school.

Incentive Amounts. Evaluation grantees would be required to implement a PBCS through which an LEA makes substantial incentive awards at the following levels:

(a) For differentiated effectiveness incentive payments provided to principals, (i) the average principal payout (defined as the total amount of principal payments divided by the total number of principals in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (*e.g.,* 5% of the average principal salary), (ii) the criteria for determining whether a principal is eligible for payment are challenging (*e.g.,* payments are only made to those who perform significantly better than the current average performance among study schools within the district), and (iii) there is an expectation of meaningful differences in resulting principal pay (*e.g.,* at least some principals could reasonably expect to receive an incentive payment of three times the average principal payout) and the applicant's documentation of cost projections is consistent with this expectation); and

(b) For differentiated effectiveness incentive payments provided to teachers, (i) the average teacher payout (defined as the total amount of teacher payments divided by the total number of teachers in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (*e.g.,* 5% of the average teacher salary), (ii) the criteria for determining whether a teacher is eligible for payment are challenging (*e.g.,* payments are only made to those who perform significantly better than the current average performance among study schools within the district), and (iii) there is an expectation of meaningful differences in resulting teacher pay (*e.g.,* at least some teachers could reasonably expect to receive an incentive payment of three times the average teacher payout) and the applicant's documentation of cost projections is consistent with this expectation).

Each Evaluation grantee would be required to agree to implement in at least one LEA a PBCS with these characteristics to ensure that the Evaluation can focus on the effectiveness of the differentiated effectiveness incentive component of the PBCS. In designing the Evaluation, IES determined that these differentiated effectiveness incentive amounts, based on current evidence in the research literature, are the minimal amounts needed to alter teacher and principal behavior and recruitment in high-need schools consistent with the effect the Evaluation is designed to detect.

Implementation of Evaluation. Each applicant under the TIF Evaluation competition would be required to agree, in its application, to implement its differentiated effectiveness incentive component of the PBCS in at least one LEA in accordance with the implementation plan developed by the

IES evaluator, Mathematica Policy Research. The applicant also would be required to identify in its application the schools that would participate in the evaluation. For each LEA participating in the Evaluation, the IES evaluator would, by lottery, place eligible schools equally within one of two groups (*i.e.,* "Group 1" or "Group 2").

For each participating LEA, the grantee would be required to implement its PBCS in the LEA's Group 1 schools in either school year 2010–2011 or school year 2011–2012, depending on whether the LEA has the 5 core elements of the PBCS in place at the time of award.

The following describes implementation for each of the two comparison designs the Department is considering:

(a) *Comparison design 1:* With the same timing as Group 1, Group 2 would be required to implement all non-differentiated effectiveness incentive components of the PBCS. (Participating LEAs that have the 5 core elements in place at the time of the grant award would be required to begin the first PBCS implementation in Group 1 schools and non-differentiated effectiveness incentive components of the PBCS in Group 2 schools at the beginning of the 2010–2011 school year. Participating LEAs that do not have in place the 5 core elements and that therefore would implement a planning period would be required to begin the first PBCS implementation in Group 1 schools and non-differentiated effectiveness incentive components of the PBCS in Group 2 schools at the beginning of the 2011–2012 school year.) All Group 2 schools would be prohibited from implementing a differentiated effectiveness incentive component for the duration of the TIF grant.

(b) *Comparison design 2:* With the same timing as Group 1, Group 2 would be required to implement all non-differentiated effectiveness incentive components of the PBCS and a salary increase for teachers and principals equivalent to the expected average payout in Group 1. (Participating LEAs that have the 5 core elements in place at the time of the grant award would be required to begin the PBCS implementation in Group 1 schools and non-differentiated effectiveness incentive components of the PBCS and the across the board salary increase in Group 2 schools at the beginning of the 2010–2011 school year. Participating LEAs that do not have in place the 5 core elements and that therefore would implement a planning period would be required to begin the PBCS implementation in Group 1 schools and non-differentiated effectiveness incentive components of the PBCS and the across the board salary increase in Group 2 schools at the beginning of the 2011–2012 school year.) All Group 2 schools would be prohibited from implementing a differentiated effectiveness incentive component for the duration of the TIF grant.

The selection and placement of the LEA's participating schools into Groups 1 and 2 by lottery would enable the IES evaluator to examine what happens to student, teacher, and principal outcomes in comparable schools: (i) With and without a differentiated effectiveness incentive component of the PBCS under comparison design 1; or (ii) with a differentiated effectiveness incentive component of the PBCS and with an across-the-board salary increase under comparison design 2. Both of these evaluation designs would enable IES to compare outcomes in these schools for up to 5 years after the PBCS is implemented. It is important for the Evaluation to include multiple years because principal and teacher behavior may take time to respond to the differentiated effectiveness incentive payments. For teachers and principals who transfer to the PBCS schools, it may also take time for them to be effective in their new setting.

Under comparison design 2, in addition to the non-differentiated effectiveness incentive components of its PBCS, the Group 2 schools would also implement an across-the-board salary increase for teachers and principals equivalent to the respective expected average payouts for teachers and principals in Group 1. This requirement, in combination with the random assignment study design, would ensure that when the Evaluation compares schools in the study that have implemented the differentiated effectiveness incentive component of the PBCS with schools that have implemented an across-the-board salary increase, differences in outcomes can be attributed to the differentiated effectiveness incentive component of the PBCS.

Matching Requirement Under Comparison Group 2. (Funds provided to meet this match requirement may address the element of Absolute Proposed Priority 2 in which applicants would be required to provide from non-TIF funds an increasing share of performance-based compensation paid to teachers and principals.)

Each applicant under the TIF Evaluation competition would be required to provide from non-TIF funds 50% of the proposed across-the-board salary increase to be implemented in half of the participating Evaluation schools. While an across-the-board salary increase for staff in high-need schools reflects what may be, for some, a seemingly attractive alternative to differentiated payments based on performance, funds used to pay these increases are not supporting a PBCS. TIF funds therefore could not support such an across-the-board salary increase except for the fact that ARRA and the Department's FY 2010 appropriation permit the use of TIF funds for evaluation.

We recognize that if comparison design 2 is adopted, IES will be able to secure important research results about the impact of PBCSs relative to an across-the-board salary increase. On the other hand, the teachers and principals in schools that benefit from such salary increases will obtain significant benefits from use of TIF funds. Balancing these competing factors, if comparative design 2 is adopted, we believe that it is reasonable to require that grantees pay 50 percent of the costs of across-the-board salary increases for staff in the group of schools selected to be in Group 2. The Department will also consider alternative possibilities for design, including a hybrid of the two approaches above.

Advance Notice. To ensure that teachers and principals are aware of the implementation of the PBCS in their schools, applicants would be required to agree to work with the IES evaluator to notify all eligible school staff in schools participating in the Evaluation at least two months prior to the assigned Group 1 implementation schedule. Advance notification and dissemination about the PBCS differentiated effectiveness incentive component features and performance criteria two months prior to the beginning of the school year in which it is implemented is important so that teachers and principals within and outside of the LEA would have time to learn about the differentiated effectiveness incentive component of the PBCS, and be informed enough about it to change their behavior in response. (*e.g.,* for those in a PBCS school with a differentiated effectiveness incentive component, this might entail altering their teaching strategy to be more effective; for those not in a PBCS school with a differentiated effectiveness incentive component, this might entail transferring to a PBCS school with a differentiated effectiveness component.)

Implementation of all Non-differentiated Effectiveness Incentive Components. In order to isolate the effects of the differentiated effectiveness

incentive component of the PBCS, the Department would require every applicant to agree to implement the non-differentiated effectiveness incentive components (*e.g.,* the professional development component, the incentives for leadership roles component, and the incentives for taking on additional responsibilities) of its PBCS in all of an LEA's Group 1 and Group 2 schools at the same time the applicant implements the differentiated effectiveness incentive component of the PBCS in Group 1 schools. This requirement, in combination with the random assignment study design, would ensure that when the Evaluation compares schools in the study with and without the differentiated effectiveness incentive component of the PBCS, differences in outcomes can be attributed to the differentiated effectiveness incentive component of the PBCS. The LEA's schools in Group 2 would not be permitted to fully implement the differentiated effectiveness incentive component of the PBCS for the duration of the grant.

Scope of Schools. In order that funds reserved for the TIF Evaluation competition are used as efficiently as possible, each applicant would be required to demonstrate, in its application, that, for each LEA in which it implements the PBCS, it will implement the differentiated effectiveness incentive component of the PBCS—

(a) In eight or more high-need schools, within that LEA, that have students in tested subjects (*i.e.,* students in grades three through eight); and

(b) In at least two schools among those eight or more high-need schools that are of the same grade configuration (*e.g.,* in at least two elementary schools or at least two middle schools).

It would be important that each applicant provide the IES evaluator with at least two schools with the same grade configuration among the LEA's schools proposed to participate in the Evaluation so that the IES evaluator's group assignments made by lottery can result with at least one school of the same grade configuration in each of the two Groups (*i.e.,* at least one elementary school in Group 1 and at least one in Group 2). It would also be important for the eight schools to be within the same LEA so that the random assignment can be conducted within the same local context (*e.g.,* the schools have in common the same labor market issues, the same union issues, the same LEA policies *etc.*).

Commitment to Evaluation. Because each participating LEA and school will need to work with the IES evaluator, it is critical that both the LEA and principals of the schools participating in the Evaluation are aware of, and agree to, the requirements of the Evaluation (*i.e.,* adhering to the implementation plan and cooperating with data-collection efforts, such as providing math and reading State assessment student test scores). Therefore, we propose to require applicants to demonstrate, in their applications, that each participating LEA and school is willing and able to participate in the Evaluation. To demonstrate this willingness and ability to participate, each applicant would be required to include, in its application, a letter from the superintendent of each participating LEA, and a letter from the LEA's research office or board, and principals of the participating schools stating that these officials agree to comply with the Evaluation requirements.

Proposed Requirements for the TIF Evaluation Competition

In addition to the requirements and priorities for the Main competition, which applicants for the TIF Evaluation competition would also be required to address, the Secretary proposes the following requirements for the TIF Evaluation competition only:

Budget Information. An applicant for the TIF Evaluation competition must provide, in its application, a proposed budget that indicates how it plans to use the additional $1 million in funding received for participating in the Evaluation. The following activities are the only permissible uses for these additional funds: costs associated with developing value-added measures of student achievement; professional development and expenses related to release time for teachers to attend professional development; and salaries of academic coaches such as math and reading coaches, and Master, Mentor, or Lead Teacher salaries.

Two Incentive Models for Determining Teacher Incentive Payments. An applicant for the TIF Evaluation competition must demonstrate, in its application, that it will implement a PBCS that provides incentive payments to both teachers and principals:

(a) *Teacher Incentive Payments.* To be eligible to receive a grant under the TIF Evaluation competition, an applicant's teacher differentiated effectiveness incentive component of the PBCS must use one of the following two models:

(1) An individual-based incentive pay model, which awards differentiated effectiveness incentive payments to teachers based on individual teachers' performance (*e.g.,* student achievement results, teacher observations, *etc.*) based on criteria proposed by the applicant in its application.

(2) A mixed-group incentive pay model which awards differentiated effectiveness incentive payments to teachers using group performance criteria at the grade, team, or school level, or using a mixture of group and individual teacher performance criteria.

Note: Under the mixed-group incentive pay model, how much emphasis is placed on individual performance relative to group performance is up to the applicant to specify; however, in order to be a mixed-group model, the PBCS must use group performance criteria to determine the differentiated effectiveness incentive component of the incentive amounts and may, but is not required to, use individual performance criteria.

Each applicant must specify, in its application, which of these two incentive models it will use for the teacher compensation component of its PBCS.

(b) *Principal Incentive Payments.* To be eligible to receive a grant under the TIF Evaluation competition, the applicant must describe, in its application, the incentive model it will use for the principal differentiated effectiveness incentive component of its PBCS. (There are no specific model requirements for an applicant's principal compensation component of the PBCS.)

Incentive Amounts. An applicant for the TIF Evaluation competition must demonstrate, in its application, that it will implement a PBCS that uses: (1) principal differentiated effectiveness incentive payments in which (i) the average principal payout (defined as the total amount of principal payments divided by the total number of principals in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (*e.g.,* 5% of the average principal salary), (ii) the criteria for determining whether a principal is eligible for payment are challenging (*e.g.,* payments are only made to those who perform significantly better than the current average performance among study schools within the district), and (iii) there is an expectation of meaningful differences in resulting principal pay (*e.g.,* at least some principals could reasonably expect to receive an incentive payment of three times the average principal payout) and the applicant's documentation of cost projections is consistent with this expectation); and

(2) Teacher differentiated effectiveness incentive payments in which (i) the average teacher payout (defined as the total amount of teacher

payments divided by the total number of teachers in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (*e.g.,* 5% of the average teacher salary), (ii) the criteria for determining whether a teacher is eligible for payment are challenging (*e.g.,* payments are only made to those who perform significantly better than the current average performance among study schools within the district), and (iii) there is an expectation of meaningful differences in resulting teacher pay (*e.g.,* at least some teachers could reasonably expect to receive an incentive payment of three times the average teacher payout) and the applicant's documentation of cost projections is consistent with this expectation).

Implementation of Evaluation. Each applicant under the TIF Evaluation competition must agree, in its application, to implement its differentiated effectiveness incentive component of the PBCS in at least one LEA in accordance with the implementation plan developed by the IES evaluator. The applicant would be required to identify in its application the schools that would participate in the evaluation.

In its application, an applicant also must acknowledge that the IES evaluator will select, by lottery, from among the schools participating in the evaluation, those schools that will implement the differentiated effectiveness incentive component of the PBCS and must agree to implement the Evaluation design and its implementation plan within at least one LEA.

In participating LEAs that have the five core elements in place at the time of grant award, the first group of schools in that LEA (Group 1 schools) must begin implementation of all components of the PBCS at the beginning of the 2010–2011 school year. In a participating LEA that does not yet have in place the 5 core elements necessary to implement a successful PBCS at the time of award, the first group of schools in that LEA (Group 1 schools) must begin implementation of all components of the PBCS no later than the 2011–2012 school year.

The following table illustrates the Evaluation random assignment plan, depending on the amount of planning time an applicant would need:

	Random assignment [a]	Pay component of PBCS [b]
Design 1		
LEAs Ready for 2010–11 Implementation.	Group 1	Differentiated pay implemented starting in 2010–11.
	Group 2	No differentiated pay component until 2015–16.
LEAs Ready for 2011–12 Implementation.	Group 1	Differentiated pay implemented starting in 2011–12.
	Group 2	No differentiated pay component until 2015–16.
Design 2		
LEAs Ready for 2010–11 Implementation.	Group 1	Differentiated pay implemented starting in 2010–11.
	Group 2	Across the board pay increase implemented starting in 2010–11 through 2014–15.
LEAs Ready for 2011–12 Implementation.	Group 1	Differentiated pay implemented starting in 2011–12.
	Group 2	Across the board pay increase implemented starting in 2011–12 through 2014–15.

[a] For each LEA, the IES evaluator will randomly assign the schools participating in the Evaluation into 2 groups (Groups 1 and 2).
[b] The school year listed is the first year in which the differentiated effectiveness incentive component of the PBCS will be implemented in the LEA's schools participating in the designated group.

Matching Requirement. (Funds provided to meet this match requirement may address the element of Proposed Absolute Priority 2 in which applicants are required to provide from non-TIF funds an increasing share of performance-based compensation paid to teachers and principals.) If Comparison Design 2 is selected, an applicant for the TIF Evaluation competition must provide from non-TIF funds 50% of the proposed across-the-board salary increase to be implemented in Group 2 schools.

Advance Notice. Each applicant must agree, in its application to work with the IES evaluator to notify all eligible schools participating in the Evaluation at least 2 months prior to the assigned Group 1 implementation schedule.

Implementation of all Non-differentiated Effectiveness Incentive Components. Each applicant must agree, in its application, to implement the non-differentiated effectiveness incentive components of its PBCS in all of the LEA's participating schools (those in Groups 1 and 2) starting at the same time as the differentiated effectiveness incentive component of its PBCS is implemented in the Group 1 schools. The schools in Group 2 must not implement the differentiated effectiveness incentive component of its PBCS for the duration of the TIF grant.

Scope of Schools. An applicant for the TIF Evaluation competition must demonstrate, in its application, that it will implement a PBCS in eight or more high-need schools, within an LEA, that have students in tested subjects (*i.e.,* students in grades three through eight), from which there are at least two schools proposed to participate in the Evaluation within the same LEA within each grade configuration (*i.e.,* if elementary schools are proposed there are at least two elementary schools among the minimum of eight schools all within the same LEA; if middle schools are proposed there are at least two middle schools among the minimum of eight schools all within the same LEA). Applicants that include multiple LEAs must meet the scope of schools requirement in at least one LEA.

Commitment to Evaluation. An applicant for the TIF Evaluation competition must provide, in its application, documentation that demonstrates the willingness of each participating LEA and school to

participate in the Evaluation. Such documentation must include for each participating LEA:

(a) A letter from the LEA superintendent and the principals of the participating schools stating that those officials agree to meet the TIF Evaluation competition requirements, including adhering to the implementation plan of the IES evaluator which involves selection through a lottery of those schools to implement the differentiated effectiveness component among the schools participating in the evaluation.

(b) A letter from the research office or research board of the participating LEA that expresses an agreement to comply with the Evaluation requirements (if such research office approval is needed).

Proposed Definitions

Background

The Department proposes definitions for five terms not defined in the authorizing legislation for TIF that the Department has determined are necessary for the proper implementation of the TIF program: *High-need school, student achievement, student growth, high-need students,* and *additional responsibilities and leadership roles.*

High-Need School

Public Law 110–161 and Public Law 111–117 require an eligible entity to use TIF funds to develop and implement a PBCS in a high-need school, but they does not define the term "high-need school." Because the meaning of this term is critical to implementing the purpose of the TIF program, we propose to define it. Specifically, we propose to define a *high-need school* as a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use (*see* section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5))). Because it is widely known that students attending middle and high schools submit applications for free or reduced-price lunch subsidies much less frequently than do students enrolled in elementary schools, we propose to clarify in the definition that LEAs may establish eligibility of a middle school or a high school as a high-need school based on comparable data from its feeder schools. We are proposing to define the term *high-need school* in terms of 50 percent eligibility for free- and reduced-lunch subsidies because the Administration is focusing on turning around struggling schools in high-poverty areas. We are targeting our efforts to help the schools and students most in need.

Student Achievement and Student Growth

The Department believes that there is sufficient research demonstrating that teacher effectiveness is a critical contributor to student learning, where student learning is measured by student growth over time—that is, the change in student achievement between two or more points in time. We believe that student achievement should be measured, in significant part, by a student's standardized test scores.

On the other hand, we recognize that teacher effectiveness should not be determined solely on the basis of standardized test scores, which is why we are proposing, consistent with the Race to the Top program, that the use of student growth as a significant factor in teacher evaluations must include multiple measures.

The Department believes that student achievement and student growth data are meaningful predictive measures of teacher and principal effectiveness, and, therefore, should be considered as a part of a rigorous, transparent, and fair evaluation system.

High-Need Students

Through the Proposed Priority 5, the Department is encouraging applicants to develop and implement a PBCS that serves the needs of *high-need students.* The Department would like to take this opportunity to define this term for the purpose of each applicant's understanding of the competitive priority. It was important to the Department for this definition to be consistent with the definition of *high-need students* in the Race to the Top final notice of priorities. Thus, the Department has used the same definition (identified below).

Additional Responsibilities and Leadership Roles

Public Law–161 and Public Law 111–117 require an eligible entity to use TIF funds to develop and implement a PBCS in a high-need school that provides educators incentives to take on additional responsibilities and leadership roles, but it does not define the terms "additional responsibilities and leadership roles." Because the meaning of these terms is critical to implementing the purpose of the TIF program, we propose to define it. Specifically, we propose to define *additional responsibilities and leadership roles* as duties teachers may voluntarily accept such as roles as master or mentor teachers who are chosen through a performance-based selection process including assessment of their teaching effectiveness and the ability to work effectively with other adults and students, with responsibilities to assess and improve the teaching effectiveness of other teachers in the school; roles in induction and mentoring of novice teachers or high-need students; roles in tutoring students; or in establishing and developing learning communities designed to continually improve the capacity of all teachers in a school to advance student learning, using a shared set of practices, instructional principles or teaching strategies. This list is not exhaustive and the Department would encourage applicants to come up with other additional responsibility and leadership role opportunities for its teachers and principals that best meets the needs of its high-need schools.

Proposed Definitions

The Secretary proposes the following definitions of the terms *high-need school, student achievement* and *student growth, high-need students,* and *additional responsibilities and leadership roles* for use in the TIF program. We would apply these definitions for any Main TIF competition or TIF Evaluation competition in any year in which TIF is funded.

High-need school means a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use (*see* section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)). For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-need school under this definition is determined on the basis of the most currently available data.

Student achievement means—

(a) For tested grades and subjects—

(1) A student's score on the State's assessments under the ESEA; and

(2) As appropriate, other measures of student learning, such as those described in paragraph (b) of this definition, provided that they are rigorous and comparable across schools.

(b) For non-tested grades and subjects, alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments, and other measures of student achievement

that are rigorous and comparable across schools.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. A State or LEA may also include other measures that are rigorous and comparable across schools.

High-need students means students at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English language learners.

Additional responsibilities and leadership roles means duties teachers may voluntarily accept such as roles as master or mentor teachers who are chosen through a performance-based selection process including assessment of their teaching effectiveness and the ability to work effectively with other adults and students, with responsibilities to assess and improve the teaching effectiveness of other teachers in the school; roles in induction and mentoring of novice teachers or high-need students; roles in tutoring students; or in establishing and developing learning communities designed to continually improve the capacity of all teachers in a school to advance student learning, using a shared set of practices, instructional principles or teaching strategies.

Proposed Selection Criteria

The following selection criteria apply to both the Main competition and the TIF Evaluation competition.

Background

The Secretary proposes these selection criteria to be used to review an applicant's proposal for funding under either the Main TIF competition or the TIF Evaluation competition. The Department believes that these proposed selection criteria are needed to ensure that each applicant demonstrates, in its application, that it: (1) Proposes to implement a PBCS that will address a significant need of the LEA(s) to be served by the project, through the types of awards to be given to teachers and principals based on student achievement and other required factors; (2) has or will have a personnel and management structure capable of overseeing the development and implementation of the proposed PBCS; and (3) commits to sustaining the proposed PBCS after TIF funding has ended.

Proposed Selection Criteria

The Secretary proposes the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which there is a Main TIF competition or TIF Evaluation competition for this program. In the notice inviting applications, or the application package, or both we will announce the maximum possible points assigned to each criterion.

(a) *Need for the project.* In determining the need for the proposed project, the Secretary will consider the extent to which the applicant establishes that—

(1) The high-need schools whose educators would be part of the PBCS have difficulty—

(i) Recruiting highly qualified or effective teachers, particularly in hard-to-staff subject areas or specialty areas, such as mathematics, science, English Language Acquisition, and special education; and

(ii) Retaining highly qualified or effective teachers and principals; and

(2) Student achievement in each of the schools whose educators would be part of the PBCS is lower than in what the applicant determines are comparable schools of the LEA, or another LEA within its State, in terms of key factors such as size, grade levels, and poverty levels.

(3) A definition of what it considers a "comparable" school for the purposes of paragraph (2) of this selection criterion.

(b) *Project design.* The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed PBCS—

(1) Is part of a proposed LEA or Statewide strategy, as appropriate, for improving the process by which each participating LEA rewards teachers and principals in high-need schools based upon their effectiveness as determined in significant part by student growth. With regard to teacher and principal effectiveness, the Secretary considers whether—

(i) The methodology the LEA or SEA proposes to use in its PBCS to determine the effectiveness of a school's teachers and principals includes valid and reliable measures of student achievement, including norm- and criterion-referenced State-wide assessment scores, as appropriate; and

(ii) The participating LEA would use the proposed PBCS to provide performance awards to teachers and principals that are of sufficient size to affect teacher and administrator behaviors, and their decision whether to go to, or remain working in, the high-need school;

(2) Has the involvement and support of teachers, principals, and other certified personnel (including input from teachers and principals in the schools and LEAs to be served by the grant) and the involvement and support of unions in participating LEAs where they are the designated exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant;

(3) Includes rigorous, transparent, and fair evaluation systems for teachers and principals that differentiate effectiveness using multiple rating categories that take into account data on student growth as a significant factor, as well as classroom observations conducted at least twice during the school year;

(4) Includes a data-management system, consistent with the LEA's proposed PBCS, that can link student achievement data to teacher and principal payroll and human resources systems; and

(5) Incorporates high-quality professional development activities that increase the capacity of teachers and principals to raise student achievement, and are directly linked to the specific measures of teacher and principal effectiveness included in the PBCS.

(c) *Adequacy of Support for the Proposed Project.* In determining the adequacy of the support for the proposed project, the Secretary considers the extent to which—

(1) The management plan is likely to achieve the objectives of the proposed project on time and within budget, and includes clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks;

(2) The project director and other key personnel are qualified to carry out their responsibilities, and their time commitments are appropriate and adequate to implement the project effectively;

(3) The applicant will support the proposed project with funds provided under other Federal or State programs and local financial or in-kind resources; and

(4) The requested grant amount and project costs are sufficient to attain project goals and reasonable in relation to the objectives and design of the project.

(d) *Quality of Evaluation.* In determining the quality of the project evaluation, the Secretary considers the extent to which the applicant's evaluation plan—

(1) Includes the use of strong and measurable performance objectives (that are clearly related to the goals of the project) for raising student achievement, increasing teacher and principal effectiveness, and retaining and recruiting effective teachers and principals;

(2) Will produce evaluation data that are quantitative and qualitative; and

(3) Includes adequate evaluation procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

Final Priorities, Requirements, Definition, and Selection Criteria

We will announce the final priorities, requirements, definition, and selection criteria in a notice in the **Federal Register**. We will determine the final priorities, requirements, definition, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, requirements, definition, and selection criteria, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments, or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement 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. Pursuant to the Executive Order, it has been determined that this regulatory action will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through the TIF program will exceed that amount. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of the Executive Order.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of this proposed regulatory action, we have determined that the benefits of the proposed priorities, requirements, definition, and selection criteria justify the costs.

We have determined, also, that this proposed regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Need for Federal Regulatory Action

The proposed priorities, requirements, definition, and selection criteria are needed to implement the TIF program. The Secretary does not believe that the statute, by itself, provides a sufficient level of detail to ensure that the program achieves the greatest national impact in promoting the development and implementation of teacher and school leader PBCSs. The authorizing and appropriations language is very brief and provides only broad parameters to govern the program. The priorities, requirements, definition, and selection criteria proposed in this notice would clarify the types of activities the Department seeks to fund, and permit the Department to evaluate proposed projects using selection criteria that are based on the purpose of the program and are closely aligned with the Secretary's priorities.

In the absence of specific selection criteria for the TIF program, the Department would use the general selection criteria in 34 CFR 75.210 of the Education Department General Administrative Regulations in selecting grant recipients. However, the Secretary does not believe the use of those general criteria would be appropriate for the Main TIF grant or TIF Evaluation competitions, because they do not focus on the development of PBCSs or activities most likely to increase the quality of teaching and school administration and improve educational outcomes for students.

Regulatory Alternatives Considered

The Department considered a variety of possible priorities, requirements, definitions, and selection criteria before deciding to propose those included in this notice. For example, the Department considered—

(1) Allowing applicants to propose to serve schools already served (or to be served) by current TIF grants, but chose to limit eligibility in order to expand the program to new schools.

(2) A variety of definitions for the term "high-need school" before proposing to define this term based on 50 percent eligibility for free- and reduced-lunch subsidies as the best means of focusing the program on turning around struggling schools in high-poverty areas. We are targeting our efforts to help the schools and students most in need.

(3) Restricting the range of approaches to implementing a PBCS that this competition would support, to individual-based, school-based, or group-based awards. However, we recognize that a combination of these approaches may best meet the needs of an applicant's high-need school or schools.

The proposed priorities, requirements, definitions, and selection criteria are those that the Secretary believes best capture the purpose of the TIF program while clarifying what he expects the program to accomplish and ensuring that program activities are aligned with other Presidential and Departmental priorities. The proposals also would provide eligible applicants with some flexibility in selecting activities to carry out the purposes of program. The Secretary believes that the proposals reflected in this notice appropriately balance the need to flesh out TIF programmatic requirements and provide the Department with the necessary tools to evaluate applications for TIF funding with the goal of providing applicants with sufficient flexibility to implement innovative approaches to PBCSs. We seek public comment on whether we have achieved an acceptable balance.

Summary of Costs and Benefits

The Secretary believes that the proposed priorities, requirements, definitions, and selection criteria would not impose significant costs on eligible States, LEAs, or nonprofit organizations that would receive assistance through the TIF program. The Secretary also believes that the benefits of implementing the proposals contained

in this notice outweigh any associated costs.

The Secretary believes that the proposed priorities, requirements, definitions, and selection criteria would result in selection of high-quality applications to implement activities that are most likely to improve the quality of teaching and educational administration. Through the regulatory action proposed in this notice, the Secretary seeks to provide clarity as to the scope of activities he expects to support with program funds and the expected burden of work involved in preparing an application and implementing a project under the program. A potential applicant would need to consider carefully the effort that would be required to prepare a strong application and its capacity to implement a project successfully.

The Secretary believes that the costs imposed on an applicant by the proposed priorities, requirements, definitions, and selection criteria would be largely limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by the applicant. This is because, during the project period, the costs of actually carrying out activities under a TIF grant would be paid for with program funds and any matching funds. Thus, the costs of implementing a TIF project or evaluation using these proposed priorities, requirements, definition, and selection criteria would not be a burden for any eligible applicants, including small entities.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed regulatory action. This table provides our best estimate of the Federal payments to be made to States, LEAs, and nonprofit organizations under this program as a result of this proposed regulatory action. This table is based on funds available for new awards under this program from the ARRA supplemental appropriation and the fiscal year 2010 appropriation. Expenditures are classified as transfers to those entities.

Accounting Statement Classification of Estimated Expenditures

Category	Transfers (in millions)
Annual Monetized Transfers.	$439.0.
From Whom to Whom	Federal Government to States, LEAs, and nonprofits.

Paperwork Reduction Act of 1995

The requirements and selection criteria proposed in this notice would require the collection of information that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

We estimate that each applicant would spend approximately 248 hours of staff time to address the requirements and selection criteria, prepare the application, and obtain necessary clearances. Based on the number of applications the Department received in the first competition it held (in FY 2006), we expect to receive approximately 120 applications for these funds. The total number of hours for all expected applicants is an estimated 29,760 hours. We estimate the total cost per hour of the applicant-level staff who carry out this work to be $30 per hour. The total estimated cost for all applicants would be $892,800.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action may affect are (1) small LEAs, and (2) nonprofit organizations applying for and receiving funds under this program in partnership with an LEA or SEA. The Secretary believes that the costs imposed on an applicant by the proposed priorities, requirements, definition, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by the applicant.

Participation in the TIF program is voluntary. For this reason, the proposed priorities, requirements, definitions, and selection criteria would impose no burden on small entities unless they applied for funding under a TIF program using the priorities, requirements, definition and selection criteria proposed in this notice. We expect that in determining whether to apply for TIF funds, an eligible entity would evaluate the requirements of preparing an application and implementing a TIF project, and any associated costs, and weigh them against the benefits likely to be achieved by implementing the TIF project. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application and implementing a project. The likely benefits of applying for a TIF program grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of its TIF application to spur development and implementation of PBCSs without Federal funding through the TIF program.

The U.S. Small Business Administration (SBA) Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. The Urban Institute's National Center for Charitable Statistics reported that of 203,635 nonprofit organizations that had an educational mission and reported revenue to the Internal Revenue Service (IRS) by July 2009, 200,342 (over 98 percent) had revenues of less than $5 million. In addition, there are 12,484 LEAs in the country that meet the SBA's definition of small entity. While these entities are eligible to apply for funding under the TIF program, the Secretary believes that only a small number of them will be interested in applying, thus reducing the likelihood that the priorities, requirements, definitions and selection criteria proposed in this notice would have a significant economic impact on small entities. In the first TIF competition that the Department held in FY 2006, approximately 21 nonprofit organizations applied for funding in partnership with an LEA or SEA, and few of these organizations appeared to be a small entity. The Secretary has no reason to believe that a future competition under this program would be different. To the contrary, we expect that the competitions run under Public Law 111–8 and ARRA will be similar to the FY 2006 competition because only a limited number of nonprofit organizations are working actively on the development of teacher and school leader PBCSs and many of these organizations are larger organizations.

In addition, the Secretary believes that the priorities, requirements,

definitions, and selection criteria proposed in this notice do not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

Further, this proposed regulatory action may help a small entity determine whether it has the interest, need, or capacity to implement activities under the program and, thus, prevent a small entity that does not have such an interest, need, or capacity from absorbing the burden of applying.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program and with any matching funds provided by private-sector partners.

The Secretary invites comments from small nonprofit organizations and small LEAs as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, requests evidence to support that belief.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact.*

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 22, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–3963 Filed 2–25–10; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0928; EPA–R05–OAR–2010–0046; FRL–9116–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Indiana; Redesignation of the Ohio and Indiana Portions of the Cincinnati-Hamilton Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the requests of Ohio and Indiana to redesignate the Ohio and Indiana portions of the Cincinnati-Hamilton, OH-KY-IN 8-hour ozone nonattainment area, "the Cincinnati-Hamilton area," to attainment for that standard, because these requests meet the statutory requirements for redesignation under the Clean Air Act (CAA). The Ohio Environmental Protection Agency (Ohio EPA) and the Indiana Department of Environmental Management (IDEM) submitted these requests on December 14, 2009, and January 21, 2010, respectively. (EPA will address the Kentucky portion of the Cincinnati-Hamilton area in a separate rulemaking action.)

These proposed approvals involve several related actions. EPA is proposing to determine that the Cincinnati-Hamilton area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Cincinnati-Hamilton area includes Butler, Clermont, Clinton, Hamilton, and Warren Counties in Ohio, Lawrenceburg Township in Dearborn County, Indiana, and Boone, Campbell, and Kenton Counties in Kentucky. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2007–2009 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. EPA is also proposing to approve, as revisions to the Ohio and Indiana State Implementation Plans (SIPs), the States' plans for maintaining the 8-hour ozone NAAQS through 2020 in the area.

EPA is proposing to approve the 2002 base year emissions inventory submitted by IDEM on June 13, 2007, as meeting the base year emissions inventory requirement of the CAA for the Indiana portion of the Cincinnati-Hamilton area. EPA is proposing to approve the 2005 base year emissions inventory submitted by Ohio EPA as part of its redesignation request as meeting the base year emissions inventory requirements of the CAA for the Ohio portion of the Cincinnati-Hamilton area. Finally, EPA finds adequate and is proposing to approve the States' 2015 and 2020 Motor Vehicle Emission Budgets (MVEBs) for the Ohio and Indiana portion of the Cincinnati-Hamilton area.

DATES: Comments must be received on or before March 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0928 and EPA–R05–OAR–2010–0046, by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.
2. *E-mail: damico.genevieve@epa.gov.*
3. *Fax:* (312) 692–2511.
4. *Mail:* Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand delivery:* Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0928 and EPA–R05–OAR–2010–0046. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of this document, "What Should I Consider as I Prepare My Comments for EPA?"

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

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I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Proposing To Take?

EPA is proposing to take several related actions. EPA is proposing to determine that the Cincinnati-Hamilton nonattainment area has attained the 1997 8-hour ozone standard and that the Ohio and Indiana portions of this area have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve requests from Ohio EPA and IDEM to change the legal designation of the Ohio and Indiana portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve, as revisions to the Ohio and Indiana SIPs, the States' maintenance plans (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plans are designed to keep the Cincinnati-Hamilton area in attainment of the ozone NAAQS through 2020. EPA is proposing to approve the 2005 base year emissions inventory for the Ohio portion of the Cincinnati-Hamilton area, and the 2002 base year emissions inventory for Dearborn County, Indiana, as meeting the requirements of section 172(c)(3) of the CAA. If EPA's determination of attainment is finalized, under the provisions of 40 CFR 51.918, the requirement to submit certain planning SIPs related to attainment (the Reasonably Available Control Measure (RACM) requirement of section 172(c)(1) of the CAA, the Reasonable Further Progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) are not applicable to the area as long as it continues to attain the NAAQS and would cease to be applicable upon redesignation. In addition, as set forth in more detail below, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. Finally, EPA finds adequate and is proposing to approve the newly established 2015 and 2020 MVEBs for the Ohio and Indiana portion of the Cincinnati-Hamilton area. The adequacy comment period for the MVEBs began on December 10, 2009, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*). The adequacy comment period for these MVEBs ended on January 11, 2010. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. In letters dated January 14, 2010, EPA informed Ohio EPA and IDEM that we had found the 2015 and 2020 MVEBs to be adequate for use in transportation conformity analyses. Please *see* section VI. B. of this rulemaking, "Adequacy of the MVEBs," for further explanation of

this process. Therefore, we find adequate, and are proposing to approve, the States' 2015 and 2020 MVEBs for transportation conformity purposes.

III. What Is the Background for These Actions?

A. What Is the General Background Information?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56813), the Cincinnati-Hamilton area was designated as a moderate nonattainment area under the 1-hour ozone NAAQS. Dearborn County, Indiana, was not included as part of the Cincinnati-Hamilton area, and was designated as attainment/unclassifiable under the 1-hour standard. The Ohio portion of the Cincinnati-Hamilton area was subsequently redesignated to attainment of the 1-hour standard effective June 14, 2005. (*See* 70 FR 35946, published June 21, 2005). This attainment designation was thus in effect at the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts (ppm). On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in Title I, part D, of the CAA; 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas.

Under EPA's implementation rule for the 1997 8-hour ozone standard, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.* the three-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Cincinnati-Hamilton area was designated as a subpart 1, 8-hour ozone nonattainment area by EPA on April 30, 2004 (69 FR 23857, 23900, 23905, and 23926), based on air quality monitoring data from 2001–2003 (69 FR 23860).

40 CFR 50.10 and 40 CFR part 50, Appendix I provide that the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. *See* 40 CFR part 50, Appendix I, 2.3(d).

The Ohio EPA and IDEM submitted requests to redesignate the Ohio and Indiana portions of the Cincinnati-Hamilton area to attainment for the 8-hour ozone standard on December 14, 2009, and January 21, 2010, respectively. The redesignation requests included three years of complete, quality-assured data for the period of 2007 through 2009, indicating the 8-hour NAAQS for ozone, as promulgated in 1997, had been attained for the Cincinnati-Hamilton area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard, and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. In May 2008, States, environmental groups and industry groups filed petitions with the DC Circuit Court of Appeals for review of the 2008 ozone standards. In March 2009, the court granted EPA's request to stay the litigation so EPA could review the standards and determine whether they should be reconsidered. On September 16, 2009, we announced that we are reconsidering our 2008 decision setting national standards for ground-level ozone. The designation process for that standard has been stayed. On January 6, 2010, EPA proposed to set the level of the primary 8-hour ozone standard within the range of 0.060 to 0.070 ppm, rather than at 0.075 ppm. We expect by August 2010 to have completed our reconsideration of the standard and also expect that thereafter we will proceed with designations. The actions addressed in today's proposed rulemaking relate only to the 1997 8-hour ozone standard.

B. What Are the Impacts of the December 22, 2006, and June 8, 2007, United States Court of Appeals Decisions Regarding EPA's Phase 1 Implementation Rule?

1. Summary of Court Decision

On December 22, 2006, in *South Coast Air Quality Management Dist.* v. *EPA,* the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. *Id.,* Docket No. 04 1201. Therefore, several provisions of the Phase 1 Rule remain effective: Provisions related to classifications for areas currently classified under subpart 2 of Title I, part D, of the CAA as 8-hour nonattainment areas; the 8-hour attainment dates; and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS. The June 8, 2007, decision also left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8, 2007, decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8, 2007, decision

clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation or prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. In its January 16, 2009, proposed rulemaking in response to the South Coast decision, EPA has proposed to classify Cincinnati-Hamilton under subpart 2 as a moderate area. 74 FR 2936, 2944. If EPA finalizes this rulemaking, the requirements under subpart 2 will become applicable when they are due, a deadline that EPA has proposed to be one year after the effective date of a final rulemaking classifying areas as moderate or marginal. 74 FR 2940–2941. Although a future final decision by EPA to classify this area under subpart 2 would trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any requirements that might be applied in the future.

First, at the time the redesignation request was submitted, the Cincinnati-Hamilton area was not classified under subpart 2, nor were there any subpart 2 requirements yet due for this area. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. *See* September 4, 1992, Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). *See also* Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004), which upheld EPA's redesignation rulemaking applying this interpretation. *See, e.g. also* 68 FR 25418, 25424, 25427 (May 12, 2003) (Redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking. In *Sierra Club* v. *Whitman,* 285 F. 3d 63 (D.C. Cir. 2002), the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: "Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it, for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request.

3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Cincinnati-Hamilton area was an attainment area subject to a CAA section 175A maintenance plan under the 1-hour standard. The DC Circuit's decisions with respect to 1-hour nonattainment anti-backsliding requirements do not impact redesignation requests for these types of areas, except to the extent that the Court in its June 8, 2007, decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Cincinnati-Hamilton area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus, the decision in South Coast Air Quality Management Dist. would not preclude EPA from finalizing the redesignation of this area.

IV. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

"Ozone and Carbon Monoxide Design Value Calculations," Memorandum from William G. Laxton, Director Technical Support Division, June 18, 1990;

"Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

"Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,"

Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

"Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

"State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

"Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

"State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

"Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, November 30, 1993.

"Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

"Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

V. What Is the Effect of These Actions?

Approval of the redesignation requests would change the official designation of the Ohio and Indiana portions of the Cincinnati-Hamilton area for the 1997 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Ohio and Indiana SIPs, plans for maintaining the 8-hour ozone NAAQS through 2020. The maintenance plans include contingency measures as required under CAA section 175A to remedy future violations of the 8-hour NAAQS. They also establish MVEBs for the Ohio and Indiana portions of the Cincinnati-Hamilton area of 31.73 and 28.82 tons per day (tpd) VOC and 49.00 and 34.39 tpd NO_X for the years 2015 and 2020, respectively.

VI. What Is EPA's Analysis of the Request?

A. Attainment Determination and Redesignation

EPA is proposing to determine that the Cincinnati-Hamilton area has attained the 1997 8-hour ozone standard and that the area has met all other applicable redesignation criteria under CAA section 107(d)(3)(E). The basis for EPA's proposed approvals of the redesignation requests is as follows:

1. The Area Has Attained the 8-hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make a determination that the Cincinnati-Hamilton area has attained the 1997 8-hour ozone NAAQS. An area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and part 50, Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA's Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Ohio and Indiana included in their redesignation requests ozone monitoring data for the 2007 to 2009 ozone seasons. Monitoring data for 2007 and 2008 have been certified by the States; 2009 data has not yet been certified. However, Ohio and Kentucky have quality-assured all of the ambient monitoring data in accordance with 40 CFR 58.10, and have recorded it in the AQS database. (There are no monitoring locations in Dearborn County, Indiana.) The data meet the completeness criteria in 40 CFR 50, Appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each three-year period. Monitoring data are presented in Table 1 below.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND THREE YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS

State	County	Monitor	2007 4th high (ppm)	2008 4th high (ppm)	2009 4th high (ppm)	2007–2009 average (ppm)
Ohio	Butler	Hamilton 39–017–0004	0.091	0.071	0.073	0.078
		Middletown 39–017–1004	0.091	0.079	0.076	0.082
	Clermont	Batavia 39–025–0022	0.086	0.071	0.069	0.075
	Clinton	Wilmington 39–027–1002	0.082	0.076	0.070	0.076
	Hamilton	Grooms Rd., Cincinnati 39–061–0006	0.089	0.086	0.072	0.082

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND THREE YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS—Continued

State	County	Monitor	2007 4th high (ppm)	2008 4th high (ppm)	2009 4th high (ppm)	2007–2009 average (ppm)
		Cleves 39–061–0010	0.086	0.077	0.065	0.076
		250 Wm. Howard Taft, Cincinnati. 39–061–0040	0.086	0.080	0.074	0.080
	Warren	Lebanon 39–165–0007	0.088	0.082	0.077	0.082
Kentucky	Boone	KY 338 & Lower River Road 21–015–0003	0.078	0.064	0.064	0.068
	Campbell	Highland Heights 21–037–3002	0.086	0.075	0.068	0.076
	Kenton	Covington 21–117–0007	0.085	0.073	0.074	0.077

In addition, as discussed below with respect to the Ohio maintenance plan, Ohio EPA has committed to continue to operate an EPA-approved monitoring network as necessary to demonstrate ongoing compliance with the NAAQS. Ohio EPA commits to continue monitoring ozone at the sites indicated in Table 1 and to consult with EPA prior to making changes to the existing monitoring network, should changes become necessary in the future. Ohio EPA remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into AQS in accordance with Federal guidelines. Indiana does not operate any ozone monitors in Dearborn County, which contains Lawrenceburg Township, the Indiana portion of the Cincinnati-Hamilton area. In summary, EPA believes that the data show that the Cincinnati-Hamilton area has attained the 8-hour ozone NAAQS.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Ohio and Indiana have met all currently applicable SIP requirements for purposes of redesignation for the Cincinnati-Hamilton area under section 110 of the CAA (general SIP requirements). We are also proposing to determine that the Ohio and Indiana SIPs meet all SIP requirements currently applicable for purposes of redesignation under part D of Title I of the CAA (requirements specific to subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the base year emissions inventory, we have determined that the Ohio and Indiana SIPs are fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is proposing to approve Ohio's 2005 base year emissions inventory and Indiana's 2002 base year emissions inventory as meeting the section 172(c)(3) emissions inventory requirement.

In proposing these determinations, we have ascertained which SIP requirements are applicable to the area for purposes of redesignation, and have determined that there are SIP measures meeting those requirements and that they are fully approved under section 110(k) of the CAA. As discussed more fully below, for purposes of evaluating a redesignation request, SIPs must be fully approved only with respect to requirements that became due prior to the submission of the redesignation request.

The September 4, 1992, Calcagni memorandum (*see* "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a State and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the State's submittal of a complete redesignation request for the area. *See also* the September 17, 1993 Michael Shapiro memorandum and 60 FR 12459, 12465–12466 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the State's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (Redesignation of St. Louis).

Since EPA is proposing here to determine that the area has attained the 1997 8-hour ozone standard, under 40 CFR 51.918, if that determination is finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (c)(6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) would not be applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans * * * provides specific requirements for contingency measures that effectively

supersede the requirements of section 172(c)(9) for these areas. "General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum at 6 ("The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard").

a. The Ohio and Indiana Portions of the Cincinnati-Hamilton Area Have Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA

i. Section 110 General SIP Requirements

Section 110(a) of Title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a State must have been adopted by the State after reasonable public notice and hearing, and that, among other things, it includes enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provides for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provides for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; includes provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; includes criteria for stationary source emission control measures, monitoring, and reporting; includes provisions for air quality modeling; and provides for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address transport of air pollutants (NO_X SIP Call [1] and Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12, 2005)). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A State remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Ohio's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the Ohio SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.1870). Further, in submittals dated December 5, 2007 and September 19, 2008, Ohio confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard. EPA has not yet taken rulemaking action on these submittals; however, such approval is not necessary for redesignation.

We have also reviewed Indiana's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the Indiana SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.773). Further, in a submittal dated December 10, 2007, Indiana confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard. EPA has not yet taken rulemaking action on this submittal; however, such approval is not necessary for redesignation.

ii. Part D Requirements

EPA has determined that, if EPA finalizes the approval of the base year emissions inventories discussed in section VI.C. and D. of this rulemaking, the Ohio and Indiana SIPs will meet the applicable SIP requirements for their portions of the Cincinnati-Hamilton area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

Since the Cincinnati-Hamilton area was not classified under subpart 2 of Part D at the time its redesignation request was submitted, the subpart 2 requirements do not apply for purposes of evaluating the States' redesignation requests. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176.

Subpart 1 Section 172 Requirements

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Cincinnati-Hamilton area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

[1] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 States to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP Call, both Ohio EPA and IDEM have developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, major cement kilns, and internal combustion engines. EPA approved Ohio's rules as fulfilling Phase I of the NO_X SIP Call on August 5, 2003 (68 FR 46089) and June 27, 2005 (70 FR 36845), and as meeting Phase II of the NO_X SIP Call on February 4, 2008 (73 FR 6427). EPA approved Indiana's rules as fulfilling requirements of Phase I of the NO_X SIP Call on November 8, 2001 (66 FR 56465) and December 11, 2003 (68 FR 69025), and as meeting Phase II of the NO_X SIP Call on October 1, 2007 (72 FR 55664).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the national primary ambient air quality standards. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. On June 15, 2007 and April 22, 2008, Ohio EPA submitted an attainment demonstration and identified the control measures necessary to attain the NAAQS in the Cincinnati-Hamilton area. Indiana submitted an attainment demonstration for the Cincinnati-Hamilton area on June 13, 2007. However, because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. 40 CFR 51.918. If EPA finalizes approval of the redesignation of the Ohio and Indiana portions of the Cincinnati-Hamilton area, EPA will take no further action on the attainment demonstrations submitted by Ohio and Indiana for the area.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Cincinnati-Hamilton area has monitored attainment of the ozone NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. In addition, because the Cincinnati-Hamilton area has attained the ozone NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. Id.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. As part of Ohio's redesignation request for the Cincinnati-Hamilton area, the State submitted a 2005 base year emissions inventory. As discussed below in section VI.C., EPA is proposing to approve the 2005 base year inventory that Ohio submitted with the redesignation request as meeting the section 172(c)(3) emissions inventory requirement. As part of Indiana's June 13, 2007, attainment demonstration submittal for the Cincinnati-Hamilton area, IDEM included a 2002 base year emissions inventory. As discussed below in section VI.D., EPA is proposing to approve Indiana's 2002 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Ohio and Indiana have demonstrated that the Cincinnati-Hamilton area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the States need not have fully approved part D NSR programs prior to approval of the redesignation request. The States' PSD programs will become effective in the Cincinnati-Hamilton area upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Ohio and Indiana SIPs meet the requirements of section 110(a)(2) applicable for purposes of redesignation.

Subpart 1 Section 176 Conformity Requirements

Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if State rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. *See also* 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Ohio's general and transportation conformity SIPs on March 11, 1996 (61 FR 9646), and May 30, 2000 (65 FR 34395), respectively. Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEALU), which was signed into law on August 10, 2005 (Pub. L. 109–59). Among the changes Congress made to this section of the CAA was to streamline the requirements for State conformity SIPs. Ohio is in the process of updating its transportation conformity SIP to meet these new requirements. EPA approved Indiana's general conformity SIP on January 14, 1998 (63 FR 2146). Indiana does not have a Federally-approved transportation conformity SIP. However, conformity analyses are performed pursuant to EPA's Federal conformity rules. Ohio and Indiana have submitted onroad motor vehicle budgets for the Ohio and Indiana portion of the

Cincinnati-Hamilton area of 31.73 and 28.82 tpd VOC and 49.00 and 34.39 tpd NO_X for the years 2015 and 2020, respectively. The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

b. The Ohio and Indiana Portions of the Cincinnati-Hamilton Area Have Fully Approved Applicable SIPs Under Section 110(k) of the CAA

If EPA issues a final approval of the base year emissions inventories, EPA will have fully approved the Ohio and Indiana SIPs for the Cincinnati-Hamilton area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*See* page 3 of the September 4, 1992, John Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio and Indiana have adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under the 1-hour ozone standard. In this action, EPA is proposing to approve Ohio's 2005 base year emissions inventory and Indiana's 2002 base year emissions inventory for the Cincinnati-Hamilton area as meeting the requirement of section 172(c)(3) of the CAA. No Cincinnati-Hamilton area SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. The Improvement in Air Quality is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA finds that Ohio and Indiana have demonstrated that the observed air quality improvement in the Cincinnati-Hamilton area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIPs, Federal measures, and other State-adopted measures.

In making this demonstration, Ohio EPA and IDEM have calculated the change in emissions between 2005 and 2008. Ohio and Indiana are using 2005 base year emissions inventories developed in conjunction with the Lake Michigan Air Directors Consortium (LADCO) as the nonattainment inventories. The States developed an attainment inventory for 2008, one of the years the Cincinnati-Hamilton area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Cincinnati-Hamilton and upwind areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

i. Stationary Source NO_X Rules

Ohio EPA and IDEM have developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, major cement kilns, and internal combustion engines. EPA approved Ohio's rules as fulfilling Phase I of the NO_X SIP Call on August 5, 2003 (68 FR 46089), and June 27, 2005 (70 FR 36845), and as fulfilling Phase II of the SIP Call on February 4, 2008 (73 FR 6427). EPA approved Indiana's rules as fulfilling requirements of Phase I of the NO_X SIP Call on November 8, 2001 (66 FR 56465), and December 11, 2003 (68 FR 69025), and as meeting Phase II of the NO_X SIP Call on October 1, 2007 (72 FR 55664). Ohio and Indiana began complying with Phase I of this rule in 2004. Compliance with Phase II of the SIP Call, which requires the control NO_X emissions from large internal combustion engines, began in both Ohio and Indiana in 2007, and was projected to result in an 82 percent NO_X reduction from 1995 levels.

ii. Federal Emission Control Measures

Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_X emission reductions will occur nationwide: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent); and, larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Some of these emission reductions occurred by the attainment years (2007–2009) and additional emission reductions will occur during the maintenance period.

Heavy-Duty Diesel Engine Rule. EPA issued this rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which further reduced the highway diesel fuel sulfur content to 15 parts per million, leading to additional reductions in combustion NO_X and VOC emissions. This rule is expected to achieve a 95 percent reduction in NO_X emissions from diesel trucks and busses.

Non-Road Diesel Rule. EPA issued this rule in 2004. This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_X emissions from non-road diesel engines by up to 90 percent. This rule is currently achieving emission reductions, but will not be fully implemented until 2010.

iii. Control Measures in Upwind Areas

On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 States to reduce emissions of NO_X. Affected States were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. The reduction in NO_X emissions has resulted in lower concentrations of transported ozone entering the Cincinnati-Hamilton area. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable.

b. Emission Reductions

Ohio and Indiana are using 2005 base year emissions inventories developed in conjunction with the LADCO as the nonattainment inventories. The main purpose of LADCO is to provide technical assessments for and assistance to its member States on problems of air quality. LADCO's primary geographic focus is the area encompassed by its member States (Illinois, Indiana, Michigan, Ohio and Wisconsin) and any areas which affect air quality in its member States. In developing the 2005 nonattainment year inventory, Ohio EPA and IDEM provided point and area source inventories to LADCO. LADCO processed these inventories through the Emission Modeling System (EMS) to

generate summer weekday emissions for VOC and NO_X. The point source data provided to LADCO is a combination of EPA's EGU inventory and source specific data reported to Ohio EPA and IDEM for non-EGU sources. Area source emissions were estimated by Ohio EPA and IDEM using published Emission Inventory Improvement Program methodologies or methodologies shared by other States. The methodology used for each area source category was documented. Nonroad mobile emissions were generated for LADCO using EPA's National Mobile Inventory Model (NMIM), with the following exceptions: Recreational motorboat populations and spatial surrogates were updated; emissions estimates were developed for commercial marine vessels, aircraft, and railroads, three nonroad categories not included in NMIM. The States and LADCO also developed emissions inventories for 2009 and 2018 using similar methodologies. Onroad mobile emissions were prepared by the Ohio, Kentucky and Indiana Council of Governments (OKI) using the MOBILE6.2 emissions model. Ohio has submitted this 2005 emissions inventory to meet the requirement for a base year emissions inventory pursuant to section 172(c)(3) of the CAA.

Ohio and Indiana are using 2008 for the attainment year inventory. Ohio EPA used growth factors provided by LADCO to project the area and nonroad source sectors of the 2005 base year inventory to 2008. IDEM used the 2005 nonattainment inventory and the 2009 emissions inventory prepared in conjunction with LADCO to extrapolate 2008 emissions for the area and nonroad mobile source sectors. Point source emissions for 2008 were compiled from Ohio EPA's 2008 annual emissions inventory database, IDEM's 2008 annual emissions statement database, and EPA's Clean Air Markets database. Onroad mobile emissions were calculated for 2008 by OKI using the MOBILE6.2 emissions model.

Using the inventories described above, as well as emissions inventories provided by Kentucky, Ohio and Indiana have documented changes in VOC and NO_X emissions from 2005 to 2008 for the Cincinnati-Hamilton area. Emissions data are shown in Tables 2 through 5 below.

TABLE 2—CINCINNATI-HAMILTON AREA VOC AND NO_X EMISSIONS FOR NONATTAINMENT YEAR 2005 (TPD)

County	VOC					NO_X				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Butler	3.67	11.96	9.94	6.88	32.45	15.91	2.15	18.88	10.25	47.19
Clermont	0.73	6.98	6.86	4.33	18.90	43.11	1.65	13.04	5.03	62.83
Clinton	0.00	3.24	3.02	1.77	8.03	0.00	0.42	5.07	2.26	7.75
Hamilton	2.94	33.04	29.47	17.45	82.90	21.95	5.19	56.51	20.57	104.22
Warren	0.53	8.40	7.97	4.79	21.69	2.68	1.15	15.15	6.10	25.08
Dearborn, IN	3.24	2.07	1.00	0.82	7.13	30.40	0.26	1.44	1.26	33.36
Boone, KY	2.57	8.13	4.33	1.71	16.74	23.94	4.99	10.27	12.96	52.16
Campbell, KY	0.25	4.77	2.52	1.76	9.30	0.00	1.41	5.98	6.33	13.72
Kenton, KY	1.20	8.53	4.32	2.33	16.38	0.04	4.17	10.39	8.43	23.03
OH-IN Total	11.11	65.69	58.26	36.04	171.10	114.05	10.82	110.09	45.47	280.43
Area Total	15.13	87.12	69.43	41.84	213.52	138.03	21.39	136.73	73.19	369.34

TABLE 3—CINCINNATI-HAMILTON VOC AND NO_X EMISSIONS FOR ATTAINMENT YEAR 2008 (TPD)

County	VOC					NO_X				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Butler	2.80	10.31	7.87	5.68	26.66	13.40	2.18	16.05	8.89	40.52
Clermont	0.36	6.05	5.42	3.68	15.51	22.79	1.67	11.05	4.22	39.73
Clinton	0.00	2.85	2.33	1.65	6.83	0.00	0.43	3.87	2.01	6.31
Hamilton	3.09	28.80	22.70	14.66	69.25	19.09	5.27	46.80	17.21	88.37
Warren	0.82	7.30	6.26	4.10	18.48	3.14	1.17	12.76	5.19	22.26
Dearborn, IN	3.58	2.42	0.75	0.74	7.49	30.55	0.26	1.14	1.14	33.09
Boone, KY	2.81	8.41	4.00	5.07	20.29	23.27	5.02	8.53	11.02	47.84
Campbell, KY	0.28	4.34	2.29	1.51	8.42	0.02	1.32	4.88	5.34	11.56
Kenton, KY	1.17	7.88	3.85	1.95	14.85	0.03	4.06	8.37	7.33	19.79
OH-IN Total	10.65	57.73	45.33	30.51	144.22	88.97	10.98	91.67	38.66	230.28
Area Total	14.91	78.36	55.47	39.04	187.78	112.29	21.38	113.45	62.35	309.47

TABLE 4—COMPARISON OF 2005 AND 2008 VOC AND NO_X EMISSIONS FOR THE OHIO AND INDIANA PORTION OF THE CINCINNATI-HAMILTON AREA (TPD)

	VOC			NO_X		
	2005	2008	Net change (2005–2008)	2005	2008	Net change (2005–2008)
Point	11.11	10.65	−0.46	114.05	88.97	−25.08
Area	65.69	57.73	−7.96	10.82	10.98	0.16
Onroad	58.26	45.33	−12.93	110.09	91.67	−18.42
Nonroad	36.04	30.51	−5.53	45.47	38.66	−6.81

TABLE 4—COMPARISON OF 2005 AND 2008 VOC AND NO_X EMISSIONS FOR THE OHIO AND INDIANA PORTION OF THE CINCINNATI-HAMILTON AREA (TPD)—Continued

	VOC			NO_X		
	2005	2008	Net change (2005–2008)	2005	2008	Net change (2005–2008)
Total	171.10	144.22	−26.88	280.43	230.28	−50.15

TABLE 5—COMPARISON OF 2005 AND 2008 VOC AND NO_X EMISSIONS FOR THE ENTIRE CINCINNATI-HAMILTON AREA (TPD)

	VOC			NO_X		
	2005	2008	Net change (2005–2008)	2005	2008	Net change (2005–2008)
Point	15.13	14.91	−0.22	138.03	112.29	−25.74
Area	87.12	78.36	−8.76	21.39	21.38	−0.01
Onroad	69.43	55.47	−13.96	136.73	113.45	−23.28
Nonroad	41.84	39.04	−2.80	73.19	62.35	−10.84
Total	213.52	187.78	−25.74	369.34	309.47	−59.87

Table 4 shows that the Ohio and Indiana portion of the Cincinnati-Hamilton area reduced VOC emissions by 26.88 tpd and NO_X emissions by 50.15 tpd between 2005 and 2008. As shown in Table 5, the entire Cincinnati-Hamilton area reduced VOC emissions by 25.74 tpd and NO_X emissions by 59.87 tpd between 2005 and 2008. Based on the information summarized above, Ohio and Indiana have adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with their requests to redesignate the Cincinnati-Hamilton nonattainment area to attainment status, Ohio and Indiana submitted SIP revisions to provide for the maintenance of the 8-hour ozone NAAQS in the area through 2020.

a. Maintenance Plan Requirements

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: The attainment VOC and NO_X emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The Ohio EPA and IDEM developed emissions inventories for 2008, one of the years used to demonstrate monitored attainment of the 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 3, above.

c. Demonstration of Maintenance

Along with the redesignation requests, Ohio EPA and IDEM submitted revisions to the Ohio and Indiana 8-hour ozone SIPs to include maintenance plans for the Cincinnati-Hamilton area, in compliance with section 175A of the CAA. These demonstrations show maintenance of the 8-hour ozone standard through 2020 by showing that current and future emissions of VOC and NO_X for the Cincinnati-Hamilton area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio and Indiana are using emissions inventory projections for the years 2015 and 2020 to demonstrate maintenance. OKI calculated onroad emissions for 2015 and 2020 using the MOBILE6.2 emissions model. Emissions estimates for the remaining source categories were based on future year inventories developed by the States and LADCO for the years 2009 and 2018. (*See* section VI.A.3.b., above.) The 2015 interim year emissions were estimated based on the 2009 and 2018 inventories, using growth factors provided by LADCO. The 2020 maintenance year emissions were estimated by applying growth factors provided by LADCO to the 2018 inventory.

Ohio is in the process of revising its State rules for its Best Available Technology (BAT) minor source permitting program. As discussed above, a State can demonstrate maintenance of the standard by showing that future emissions of VOC and NO_X for the area remain at or below attainment year emission levels. Ohio EPA's emissions projections for this maintenance plan assume no emissions benefits from implementation of the BAT program. The LADCO growth factors used to project future emissions were developed using techniques consistent among the LADCO States and assume implementation of no minor

source permitting programs for any State, including Ohio. The emission projections show that Ohio EPA does not expect emissions in the Cincinnati-Hamilton area to exceed the level of the 2008 attainment year inventory during the maintenance period. Ohio's maintenance plan demonstrates that the area can maintain the standard through 2020 applying standard growth factors and without the BAT program. EPA believes that Ohio has provided adequate demonstration of maintenance, and that any changes to the BAT program should not impact the Cincinnati-Hamilton area's ability to attain or maintain the 1997 8-hour ozone NAAQS. Therefore, the issues associated with the BAT program are not being considered for purposes of this redesignation. Nothing in this rule or redesignation is intended to affect the SIP approvability or non-approvability of any revised Ohio BAT rules, and EPA will evaluate the approvability of such rules when Ohio submits them. Emissions data are shown in Tables 6–9, below.

TABLE 6—CINCINNATI-HAMILTON AREA VOC AND NO_X EMISSIONS FOR INTERIM YEAR 2015 (TPD)

County	VOC					NO_X				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Butler	4.27	9.76	4.87	4.95	23.85	14.84	2.19	7.55	5.91	30.49
Clermont	0.78	5.74	3.29	3.13	12.94	50.23	1.67	5.10	2.76	59.76
Clinton	0.00	2.72	1.47	1.26	5.45	0.00	0.43	2.02	1.39	3.84
Hamilton	3.28	27.38	13.44	12.70	56.80	35.71	5.30	21.11	11.18	73.30
Warren	0.57	6.94	4.02	3.39	14.92	2.70	1.17	6.23	3.22	13.32
Dearborn, IN	3.95	1.79	0.50	0.62	6.86	30.42	0.27	0.60	0.78	32.07
Boone, KY	3.04	8.50	3.17	4.55	19.26	25.08	5.03	4.63	9.77	44.51
Campbell, KY	0.30	4.20	l.74	1.29	7.53	0.02	1.30	2.54	4.57	8.43
Kenton, KY	1.31	7.66	2.85	1.76	13.58	0.03	4.02	4.23	6.15	14.43
OH-IN Total	12.85	54.33	27.59	26.05	120.82	133.90	11.03	42.61	25.24	212.78
Area Total	17.50	74.69	35.35	33.65	161.19	159.03	21.38	54.01	45.73	280.15

TABLE 7—CINCINNATI-HAMILTON AREA VOC AND NO_X EMISSIONS FOR MAINTENANCE YEAR 2020 (TPD)

County	VOC					NO_X				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Butler	4.58	9.76	4.50	4.80	23.64	14.86	2.19	5.37	4.64	27.06
Clermont	0.80	5.74	3.04	2.96	12.54	51.65	1.67	3.63	2.17	59.12
Clinton	0.00	2.72	1.22	1.08	5.02	0.00	0.43	1.41	1.13	2.97
Hamilton	3.43	27.38	12.00	12.19	55.00	36.69	5.30	14.44	8.73	65.16
Warren	0.57	6.94	3.88	3.15	14.54	2.70	1.17	4.63	2.38	10.88
Dearborn, IN	4.15	1.79	0.42	0.60	6.96	31.22	0.27	0.42	0.65	32.56
Boone, KY	3.20	8.50	2.96	4.36	19.02	26.47	5.03	3.45	9.48	44.43
Campbell, KY	0.31	4.20	1.55	1.22	7.28	0.03	1.30	1.81	4.34	7.48
Kenton, KY	1.42	7.66	2.56	1.73	13.37	0.03	4.02	3.01	5.75	12.81
OH-IN Total	13.53	54.33	25.06	24.78	117.70	137.12	11.03	29.90	19.70	197.75
Area Total	18.46	74.69	32.13	32.09	157.37	163.65	21.38	38.17	39.27	262.47

TABLE 8—COMPARISON OF 2008, 2015 AND 2020 VOC AND NO_X EMISSIONS FOR THE OHIO AND INDIANA PORTION OF THE CINCINNATI-HAMILTON AREA (TPD)

	VOC					NO_X				
	2008	2015	2020	Net change (2008–2015)	Net change (2008–2020)	2008	2015	2020	Net change (2008–2015)	Net change (2008–2020)
Point	10.65	12.85	13.53	2.20	2.88	88.97	133.90	137.12	44.93	48.15
Area	57.73	54.33	54.33	−3.40	−3.40	10.98	11.03	11.03	0.05	0.05
Onroad	30.51	27.59	25.06	−2.92	−5.45	91.67	42.61	29.90	−49.06	−61.77
Nonroad	45.33	26.05	24.78	−19.28	−20.55	38.66	25.24	19.70	−13.42	−18.96
Total	144.22	120.82	117.70	−23.40	−26.52	230.28	212.78	197.75	−17.50	−32.53

TABLE 9—COMPARISON OF 2008, 2015 AND 2020 VOC AND NO_X EMISSIONS FOR THE ENTIRE CINCINNATI-HAMILTON AREA (TPD)

	VOC					NO_X				
	2008	2015	2020	Net change (2008–2015)	Net change (2008–2020)	2008	2015	2020	Net change (2008–2015)	Net change (2008–2020)
Point	14.91	17.50	18.46	2.59	3.55	112.29	159.03	163.65	46.74	51.36
Area	78.36	74.69	74.69	−3.67	−3.67	21.38	21.38	21.38	0.00	0.00
Onroad	55.47	35.35	32.13	−20.12	−23.34	113.45	54.01	38.17	−59.44	−75.28
Nonroad	39.04	33.65	32.09	−5.39	−6.95	62.35	45.73	39.27	−16.62	−23.08
Total	187.78	161.19	157.37	−26.59	−30.41	309.47	280.15	262.47	−29.32	−47.00

The emission projections show that Ohio, Indiana, and Kentucky do not expect emissions in the Cincinnati-Hamilton area to exceed the level of the 2008 attainment year inventory during the maintenance period, even without implementation of CAIR. (*See also* discussion below.) As shown in Table 8, VOC and NO_X emissions in the Ohio and Indiana portion of the Cincinnati-Hamilton area are projected to decrease by 26.52 tpd and 32.53 tpd, respectively, between 2008 and 2020. As shown in Table 9, VOC and NO_X emissions in the entire Cincinnati-Hamilton area are projected to decrease by 30.41 tpd and 47.00 tpd, respectively, between 2008 and 2020.

In addition, LADCO performed a regional modeling analysis to address the effect of the recent court decision vacating CAIR. This analysis is documented in LADCO's "Regional Air Quality Analyses for Ozone, PM2.5, and Regional Haze: Final Technical Support Document (Supplement), September 12, 2008." LADCO produced a base year inventory for 2005 and future year inventories for 2009, 2012, and 2018. To estimate future EGU NO_X emissions without implementation of CAIR, LADCO projected 2007 EGU NO_X emissions for all States in the modeling domain based on Energy Information Administration growth rates by State (North American Electric Reliability Corporation (NERC) region) and fuel type for the years 2009, 2012 and 2018. The assumed 2007–2018 growth rates were 8.8% for Illinois, Iowa, Missouri and Wisconsin; 13.5% for Indiana, Kentucky, Michigan and Ohio; and 15.1% for Minnesota. Emissions were adjusted by applying legally enforceable controls, *e.g.,* consent decree or rule. EGU NO_X emissions projections for the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin are shown below in Table 11. The emission projections used for the modeling analysis do not account for certain relevant factors such as allowance trading and potential changes in operation of existing control devices. The NO_X projections indicate that, due to the NO_X SIP Call, certain State rules, consent decrees resulting from enforcement cases, and ongoing implementation of a number of mobile source rules, EGU NO_X is not expected to increase in Ohio, Indiana, or any of the States in the immediate region, and overall NO_X emissions in Ohio, Indiana, and the nearby region are expected to decrease substantially between 2005 and 2020.[2] Total NO_X emissions projections are shown in Table 11, below.

TABLE 10—EGU NO_X EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR 2007, 2009, 2012, AND 2018

	2007	2009	2012	2018
EGU	1,582	1,552	1,516	1,524

TABLE 11—TOTAL NO_X EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR THE YEARS 2005, 2009, 2012, AND 2018

	2005	2009	2012	2018
Total NO_X	8,260	6,778	6,076	4,759

Given that 2007 is one of the years Ohio and Indiana used to demonstrate monitored attainment of the 8-hour NAAQS, Table 10 shows that EGU NO_X emissions will remain below attainment levels through 2018. If the rate of emissions increase between 2012 and 2018 continues through 2020, EGU NO_X emissions would still remain below attainment levels in 2020. Furthermore, as shown in Table 11, total NO_X emissions clearly continue to decrease substantially throughout the maintenance period.

Ozone modeling performed by LADCO supports the conclusion that the Cincinnati-Hamilton area will maintain the standard throughout the maintenance period. Peak modeled ozone levels in the area for 2009, 2012 and 2018 are 0.082 ppm, 0.081 ppm, and 0.078 ppm, respectively. These projected ozone levels were modeled applying only legally enforceable controls; *e.g.,* consent decrees, rules, the NO_X SIP Call, Federal motor vehicle control programs, *etc.* Because these programs will remain in place, emission levels, and therefore ozone levels, would not be expected to increase

[2] There is more uncertainty about the use of SO_2 allowances and future projections for SO_2 emissions; thus, further review and discussion will be needed regarding the appropriateness of using these emission projections for future PM2.5 SIP approvals and redesignation requests.

significantly between 2018 and 2020. Given that projected emissions and modeled ozone levels continue to decrease substantially through 2018, it is reasonable to infer that a 2020 modeling run would also show levels well below the 1997 8-hour ozone standard.

EPA has considered the relationship of the maintenance plans to the reductions required pursuant to CAIR. This rule was remanded to EPA, and the process of developing a replacement rule is ongoing. However, the remand of CAIR does not alter the requirements of the NO_X SIP Call, and Ohio and Indiana have demonstrated maintenance without any additional CAIR requirements (beyond those required by the NO_X SIP Call). Therefore, EPA believes that Ohio and Indiana's demonstration of maintenance under sections 175A and 107(d)(3)(E) is valid.

The NO_X SIP Call requires States to make significant, specific emissions reductions. It also provided a mechanism, the NO_X Budget Trading Program, which States could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_X Budget Trading Program, 40 CFR 51.121(r), but created another mechanism, the CAIR ozone season trading program, which States could use to meet their SIP Call obligations (70 FR 25289–90). EPA notes that a number of States, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that required sources to participate in the NO_X Budget Trading Program. In addition, because the provisions of CAIR, including the ozone season NO_X trading program, remain in place during the remand, EPA is not currently administering the NO_X Budget Trading Program. Nonetheless, all States, regardless of the current status of their regulations that previously required participation in the NO_X Budget Trading Program, will remain subject to all of the requirements in the NO_X SIP Call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including the statewide NO_X emission budgets, continue to apply after revocation of the 1-hour standard.

Indiana has submitted a SIP revision which would discontinue the allocation of NO_X allowances under the NO_X Budget Trading Program beginning in 2010. EPA has not yet acted on this SIP revision. Ohio currently retains the SIP provisions requiring sources to participate in the NO_X Budget Trading Program. Ohio EPA is in the process of promulgating a rule change stating that the NO_X Budget Trading Program would not be applicable so long as CAIR or its replacement remains in place. However, the drafted rule revision also provides that should CAIR requirements be removed and not replaced with another program, the NO_X Budget Trading Program would once again apply, on condition that EPA maintains a NO_X Budget Trading Program.

All NO_X SIP Call States have SIPs that currently satisfy their obligations under the SIP Call, the SIP Call reduction requirements are being met, and EPA will continue to enforce the requirements of the NO_X SIP Call even after any response to the CAIR remand. For these reasons, EPA believes that regardless of the status of the CAIR program, the NO_X SIP Call requirements can be relied upon in demonstrating maintenance. Here, Ohio and Indiana have demonstrated maintenance based in part on those requirements.

As part of their maintenance plans, the States elected to include a "safety margin" for the area. A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The Cincinnati-Hamilton area attained the 8-hour ozone NAAQS during the 2007–2009 time period. Ohio and Indiana used 2008 as the attainment level of emissions for the area. For the Ohio and Indiana portion of the Cincinnati-Hamilton area, the emissions from point, area, nonroad, and mobile sources in 2008 equaled 144.22 tpd of VOC. In the maintenance plans, Ohio EPA and IDEM projected emission levels for 2020. Ohio EPA and IDEM projected VOC emissions for the year 2020 to be 117.70 tpd of VOC. The SIP submissions demonstrate that the Cincinnati-Hamilton area will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 26.52 tpd of VOC for 2020. By this same method, 32.53 tpd (*i.e.,* 230.28 tpd less 197.75 tpd) is the safety margin for NO_X for 2020. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network

Indiana has no ozone monitor in Dearborn County. Ohio currently operates eight ozone monitors and Kentucky operates three monitors in the Cincinnati-Hamilton area. In its redesignation request, Ohio EPA has committed to continue to operate the ozone monitors. Further, Ohio EPA commits to consult with EPA prior to making changes to the existing monitoring network, should changes become necessary in the future. Ohio and Kentucky remain obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System in accordance with Federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Cincinnati-Hamilton area depends, in part, on the States' efforts toward tracking indicators of continued attainment during the maintenance period. Ohio's plan for verifying continued attainment of the 8-hour standard in the Cincinnati-Hamilton area consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. Ohio EPA and IDEM will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the State. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the State will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. *See* section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio and Indiana have adopted contingency plans for the Cincinnati-Hamilton area to address possible future ozone air quality problems. The contingency plans adopted by Ohio and Indiana have two levels of response, a warning level response and an action level response.

In Ohio's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.088 ppm or higher is monitored within the maintenance area. In Indiana's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.089 ppm or higher occurs in a single ozone season, or when a two-year average fourth high value of 0.085 ppm or greater occurs within the maintenance area. While the triggers selected by Ohio and Indiana differ slightly, both are acceptable. A warning level response will consist of Ohio EPA and IDEM conducting studies to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The studies will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The studies will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

In the plans submitted by both Ohio and Indiana, a violation of the standard (a three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration of 0.085 ppm or greater) in the maintenance area triggers an action level response. In Ohio's plan, an action level response is also triggered when a two-year average fourth high value of 0.085 ppm is monitored within the maintenance area. When an action level response is triggered, Ohio EPA and IDEM will determine what additional control measures are needed to assure future attainment of the ozone standard. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. Ohio EPA and IDEM may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

Ohio EPA included the following list of potential contingency measures in its maintenance plan:

i. Implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in Butler, Clermont, Hamilton and Warren Counties;

ii. Tighten or adopt VOC Reasonably Available Control Technology (RACT) on existing sources covered by EPA Control Technique Guidelines issued after the 1990 CAA;

iii. Apply VOC RACT to smaller existing sources;

iv. One or more transportation control measures sufficient to achieve at least half a percent reduction in actual area wide VOC emissions;

v. Alternative fuel and diesel retrofit programs for fleet vehicle operations;

vi. Require VOC or NO_X emission offsets for new and modified major sources;

vii. Increase the ratio of emission offsets required for new sources;

viii. Require VOC or NO_X emission offsets for new and modified minor sources; and,

ix. Adopt NO_X RACT for existing combustion sources.

IDEM included the following list of potential contingency measures in its maintenance plan:

i. Installation of an I/M program;

ii. Lower VOC formulation for asphalt paving;

iii. Diesel exhaust retrofits;

iv. Traffic flow improvements;

v. Idle reduction programs;

vi. Portable fuel container regulation statewide;

vii. Park and ride facilities;

viii. Rideshare/carpool program;

ix. VOC cap and trade program for major stationary sources;

x. Commercial/consumer solvent regulations statewide; and,

xi. NO_X RACT.

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, Ohio EPA and IDEM commit to submit to the EPA updated ozone maintenance plans eight years after redesignation of the Cincinnati-Hamilton area to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175A of the CAA, Ohio and Indiana have committed to retain the VOC and NO_X control measures contained in the SIP prior to redesignation.

EPA has concluded that the maintenance plans adequately address the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus EPA proposes to find that the maintenance plan SIP revisions submitted by Ohio and Indiana for the Cincinnati-Hamilton area meet the requirements of section 175A of the CAA.

B. Adequacy of the MVEBs

1. How Are MVEBs Developed and What Are the MVEBs for the Cincinnati-Hamilton Area?

Under the CAA, States are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard. These emission control strategy SIP revisions (*e.g.,* RFP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively approve or find that the MVEBs are "adequate" for use in determining transportation conformity. Once EPA affirmatively approves or

finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be used by State and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs is codified at 40 CFR 93.118.

The maintenance plans submitted by Ohio and Indiana for the Cincinnati-Hamilton area contain new VOC and NO_X MVEBs for the Ohio and Indiana portion of the area for the years 2015 and 2020. The availability of the SIP submission with these 2015 and 2020 MVEBs was announced for public comment on EPA's Adequacy Web site on December 10, 2009, at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2015 and 2020 MVEBs for the Ohio and Indiana portion of the Cincinnati-Hamilton area closed on January 11, 2010. No adverse comments on the submittal were received during the adequacy comment period.

EPA, through this rulemaking, has found adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Ohio and Indiana portion of the Cincinnati-Hamilton area because EPA has determined that the area can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. Ohio EPA and IDEM have determined the 2015 MVEBs for the Ohio and Indiana portion of the Cincinnati-Hamilton area to be 31.73 tpd for VOC and 49.00 tpd for NO_X. Ohio EPA and IDEM have determined the 2020 MVEBs for the Ohio and Indiana portion of the Cincinnati-Hamilton area to be 28.82 tpd for VOC and 34.39 tpd for NO_X. These MVEBs are consistent with the onroad mobile source VOC and NO_X emissions projected by OKI for 2015 and 2020, as summarized in Table 8 above. Ohio and Indiana have demonstrated that the Cincinnati-Hamilton area can maintain the 8-hour ozone NAAQS with mobile source emissions in Ohio and Indiana portion of the area of 31.73 tpd and 28.82 tpd of VOC and 49.00 tpd and 34.39 tpd of NO_X in 2015 and 2020, respectively, since emissions will remain under attainment year emission levels.

2. What Is a Safety Margin?

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 8, the emissions in the Ohio and Indiana portion of the Cincinnati-Hamilton area are projected to have safety margins of 23.40 tpd for VOC and 17.50 tpd for NO_X in 2015 (the difference between the attainment year, 2008, emissions and the projected 2015 emissions for all sources in the Ohio and Indiana portion of the Cincinnati-Hamilton area). For 2020, the emissions in the Ohio and Indiana portion of the Cincinnati-Hamilton area are projected to have safety margins of 26.52 tpd for VOC and 32.53 tpd for NO_X. Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

The MVEBs requested by Ohio EPA and IDEM contain safety margins for mobile sources smaller than the allowable safety margins reflected in the total emissions for the Ohio and Indiana portion of the Cincinnati-Hamilton area. The States are not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the States are requesting MVEBs that exceed the projected onroad mobile source emissions for 2015 and 2020 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

C. 2005 Base Year Emissions Inventory for the Ohio Portion of the Cincinnati-Hamilton Area

As discussed above, section 172(c)(3) of the CAA requires areas to submit a base year emissions inventory. As part of Ohio's request to redesignate the Ohio portion of the Cincinnati-Hamilton area, the State submitted a 2005 base year emissions inventory to meet this requirement. Emissions contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. All emission summaries were accompanied by source-specific descriptions of emission calculation procedures and sources of input data.

To determine non-EGU point source emissions, the State relied on data reported in Ohio EPA's STARShip emissions database. These data are reported by Title V facilities annually and include emissions, process rates, operating schedules, emissions control data, and other relevant information. The data entered by the sources are reviewed by local air agencies and Ohio EPA district and central office staff. After review, the data are processed into the Federally approved National Emissions Inventory (NEI) database format. The files are quality assured again using EPA's QA/QC software for format and content. The data is then submitted to LADCO for emissions processing through the Emissions Modeling System. Ohio used EPA's EGU inventory, which is based on facility reported emissions as measured by continuous emissions monitors.

Area source emissions were estimated by Ohio EPA using published Emission Inventory Improvement Program methodologies or methodologies shared by other States. The documentation supplied in the submittal shows how the county-specific emissions were calculated for each area source category.

Non-road mobile source emissions were generated using the NMIM application. However, prior to running NMIM, LADCO contracted to make the following modifications and additions to the NMIM input data: emission factors were added for diesel tampers/rammers, PM2.5 ratios were revised to correct an error that was introduced with NMIM2005 and didn't exist in NMIM2004, and gasoline parameters (Reid Vapor Pressure, oxygenate content and sulfur content) were revised using updates provided by the States and the contractor. In addition, recreational motorboat populations and spatial surrogates were updated and emissions estimates were developed for commercial marine vessels, aircraft, and railroads, three nonroad categories not included in NMIM.

Onroad mobile emissions were prepared by the OKI using the MOBILE6.2 emissions model.

Ohio EPA's submittal documents 2005 emissions in the Ohio portion of the Cincinnati-Hamilton area in units of tons per summer day. The 2005 summer day emissions of VOC and NO_X are summarized in Table 2, above. EPA is proposing to approve this 2005 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

D. 2002 Base Year Emissions Inventory for the Indiana Portion of the Cincinnati-Hamilton Area

IDEM submitted a 2002 base year emissions inventory to meet the requirement of section 172(c)(3) of the CAA for Dearborn County on June 13, 2007, as part of Indiana's attainment demonstration for the area. Emissions contained in the June 13, 2007, submittal cover the general source categories of point sources, area sources, on-road mobile sources, non-road mobile sources, and biogenic sources. All emission summaries were accompanied by source-specific descriptions of emission calculation procedures and sources of input data along with sample calculations for various counties in the State.

To determine point source emissions, the State relied on data collected from source facilities complying with the State's annual emissions reporting requirements, 326 IAC 2–6. Major sources are required to annually submit to the State data specifying their annual emissions of criteria pollutants along with seasonal source activity information to allow the calculation of seasonal emissions. After completing data quality assurance, IDEM submits the point source data to EPA for incorporation into the NEI, as required by the Consolidated Emissions Reporting Rule. The June 13, 2007, submittal includes VOC, NO_X, and CO emissions for each reporting facility statewide.

Area source emissions were calculated using a variety of information sources and guidance from the EPA. A primary source of calculation procedures and applied guidance was EPA's Emission Inventory Improvement Program. Where appropriate, point source emissions were subtracted from the calculated area source emissions to account for source coverage overlap with the reported point source emissions and to avoid double counting of emissions in the emissions totals. The documentation supplied in the June 13, 2007, submittal shows how the county-specific emissions were calculated for each area source category. Samples of area source emission calculations were provided.

The base year emission inventory documentation included a detailed description of the procedures and input data used to determine the mobile source for 2002. The mobile source emissions for Dearborn County were obtained from EPA's NEI.

Non-road mobile source VOC, NO_X, and CO emissions for 2002 were generated by NMIM. To update and quality assure the emissions for locomotives, commercial and recreational marine sources, and off-road mobile equipment sources, LADCO contracted with several consultants to update source population and distribution levels. Summaries of the consultants' results and recommended emissions changes were included in the June 13, 2007, submittal.

Biogenic VOC, NO_X, and CO emissions for 2002 were taken directly from the NEI.

The June 13, 2007 submittal documents 2002 emissions in Dearborn County in units of tons per summer day. The 2002 summer day emissions of VOC, NO_X, and CO for Dearborn County are summarized in Table 12, below. EPA is proposing to approve this 2002 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

TABLE 12—DEARBORN COUNTY 2002 BASE YEAR EMISSIONS FOR CO, VOC, AND NO_X (TPD)

Sector	CO	NO_X	VOC
Area	0.57	0.31	2.02
Biogenic	1.40	0.32	9.60
Nonroad	11.70	1.95	.96
Onroad	36.79	5.60	2.97
Point	2.27	50.63	2.77
Total	52.73	58.81	18.32

VII. What Actions Is EPA Taking?

EPA is proposing to make a determination that the Cincinnati-Hamilton area has attained the 1997 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revisions for the Ohio and Indiana portions of the Cincinnati-Hamilton area. EPA's proposed approval of the maintenance plans is based on the States' demonstrations that the plans meet the requirements of section 175A of the CAA, as described more fully above. After evaluating the redesignation requests submitted by Ohio and Indiana, EPA believes that the requests meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve the redesignation of the Ohio and Indiana portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. The final approval of these redesignation requests would change the official designation for the Ohio and Indiana portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1997 8-hour ozone standard. EPA is proposing to approve Ohio EPA's 2005 base year emissions inventory for the Ohio portion of the Cincinnati-Hamilton area as meeting the requirements of section 172(c)(3) of the CAA. EPA is proposing to approve IDEM's 2002 base year emissions inventory for Dearborn County as meeting the requirements of section 172(c)(3) of the CAA for the Indiana portion of the Cincinnati-Hamilton area. Finally, EPA finds adequate and is proposing to approve the States' 2015 and 2020 MVEBs for Ohio and Indiana portions of the Cincinnati-Hamilton area.

VIII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Redesignation of an area to

attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under State law, and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a State to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Absent a prior existing requirement for the State to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: February 10, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–3680 Filed 2–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2010–0044; FRL–9111–1]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona, Maricopa County Air Quality Department; State of Nevada, Nevada Division of Environmental Protection, Washoe County District Health Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act, EPA granted delegation of specific national emission standards for hazardous air pollutants (NESHAP) to the Maricopa County Air Quality Department on April 28, 2009, to the Nevada Division of Environmental Protection on December 1, 2008, and to the Washoe County District Health Department, Air Quality Management Division on February 26, 2009. EPA is proposing to revise the Code of Federal Regulations to reflect the current delegation status of NESHAP in Arizona and Nevada.

DATES: Any comments on this proposal must arrive by March 29, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0044, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (AIR–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured

and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

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

SUPPLEMENTARY INFORMATION:

This document concerns the delegation of unchanged NESHAP to the Maricopa County Air Quality Department, the Nevada Division of Environmental Protection, and the Washoe County District Health Department, Air Quality Management Division. In the Rules and Regulations section of this **Federal Register**, EPA is amending regulations to reflect the current delegation status of NESHAP in Arizona and Nevada. EPA is taking direct final action without prior proposal because the Agency believes this action is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: January 20, 2010.

Deborah Jordan,

Director, Air Division, Region IX.

[FR Doc. 2010–4077 Filed 2–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2009–0844; FRL–9119–2]

RIN 2025–AA27

Hydrogen Sulfide; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Intent to consider lifting administrative stay; opportunity for public comment.

SUMMARY: EPA is announcing that it is considering whether to lift the Administrative Stay of the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 toxic chemical release reporting requirements for hydrogen sulfide (Chemical Abstracts Service Number (CAS No.) 7783–06–4). Hydrogen sulfide was added to the EPCRA section 313 list of toxic chemicals in a final rule published in the **Federal Register** on December 1, 1993. However, on August 22, 1994, EPA issued an Administrative Stay of the reporting requirements for hydrogen sulfide in order to evaluate issues brought to the Agency's attention after promulgation of the final rule concerning the human health effect basis for the listing and the Agency's use of exposure analysis in EPCRA section 313 listing decisions. Although the final rule listing hydrogen sulfide under section 313 of EPCRA remained in force, the stay deferred the reporting requirements for hydrogen sulfide while EPA completed this further evaluation. EPA has now completed its further evaluation, including a consideration of additional information that has become available since the stay was put in place regarding the human health and environmental effects of hydrogen sulfide. Based on this further evaluation, EPA believes that the Administrative Stay should be lifted. By this current action, EPA is not revisiting the original listing decision, which was accomplished by final rule on December 1, 1993. Rather, EPA is merely presenting its rationale for why the Administrative Stay of the reporting requirements for hydrogen sulfide should be lifted. After consideration of comments received, the Agency will issue another **Federal Register** document responding to comments and taking appropriate action.

DATES: Comments must be received on or before April 27, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–TRI–2009–0844, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Mail:* Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460
- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–TRI–2009–0844. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly

available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–566–0743; *fax number:* 202–566–0677; *e-mail: bushman.daniel@epa.gov,* for specific information on this document. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424–9346 or (703) 412–9810 in Virginia and Alaska or toll free, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, or otherwise use hydrogen sulfide. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. *Exceptions and/or limitations exist for these NAICS codes. Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (correspond to SIC 4953, Refuse Systems).
Federal Government	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Should I Submit CBI to the Agency?

Do not submit CBI information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

II. Introduction

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (PPA), 42 U.S.C. 13106. EPCRA section 313 established an initial list of toxic chemicals composed of more than 300 chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets forth criteria for these actions. Specifically, EPCRA section 313(d)(2) states that EPA may add a chemical to the list if "there is sufficient evidence to establish any one" of the listing criteria. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, EPCRA section 313(d)(3) states that to remove a chemical from the list, EPA must determine that "there is not sufficient evidence to establish any" of the Section 313(d)(2) criteria. Therefore, to remove a chemical, EPA must demonstrate that none of the criteria are met. The EPCRA section 313(d)(2) criteria are:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) Cancer or teratogenic effects, or

(ii) Serious or irreversible—

(I) Reproductive dysfunctions,

(II) Neurological disorders,

(III) Heritable genetic mutations, or

(IV) Other chronic health effects.

(C) The chemical is known to cause or can be reasonably anticipated to cause, because of

(i) Its toxicity,

(ii) Its toxicity and persistence in the environment, or

(iii) Its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of

the Administrator, to warrant reporting under this section.

EPA often refers to the section 313(d)(2)(A) criterion as the "acute human health effects criterion;" the section 313(d)(2)(B) criterion as the "chronic human health effects criterion;" and the section 313(d)(2)(C) criterion as the "environmental effects criterion."

Under EPCRA section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479) to provide guidance regarding the recommended content and format for submitting petitions under EPCRA section 313(e). EPA also issued guidance in the **Federal Register** of May 23, 1991 (56 FR 23703) regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. In addition, EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

III. Background Information

A. What is the History of the Listing of Hydrogen Sulfide Under EPCRA Section 313?

In response to a petition from the Natural Resources Defense Council and the Governor of New York, hydrogen sulfide, along with 20 other chemicals and two chemical categories, was added to the EPCRA section 313 list of toxic chemicals as part of a 1993 final rule (December 1, 1993, 58 FR 63500). Hydrogen sulfide was listed under the criteria of EPCRA section 313(d)(2)(B) (chronic human health effects) based on chronic neurotoxic effects in humans and under EPCRA section 313(d)(2)(C) (environmental effects) based on acute aquatic toxicity. However, on August 22, 1994 (59 FR 43048), EPA issued an Administrative Stay of the EPCRA section 313 reporting requirements for hydrogen sulfide. Although the final rule listing hydrogen sulfide under section 313 of EPCRA remained in force, the stay deferred the reporting requirements for hydrogen sulfide.

B. What Was the Basis for the Administrative Stay?

After the final rule was issued adding hydrogen sulfide to the EPCRA section 313 list of toxic chemicals, some members of the regulated community expressed a concern that the "chronic human health effects" basis for listing hydrogen sulfide under EPCRA section 313(d)(2)(B) changed between the proposed rule (September 8, 1992, 57 FR 41020) and the final rule (December 1, 1993, 58 FR 63500), and that commenters on the proposed rule therefore did not have an opportunity to comment on that individual basis for the listing. Specifically, although the Agency cited the same acute aquatic toxicity as an "environmental effects" basis for the listing under EPCRA section 313(d)(2)(C) in both the proposed and final rules, the Agency also cited chronic respiratory effects as a "chronic human health effects" basis under EPCRA section 313(d)(2)(B) in the proposed rule, but chronic neurotoxic effects as a "chronic human health effects" basis under that same provision in the final rule. In addition, after issuance of the final rule, some members of the regulated community expressed concern that EPA's decision not to include an exposure analysis in deciding to list hydrogen sulfide on the basis of chronic human health effects was inconsistent with past Agency practice.

Although EPA did not agree that it had been inconsistent in its use of exposure analyses, and notwithstanding the fact that the listing decision was dictated by the acute aquatic toxicity finding alone under EPCRA section 313(d)(2)(C), the Agency issued an Administrative Stay of the reporting requirements for hydrogen sulfide in order to review the concerns raised after issuance of the final rule by some members of the regulated community.

C. What Is the Purpose of This Document?

The purpose of this document is to provide the public with the opportunity to comment on EPA's review of the currently available data on the human health and environmental effects of hydrogen sulfide—specifically, chronic respiratory effects, chronic neurotoxic effects, and acute, chronic and early-life stage aquatic toxicity—and EPA's belief that the Administrative Stay should be lifted based on that data. EPA's analysis of the toxicity of hydrogen sulfide is based on the Agency's latest Toxicological Review of Hydrogen Sulfide (Ref. 1), as well as a reassessment of the environmental effects of hydrogen sulfide (Ref. 2). These assessments are discussed in detail in Unit IV. of this document. In addition, this document addresses the concerns raised regarding use of exposure analyses. After consideration of comments received, the Agency will issue another **Federal Register** document responding to comments and taking appropriate action.

IV. What Is EPA's Technical Review of Hydrogen Sulfide?

A. What Is EPA's Evaluation of the Human Health Toxicity of Hydrogen Sulfide?

The following assessment of the human health toxicity of hydrogen sulfide is based on the information contained in EPA's most recent (June 2003) Integrated Risk Information System (IRIS) Toxicological Review of Hydrogen Sulfide (Ref. 1).

Hydrogen sulfide is a colorless, acutely toxic gas at high concentrations. Hydrogen sulfide gas is absorbed rapidly through the lungs and can be absorbed through the gastrointestinal tract. Oral exposure is not likely to occur. In animals and humans, it distributes to the blood, brain, lungs, heart, liver, spleen, and kidneys. Oxidation is the primary metabolic pathway for hydrogen sulfide, with thiosulfate and sulfate as metabolites. Metabolism in laboratory animals and in humans appears to be similar. Hydrogen sulfide metabolites are excreted in the urine.

A considerable body of case studies exists on the human health impacts resulting from acute exposure to high levels of hydrogen sulfide. Levels in the range of 500 to 1,000 parts per million (ppm) (695 to 1,390 milligrams per cubic meter (mg/m^3)) are life-threatening and can cause immediate unconsciousness followed by serious and debilitating neurologic and respiratory sequelae and death (Ref. 1). While complete recovery from a high exposure episode has been reported, more often long term or even irreversible harmful neurological effects remain. Several groups of investigators (Tvedt, *et al.* (Refs. 3 and 4); Wasch, *et al.* (Ref. 5)) have reported long-term persistent adverse neurological effects from hydrogen sulfide-induced unconsciousness in humans during occupational, accidental, and chronic exposures, including neuropsychological and neurobehavorial decrements and brain damage. These irreversible effects are believed to be caused by an essentially hypoxic (low oxygen) condition existing in persons who become unconscious from a high exposure to hydrogen sulfide. Because a loss of oxygen (anoxia) utilization in tissues, particularly the brain, occurs in such poisonings, it is possible to attribute persistent neuronal damage to this effect. Permanent (chronic) damage is commonly observed clinically when

brain tissues have been deprived of oxygen due to inadequate delivery of the gas or to interrupted utilization of oxygen by cells, as is the case with hydrogen sulfide poisoning.

The observed nonirritant effects produced in mammals from exposure to hydrogen sulfide gas may primarily be attributed to the cellular anoxia produced by inhibition of cytochrome oxidase (Ref. 1). Inhibition of cytochrome oxidase reduces the oxygen dependent metabolism of the cell, reduces cell energy sources (e.g., adenosine triphosphate (ATP)), increases products of anaerobic metabolism such as lactic acid, and produces cell death. Hence, cells with a high oxygen demand such as those in brain and cardiac tissue are thought to be more sensitive to disruption of oxidative metabolism and may be considered selected targets for the toxicity of hydrogen sulfide.

1. Chronic Toxicity. EPA has reviewed the available toxicological studies on hydrogen sulfide in its most recent IRIS Toxicological Review of Hydrogen Sulfide (Ref. 1) and concluded that hydrogen sulfide can cause chronic human health toxicity. As reported in IRIS, the upper respiratory tract (neuronal and basal cells of the olfactory nasal epithelium) and neurologic tissues are both targets for hydrogen sulfide toxicity. The weight-of-evidence from the animal studies indicates that nasal tract lesions and neurological effects of hydrogen sulfide are dose-dependent, and both effects are clearly of relevance to humans. The levels of hydrogen sulfide associated with these effects appear to be similar for either endpoint (e.g., the no-effect level of nasal tract lesions reported by Brenneman, *et al.* (Ref. 6) at 10 ppm (14 mg/m^3) and the likely indicator of neurotoxic effects reported by Hannah and Roth (Ref. 7) at 20 ppm (28 mg/m^3)), which is some indication that consideration for one effect will also address the other (Ref. 1).

a. Upper Respiratory Tract Toxicity. Several subchronic exposure studies in rats and mice indicate that low concentrations of hydrogen sulfide cause nasal lesions of the olfactory mucosa (Brenneman, *et al.* (Ref. 6); Dorman, *et al.* (Ref. 8); Chemical Industry Institute of Toxicology (Ref. 9); Lopez, *et al.* (Ref. 10); Dorman, *et al.* (Ref. 11)). The nasal lesions are consistent with the neurotoxic and irritant properties of this gas. Based on the demonstrable histopathology, information available on exposure-dose-response, and the commonality of the underlying mechanism (cytochrome oxidase inhibition and irritation) between animals and humans, there is compelling indication that such effects are reasonably anticipated to occur in humans chronically exposed to hydrogen sulfide (Hirsch and Zavala (Ref. 12)).

Brenneman, *et al.* (Ref. 6) reported significant concentration-related increases in the incidence and severity of lesions to the nasal olfactory epithelium in rats exposed to 0, 10, 30, or 80 ppm of hydrogen sulfide for 10 weeks. The effects consisted of olfactory neuron loss and basal cell hyperplasia in rats exposed to 30 or 80 ppm, 6 hours/day, 7 days/week for 10 weeks; no adverse effects were observed at 10 ppm. The severity of the olfactory neuron loss was concentration-related; however, an inverse relationship between severity and concentration was observed for the basal cell hyperplasia suggesting that as the concentration increased, the ability of the olfactory epithelium to regenerate decreased. In contrast, earlier studies conducted by the Chemical Industry Institute of Toxicology (CIIT) (Refs. 13 and 14) where rats and mice were exposed to 0, 10.1, 30.5, or 80 ppm of hydrogen sulfide, 6 hours/day, 5 days/week for 13 weeks, did not find significant alterations in the nasal turbinates of Fischer-344 (F–344) or Sprague-Dawley rats exposed to 80 ppm or less of hydrogen sulfide. Inflammation of the squamous portion of the nasal mucosa was observed in mice exposed to 80 ppm hydrogen sulfide, 6 hours/day, 5 days/week for 13 weeks (CIIT (Ref. 9)); the no-observed-adverse-effect-level (NOAEL) for this effect is 30.5 ppm. However, a re-examination of the histological specimens from this study revealed a statistically significant increase in the incidence of olfactory neuron loss in Sprague-Dawley rats, F–344 rats, and B6C3F1 mice exposed to 30 or 80 ppm; no lesions were observed at 10 ppm (Dorman, *et al.* (Ref. 11)). In addition, increases in the incidence of bronchiolar epithelial hyperplasia and hypertrophy were observed in female Sprague-Dawley rats exposed to 30 or 80 ppm and male Sprague-Dawley and F–344 rats exposed to 80 ppm.

b. Neurotoxicity. The neurotoxic effects of low level hydrogen sulfide exposure have been primarily assessed from neurodevelopmental toxicity studies. Male Sprague-Dawley rats and male B6C3F1 mice exposed to 80 ppm of hydrogen sulfide (6 hours/day, 5 days/week for 13 weeks) had a statistically significant decrease in absolute (but not relative) brain weight (CIIT (Ref. 13) and Dorman, *et al.* (Ref. 11)) at 80 ppm but not 30 ppm. In an earlier study, Skrajny, *et al.* (Ref. 15) examined the effect of hydrogen sulfide exposure on serotonin and norepinephrine levels in the developing cerebellum and frontal cortex of Sprague-Dawley rats. Timed-pregnant rats were exposed to 0, 20 or 75 ppm for 7 hours/day from gestational day 5 until post natal day (PND) 21. There were statistically significant increases in serotonin levels in the frontal cortex on PND 21 in pups exposed to 20 ppm hydrogen sulfide and increases in serotonin levels in the cerebellum and frontal cortex on postpartum days 14 and 21 in pups exposed to 75 ppm hydrogen sulfide. Norepinephrine levels were increased at 75 ppm in the cerebellum on PNDs 7, 14, and 21, and in the frontal cortex on PND 21. At 20 ppm frontal cortex norepinephrine levels were decreased compared to controls on days 14 and 21.

In a similarly designed study using the same exposure protocol as the CIIT (Refs. 9, 13, and 14) and Dorman, *et al.* (Ref. 11) studies, Hannah and Roth (Ref. 7) evaluated the perinatal effect of hydrogen sulfide on developing cerebellar Purkinje cells. Sprague-Dawley dams were exposed to 0, 20 or 50 ppm hydrogen sulfide for 7 hr/day from gestational day 5 until PND 21. Exposure to both 20 and 50 ppm interrupted normal dendritic growth of Purkinje cells in the brain of offspring. In later studies using this same experimental protocol, Hannah, *et al.* (Refs. 16 and 17) also found decreases in several brain amino acid levels in Sprague-Dawley rats exposed to 75 ppm of hydrogen sulfide.

The significance of the morphological changes and alteration of brain neurotransmitters in these studies and the Skrajny, *et al.* (Ref. 15) study to humans is unclear. Since Purkinje cell alterations and changes in neurotransmitter levels may constitute a hydrogen sulfide-induced change in the growth or organization of structural (or neurochemical) elements, they are to be regarded as indicators of a neurotoxic effect in accordance with guidance in EPA's neurotoxicity risk assessment guidelines (Ref. 18). The question as to what functional impairment these alterations might lead to in humans remains unclear. Predicting particular functional impairments from decreased brain weight and specific structural alterations such as reported by the CIIT (Refs. 9, 13, and 14) and Dorman, *et al.* (Ref. 11) studies and Hannah and Roth (Ref. 7) is difficult due to the selective nature of the observed alterations and the dynamic self-organizing response of the developing brain to injury. Although behavioral testing has not indicated that alterations of brain neurotransmittters

have a functional impact (Dorman, *et al.* (Ref. 8)), further examination of the biochemical and functional aspects of the developing brain in hydrogen sulfide-exposed animals is warranted and neurotoxic effects cannot be discounted.

Available information indicates that the dose-response character of indicators of neurotoxicity (such as the alterations to cerebellar Purkinje cells reported by Hannah and Roth (Ref. 7) and nasal olfactory (neuronal cell) lesions reported by Brenneman, *et al.* (Ref. 6)) may be similar to one another, such that consideration of one may be inclusive of the other. However, more extensive and definitive information on the neurologic endpoints could reveal that these should be the most relevant endpoints, more so than nasal tract lesions. The IRIS Summary for Hydrogen Sulfide (Ref. 1) indicates that such information may provide sufficient reason to reassess hydrogen sulfide.

2. Summary. As stated in the IRIS Summary for Hydrogen Sulfide (Ref. 1) and as discussed above, both nasal tract lesions (upper respiratory effects) and neurologic effects are chronic effects of concern. These effects occur in a clear dose concentration manner with the lowest levels of hydrogen sulfide exposure associated with these effects ranging from 20 to 30 ppm (28 mg/m^3 to 41.7 mg/m^3).

B. What Is EPA's Evaluation of the Environmental Toxicity of Hydrogen Sulfide?

A number of ecotoxicity studies have been conducted on hydrogen sulfide, mainly on freshwater invertebrates and fish. Acute, chronic, and early-life stage toxicity values for hydrogen sulfide include numerous values that are well below 1 milligram per liter (mg/L), indicating that hydrogen sulfide is toxic at very low concentrations. EPA's ecological assessment (Ref. 2) includes an extensive listing of the aquatic toxicity values for hydrogen sulfide. Some examples of the values from Table 2–1 of EPA's ecological assessment (Ref. 2) are provided below.

Hydrogen sulfide acute toxicity values (96-hour LC_{50} (i.e., the concentration that is lethal to 50% of test organisms)) for freshwater fish ranged from 0.0149 mg/L (fathead minnow) to 0.0448 mg/L (bluegill). Chronic toxicity values for freshwater fish ranged from a 6-week lowest-observed-effect-concentration (LOEC) (growth rate) of 0.0005 mg/L in a tropical fish (*Mystus nemurus*) to a 430-day LOEC (final weight) of 0.009 mg/L for goldfish. Additionally, in early-life stage toxicity testing with eggs, fry, and juveniles of various freshwater fish species, endpoint values ranged from a 96-hour LC_{50} of <0.002 mg/L (yellow perch sac fry) to a 96-hour LC_{50} value of 0.0536 mg/L (fathead minnow). The hydrogen sulfide 96-hour LC_{50} values for freshwater invertebrates ranged from 0.021 mg/L (amphipod) to 1.07 mg/L (isopod), and 48- to 96-hour LC_{50} values for estuarine/marine invertebrates ranged from 0.063 mg/L (saltwater shrimp) to 0.332 mg/L (adult amphipod). The hydrogen sulfide EC_{50} (i.e., the concentration that is effective in producing a sublethal response in 50% of test organisms) values for estuarine/marine invertebrates included 0.01 mg/L (saltwater mussel) and 0.019 mg/L (sea urchin). Hydrogen sulfide chronic values for freshwater invertebrates ranged from a 65-day LOEC (reproduction) of 0.0031 mg/L to a 10-day LC_{50} value of 0.042 mg/L, both for the amphipod *Gammarus pseudolimnaeus.* For early-life stage toxicity testing, a 96-hour LC_{50} value of 0.034 mg/L was available for juvenile crayfish (freshwater species), and for estuarine/marine invertebrates, 48-hour LC_{50} values of 0.0087 mg/L and 0.0185 mg/L were available for white shrimp larvae and juveniles, respectively.

V. EPA's Use of Exposure Analyses

The Agency's position on the use of exposure analyses in listing decisions under EPCRA section 313 was presented in a proposed rule in the **Federal Register** of January 12, 1994 (59 FR 1788). The proposed rule provided the public with the opportunity to comment on the Agency's interpretation of the statutory listing criteria as it relates to the use of exposure considerations. After considering the comments received, EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) a statement clarifying its interpretation of the statutory requirements regarding how exposure will be considered in listing decisions. Subsequent to the final rule, EPA's interpretation of the statutory listing criteria as it relates to the consideration of exposure was upheld in *National Oilseed Processors Ass'n.* v. *Browner,* 924 F. Supp. 1193 (D.D.C. 1996), *aff'd in part & remanded in part, Troy Corp.* v. *Browner,* 120 F.3d 277 (D.C. Cir. 1997).

EPA has determined that hydrogen sulfide can reasonably be anticipated to cause serious or irreversible chronic human health effects at relatively low doses and thus is considered to have moderately high to high chronic toxicity. EPA does not believe that it is appropriate to consider exposure for chemicals that are moderately high to highly toxic based on a hazard assessment when determining if a chemical can be listed for chronic effects pursuant to EPCRA section 313(d)(2)(B) (see 59 FR 61432, 61433, 61440–61442). Hydrogen sulfide has also been determined to cause ecotoxicity at relatively low concentrations, and thus is considered to have high ecotoxicity. EPA believes that chemicals that induce death or serious adverse effects in aquatic organisms at relatively low concentrations (i.e., they have high ecotoxicity) have the potential to cause significant changes in the population of fish and other aquatic organisms, and can therefore reasonably be anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting. EPA does not believe that it is required to consider exposure for chemicals that have high ecotoxicity based on a hazard assessment when determining if a chemical can be listed for effects pursuant to EPCRA section 313(d)(2)(C) (*see* 59 FR 61432, 61433, 61440–61442).

VI. What Is EPA's Rationale That the Administrative Stay Should Be Lifted?

EPA's technical evaluation of hydrogen sulfide shows that it can reasonably be anticipated to cause chronic health effects in humans. The chronic health effects have been observed in laboratory animals at concentrations as low as 28 mg/m^3 (20 ppm) and 41.7 mg/m^3 (30 ppm). In addition, EPA's technical evaluation of hydrogen sulfide also shows that it can reasonably be anticipated to cause, because of its toxicity, significant adverse effects in aquatic organisms. Examples of hydrogen sulfide's ecological toxicity include acute toxicity (96-hour LC_{50}) values for freshwater fish that ranged from 0.0149 mg/L (fathead minnow) to 0.0448 mg/L (bluegill), indicating high aquatic toxicity. Examples of hydrogen sulfide's chronic ecological toxicity include freshwater fish values that ranged from a 6-week LOEC (growth rate) of 0.0005 mg/L in a tropical fish (*Mystus nemurus*) to a 430-day LOEC (final weight) of 0.009 mg/L for goldfish, also indicating high aquatic toxicity.

Based on the above findings, EPA believes that there is no basis for continuing the Administrative Stay of the reporting requirements for hydrogen sulfide, and that the Administrative Stay should therefore be lifted. As an aside, EPA notes also that it believes that the above findings clearly demonstrate the correctness of the Agency's final decision in December 1993 to list hydrogen sulfide on the EPCRA section 313 toxic chemicals list

based on the listing criteria in EPCRA sections 313(d)(2)(B) and (C).

Finally, in accordance with EPA's stated policy on the use of exposure assessments (59 FR 61432), EPA does not believe that an exposure assessment is appropriate for determining whether hydrogen sulfide meets the criteria of EPCRA section 313(d)(2)(B) or (C), and therefore the Administrative Stay should not be continued for lack of an exposure analysis.

VII. What Are the References Cited in This Document?

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–TRI–2009–0844. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

1. U.S. Environmental Protection Agency. "Toxicological Review of Hydrogen sulfide, (CAS No. 7783–06–4), In Support of Summary Information on the Integrated Risk Information System." Washington, DC: Integrated Risk Information System. U.S. Environmental Protection Agency. June, 2003. *http://www.epa.gov/ncea/iris/toxreviews/0061-tr.pdf* Integrated Risk Information Summary for Hydrogen Sulfide available at: *http://www.epa.gov/ncea/iris/subst/0061.htm.*

2. U.S. Environmental Protection Agency, Technical Review of Hydrogen Sulfide: Chemistry, Environmental Fate and Ecological Toxicity, CAS Registry Number 7783–06–4; Office of Environmental Information, Office of Information Access and Analysis, Environmental Analysis Division, Analytical Support Branch; June 22, 2009.

3. Tvedt, B., Edland, A., Skyberg, K. *et al.,* "Delayed neuropsychiatric sequelae after acute hydrogen sulfide poisoning: affection of motor function, memory, vision and hearing." *Acta. Neurol. Scand.* v. 84, (1991), pp. 348–351.

4. Tvedt, B., Skyberg, K., Aaserud, O., *et al.,* "Brain damage caused by hydrogen sulfide: a follow-up study of six patients." *Am. J. Ind. Med.* v. 20, (1991), pp. 91–101.

5. Wasch, H.H., Estrin, W.J., Yip, P. *et al.,* "Prolongation of the P–300 latency associated with hydrogen sulfide exposure." *Arch. Neurol.* v. 46, (1989), pp. 902–904.

6. Brenneman, K.A., James, R.A., Gross, E.A., Dorman, D.C., "Olfactory neuron loss in adult male CD rats following subchronic inhalation exposure to hydrogen sulfide." *Toxicol. Pathol.* v. 28(2), (2000), pp. 326–333.

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9. Chemical Industry Institute of Toxicology, "90-Day vapor inhalation toxicity study of hydrogen sulfide in B6C3F1 mice." (1983), EPA/OTS 0883–0255.

10. Lopez, A., Prior, M., Yong, S., *et al.,* "Nasal lesions in rats exposed to hydrogen sulfide for four hours." *Am. J. Vet. Res.* v. 49(7), (1988), pp. 1107–1111.

11. Dorman, D.C., Struve, M.F., Gross, E.A., *et al.,* "Respiratory tract toxicity of inhaled hydrogen sulfide in Fischer-344 rats, Sprague-Dawley rats, and B6C3F1 mice following subchronic (90-day) exposure." *Toxicol Appl Pharmacol* v. 198, (2004), pp. 29–39.

12. Hirsch, A.R., Zavala, G., "Long-term effect on the olfactory system of exposure to hydrogen sulphide." *Occup. Environ. Med.* v. 56, (1999), pp. 284–287.

13. Chemical Industry Institute of Toxicology, "90-Day vapor inhalation toxicity study of hydrogen sulfide in Fischer-344 rats." (1983), EPA/OTS 0883–0255.

14. Chemical Industry Institute of Toxicology, "90-Day vapor inhalation toxicity study of hydrogen sulfide in Sprague-Dawley rats." (1983), EPA/OTS 0883–0255.

15. Skrajny, B., Hannah, R.S., Roth, S.H., "Low concentrations of hydrogen sulphide alter monoamine levels in the developing rat central nervous system." *Can. J. Physiol. Pharmacol.* v. 70(11), (1992), pp. 1515–1518.

16. Hannah, R.S., Hayden, L.J., Roth, S.H., "Hydrogen sulfide exposure alters the amino acid content in developing rat CNS." *Neurosci. Lett.* v. 99, (1989), pp. 323–327.

17. Hannah, R.S., Bennington, R., Roth, S.H., "A relationship between hydrogen sulfide exposure and taurine levels in maternal rats." *Proc West Pharmacol Soc* v. 33, (1990), pp. 177–179.

18. U.S. Environmental Protection Agency, "Guidelines for neurotoxicity risk assessment." **Federal Register**, May 14, 1998, 63(93):26926–26954. *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=12479*

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: February 19, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–4084 Filed 2–25–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 75, No. 38
Friday, February 26, 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

Rural Utilities Service

Basin Electric Power Cooperative: Deer Creek Station

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of Draft Environmental Impact Statement.

SUMMARY: The Rural Utilities Service (RUS) and the Western Area Power Administration (Western) have issued a Draft Environmental Impact Statement (DEIS) for the proposed Deer Creek Station in White, Brookings County, South Dakota. The DEIS was prepared pursuant to the National Environmental Policy Act (NEPA) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), RUS's NEPA implementing regulations (7 CFR part 1794), and Western's NEPA implementing regulations (10 CFR part 1021). Western is the lead federal agency as defined at 40 CFR 1501.5; RUS is a cooperating agency. The purpose of the DEIS is to evaluate the potential environmental impacts of and alternatives to Basin Electric Power Cooperative's (Basin Electric) application for a RUS loan and a Western interconnection agreement to construct the proposed 300 megawatt (MW) Deer Creek Station in Brookings and Deuel Counties, South Dakota (Project). The proposed facility would include a new natural gas-fired combustion turbine set, a heat recovery steam generator (HRSG), and a steam turbine generator set.

DATES: With this notice, RUS invites any affected Federal, State, and local agencies and other interested persons to comment on the DEIS. Written comments on this DEIS will be accepted for 45 days following the publication of the U.S. Environmental Protection Agency's notice of availability for this DEIS in the **Federal Register,** which occurred on February 5, 2010.

Western, as lead agency, will hold a public meeting on February 25, 2010, from 6 to 8 p.m. at McKnight Community Hall, located at: 228 W. Main St., White, South Dakota. RUS will be in attendance. In accordance with 40 CFR 1503.1, Inviting Comments, the purpose of the meeting will be to solicit comments from interested parties on the DEIS for the Deer Creek Station. A copy of the DEIS can be obtained or viewed online at: *http://www.usda.gov/rus/water/ees/eis.htm*.Copies of the DEIS will also be available for public review at the following locations (hours vary; contact individual repositories for available times):

Brookings Public Library, 515 3rd Street, Brookings, SD; telephone: (605) 692–9407;
SDSU Hilton M. Briggs Library, South Dakota State University, Brookings, SD; telephone: (605) 688–5570;
Deubrook Community Library, 100 School Avenue, White, SD;
Elkton City Hall, Elkton, SD;
Siverson Public Library, 100 W. Garfield, Hendricks, MN;
Brookings County Commission Office, 314 6th Avenue, Brookings, SD.

ADDRESSES: To send comments or request additional information, contact: Ms. Lauren McGee, Environmental Scientist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, telephone: (202) 720–1482, fax: (202) 690–0649, or e-mail: *lauren.mcgee@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: Basin Electric's proposed Project is to construct, own, operate, and maintain the Deer Creek Station Energy Facility Project, a 300 MW combined-cycle natural gas generation facility, water pipeline, transmission lines, transmission interconnection(s), and other associated facilities, all in Brookings and Deuel counties in eastern South Dakota. The purpose of the proposed Project is to help serve increased load demand for electric power in the eastern portion of Basin Electric's service area. Basin Electric's eastern service area includes western Nebraska, northwestern and central Iowa, portions of southern Minnesota, all of South Dakota, portions of eastern Montana, and western and central North Dakota. The need for additional generating capacity is driven by the increasing electrical power usage of the Basin Electric membership consumers. Between 1999 and 2006, Basin Electric's total system peak demand increased 752 MW from 1,195 MW to 1,947 MW, or approximately 107 MW per year. In 2007, Basin Electric prepared a forecast showing load and capability surpluses/deficits through the year 2021. The forecast predicted that by 2014, there will be a deficit of 800–900 MW for the eastern portion of its service area. The proposed Project's addition of 300 MW of generation will help meet Basin Electric's future energy requirements.

Basin Electric's proposed Project is subject to the jurisdiction of the South Dakota Public Utilities Commission (SDPUC) which has regulatory authority for siting power plants and transmission lines within the State. Basin Electric will submit an application for an Energy Conversion Facility Permit and a Route Permit to the SDPUC. The SDPUC permits would authorize Basin Electric to construct the proposed Project under South Dakota rules and regulations.

After considering various ways to meet these future needs, Basin Electric identified construction of the proposed Project as its best course of action. This DEIS considered 17 alternatives to meet the future energy requirements of the eastern portion of its service area. These alternatives were evaluated in terms of cost-effectiveness, technical feasibility, and environmental factors.

The DEIS analyzes in detail the no action alternative and the proposed action (Deer Creek station and related facilities) at two separate locations: White Site I (Brookings County, T111N R48W, Section 25 NE Quarter) and White Site II (Brookings County, T111N R48W, Section 2 NW Quarter).

Because the proposed Project may involve action in floodplains or wetlands, this Notice of Availability also serves as a notice of proposed floodplain or wetland action. The DEIS includes a floodplain/wetland assessment and floodplain/wetland statement of findings following DOE regulations for compliance with floodplain and wetlands environmental review (10 CFR part 1022).

Any action by RUS related to the proposed Project will be subject to, and contingent upon, compliance with all relevant Federal, state and local environmental laws and regulations,

and completion of the environmental review requirements as prescribed in RUS's Environmental Policies and Procedures, 7 CFR part 1794, as amended.

Dated: February 19, 2010.

Nivin A. Elgohary,

Acting Assistant Administrator, Electric Programs, Rural Utilities Service.

[FR Doc. 2010–3986 Filed 2–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for Loan Guarantees Under Section 538 Guaranteed Rural Rental Housing Program (GRRHP) for Fiscal Year 2010

AGENCY: Rural Housing Service, USDA.

ACTION: NOFA.

SUMMARY: This is a request for proposals for loan guarantees under the section 538 Guaranteed Rural Rental Housing Program (GRRHP) pursuant to 7 CFR 3565.4 for Fiscal Year (FY) 2010. FY 2010 funding for the section 538 program is $129,130,434.78. Applicants will submit proposals in the form of "responses." Responses to this NOFA will be accepted until December 31, 2010, 12 p.m. Eastern Time. The commitment of program dollars will be made to applicants of selected responses that have fulfilled the necessary requirements for obligation. Expenses incurred in developing applications will be at the applicant's risk. The following paragraphs outline the timeframes, eligibility requirements, lender responsibilities, and the overall response and application processes.

The GRRHP operates under 7 CFR part 3565. The GRRHP Origination and Servicing Handbook (HB–1–3565) is available to provide lenders and the general public with guidance on program administration. HB–1–3565, which contains a copy of 7 CFR part 3565 in Appendix 1, can be found at: *http://www.rurdev.usda.gov/regs/hblist.html#hbw6.*

Eligible lenders are invited to submit responses for the new construction and the acquisition with rehabilitation of affordable rural rental housing.

Also eligible for guarantees is the revitalization, repair, and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 housing (transfer costs are subject to Agency approval and must be an eligible use of loan proceeds as listed in 7 CFR 3565.205), and properties involved in the Agency's multi-family preservation and revitalization (MPR) program. Equity payments, as stipulated in 7 CFR 3560.406, in connection with the transfer of existing direct section 515 housing, are an eligible use of guaranteed loan proceeds. In order to be considered, for a transfer, the direct section 515 housing and MPR projects must need repairs and undergo revitalization of a minimum of $6,500 per unit.

The Agency will review responses submitted by eligible lenders, on the lender's letterhead, and signed by both the prospective borrower and lender. Although a complete application is not required in response to this NOFA, eligible lenders may submit a complete application concurrently with the response. Submitting a complete application will not have any effect on the respondent's NOFA response score.

DATES: Eligible responses to this NOFA will be accepted per this guidance until December 31, 2010, 12 p.m. Eastern Time.

Selected responses that develop into complete applications and meet all Federal environmental requirements will receive commitments until all funds are expended. A notice will be placed in the **Federal Register** if all FY 2010 funds are committed prior to September 30, 2010. Responses to this NOFA that are received after September 30, 2010, and deemed eligible for further processing will be funded to the extent an appropriation act provides funding for GRRHP for FY 2011.

The Agency will select the responses that meet eligibility criteria and invite lenders to submit complete applications to the Agency. Those responses that are selected that subsequently submit complete applications that meet all program requirements and are received prior to or on April 1, 2010, but score less than 25 points, or score 25 points or more, but have a development cost ratio equal to or greater than 70 percent, may be selected for obligation after April 1, 2010, with the highest scoring responses receiving priority subject to availability of funds. After April 1, 2010, responses that develop into complete applications that meet all program requirements will be selected for further processing regardless of score, subject to the availability of funding.

The USDA Rural Development will prioritize the obligation requests received after April 1, 2010, using the highest score and the procedures outlined as follows. Once a complete application is received and approved, the Agency will obligate funds. Obligation requests submitted will be accumulated, but not obligated throughout the week until midnight Eastern Time every Thursday. To the extent that funds remain available, the Agency will obligate the requests accumulated through the weekly request deadline of the previous week by the following Tuesday *(i.e.,* requests received from Friday, May 14, 2010, to Thursday, May 20, 2010, will be obligated by Tuesday, May 25, 2010). However, requests received prior to April 1, 2010, that are not eligible for obligation until after April 1, 2010, will be obligated no earlier than Tuesday, April 6, 2010. Funds will be obligated in scoring order, with the highest scoring requests being obligated first, until all funds are exhausted. In the event of a tie, priority will be given to the request for the project that: 1st—has the highest percentage of leveraging (lowest Loan to Cost) and in the event there is still a tie;—is in the smaller rural community.

Eligible lenders mailing a response or application must provide sufficient time to permit delivery to the *submission address* on or before the closing deadline date and time. Acceptance by a U.S. Post Office or private mailer does not constitute delivery. Postage due responses and applications will not be accepted.

Submission Address: Eligible lenders will send responses to the contact person in the State Office where the project will be located.

USDA Rural Development State Offices, their addresses, telephone numbers, and person to contact follows: [this information may also be found at *http://www.rurdev.usda.gov/recd_map.html*]

Note: Telephone numbers listed are not toll-free.

Alabama State Office, 4121 Carmichael Road, Suite 601, Sterling Centre, Montgomery, AL 36106–3683, (334) 279–3440, TDD (334) 279–3495, Anne Chavers.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905, Deborah Davis.

Arizona State Office, 230 North First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8768, TDD (602) 280–8706, Carol O. Torres.

Arkansas State Office, 700 W. Capitol Ave., Room 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Gregory Kemper.

California State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5813, TDD (530) 792–5848, Edgar Morales.

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2923, TDD (800) 659–2656, Mary Summerfield.

Connecticut, Served by Massachusetts State Office.

Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3615, TDD (302) 857–3585, Debra Eason.
Florida & Virgin Islands State Office, 4440 N.W. 25th Terrace, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400, TDD (352) 338–3499, Tresca Clemmons.
Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue—Stop 307, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers.
Hawaii State Office, (Services all Hawaii, American Samoa Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8300, TDD (808) 933–8321, Nate Riedel.
Idaho State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, Roni Atkins.
Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.
Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278–1966, (317) 290–3100 (ext. 413), Carla Orr Haskins.
Iowa State Office, 210 Walnut Street Room 873, Des Moines, IA 50273, (515) 284–4666, TDD (515) 284–4858, Heather Honkomp.
Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2718, TDD (785) 271–2767, Tim Rogers.
Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300, TDD (859) 224–7422, Paul Higgins.
Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.
Maine State Office, 967 Illinois Ave., Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Robert Nadeau.
Maryland, Served by Delaware State Office.
Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street—Suite 2, Amherst, MA 01002, (413) 253–4315, TDD (413) 253–4590, Paul D. Geoffroy.
Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5199, TDD (517) 324–5169, Julie Putnam.
Minnesota State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7804, TDD (651) 602–7830, Tom Osborne.
Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4326, TDD (601) 965–5717, Darnella Smith-Murray.
Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0987, TDD (573) 876–9480, Rachelle Long.
Montana State Office, 900 Technology Blvd. Suite B, Bozeman, MT 59718, (406) 585–2530, TDD (406) 585–2562, Deborah Chorlton.
Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5734, TDD (402) 437–5093, Linda Anders.
Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 13), TDD (775) 885–0633, William Brewer.
New Hampshire State Office, 10 Ferry Street, Concord, NH 03301–5004, Suite 218, Box 317, (603) 223–6050, TDD (802) 828–6365, Robert McCarthy.
New Jersey State Office, 8000 Midlantic Dr., 5th Floor North Suite 500, Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856) 787–7730, George Hyatt, Jr.
New Mexico State Office, 6200 Jefferson St., NE., Room 255, Albuquerque, NM 87109, (505) 761–4950, TDD (505) 761–4938, Art Garcia.
New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2425, (585) 394–0525 ext. 109, TDD (315) 477–6447, Celeste Frohm.
North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2063, TDD 711 (state relay system), William Hobbs.
North Dakota State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502, (701) 530–2050, TDD (701) 530–2090, Mark J. Wax.
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2418, TDD (800) 877–8339, Melodie Taylor-Ward.
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Ivan S. Graves.
Oregon State Office, 1201 NE. Lloyd Blvd., Suite 801, Portland, OR 97232–1274, (503) 414–3353, TDD (503) 414–3387, Rod Hansen.
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2279, TDD 711 (state relay system), Frank Wetherhold.
Puerto Rico State Office, 654 Munoz Rivera Avenue, Suite 601, Hato Rey, PR 00918, (787) 766–5095, TDD (787) 766–5332, Noemi Morant.
Rhode Island, Served by Massachusetts State Office.
South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd.
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka or Pam Reilly.
Tennessee State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203, (615) 783–1300, TDD (615) 783–1397, Kathy G. Connelly.
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9770, TDD (254) 742–9712, Joyce McGlothlin.
Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4302, TDD (801) 524–3309, Shelly Prothero.
Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6067, TDD (802) 223–6365, Kenneth Yearman.
Virgin Islands, Served by Florida State Office.
Virginia State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229, (804) 287–1596, TDD (804) 287–1753, C.J. Michels.
Washington State Office, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7740, TDD (360) 704–7772, Tammy Repine.
Western Pacific Territories, Served by Hawaii State Office.
West Virginia State Office, Federal Building, 1550 Earl Core Road, Suite 101, Morgantown, WV 26505, (304) 284–4872, TDD (304) 284–4836, David L. Cain.
Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600, TDD (715) 345–7614, Dave Schwobe.
Wyoming State Office, P.O. Box 11005, Casper, WY 82602, (307) 856–7524 ext. 124, TDD (307) 233–6733, Yvette Wilson.

FOR FURTHER INFORMATION CONTACT: Monica Cole, Financial and Loan Analyst, USDA Rural Development Guaranteed Rural Rental Housing Program, Multi-Family Housing Guaranteed Loan Division, U.S. Department of Agriculture, South Agriculture Building, Room 1263, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781. *E-mail: monica.cole@wdc.usda.gov. Telephone:* (202) 720–1251. This number is not toll-free. Hearing or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

Eligibility of Prior Year Selected Notice of Funding Availability

Responses: FY 2009 NOFA response selections that did not develop into complete applications within the time constraints stipulated by the corresponding State Office have been cancelled. A new response for the project may be submitted subject to the conditions of this NOFA.

FY 2009 NOFA responses that were selected by the Agency, with a complete application (including all Federal environmental documents required by 7 CFR part 1940, subpart G, a Form RD 3565–1 "Application for Loan and Guarantee") submitted by the lender within 90 days from the date of notification of response selection (unless an extension was granted by the Agency), will be eligible for FY 2010 program dollars and will compete for available FY 2010 funds without having to complete a FY 2010 response.

General Program Information

Program Purpose: The purpose of the GRRHP is to increase the supply of affordable rural rental housing through the use of loan guarantees that encourage partnerships between the

Agency, private lenders, and public agencies.

Responses Must Be Submitted By: The Agency will only accept responses from GRRHP eligible or approved lenders as described in 7 CFR 3565.102 and 3565.103 respectively.

Qualifying Properties: Qualifying properties include new construction for multi-family housing units and the acquisition of existing structures with a minimum per unit rehabilitation expenditure requirement in accordance with 7 CFR 3565.252.

Also eligible is the revitalization, repair and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 housing (transfer costs are subject to Agency approval and must be an eligible use of loan proceeds as listed in 7 CFR 3565.205) and properties involved in the Agency's MPR program. Equity payment, as stipulated 7 CFR 3560.406, in the transfer of existing direct section 515 housing, is an eligible use of guaranteed loan proceeds. In order to be considered, the transfer of direct section 515 housing and MPR projects must need repairs and undergo revitalization of a minimum of $6,500 per unit.

Eligible Financing Sources: Any form of Federal, State, and conventional sources of financing can be used in conjunction with the loan guarantee, including Home Investment Partnership Program (HOME) grant funds, tax exempt bonds, and low income housing tax credits.

Maximum Guarantee: The Agency can guarantee the "permanent" loan. The Agency can only guarantee construction advances for the construction of the property if a guarantee for the permanent loan is requested for the same property. The Agency cannot, however, guarantee only the "construction" advances for the construction of a property.

The maximum guarantee for a permanent loan will be 90 percent of the unpaid principal and interest up to default and accrued interest 90 calendar days from the date the liquidation plan is approved by the Agency, as defined in 7 CFR 3565.452. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. The Agency's liability under any guarantee will decrease or increase, in proportion to any decrease or increase in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee. The maximum guarantee of construction advances will not at any time exceed the lesser of 90 percent of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default of the loan. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan.

Energy Conservation: USDA Rural Development has adopted a policy that all new multi-family housing projects financed in whole or in part by the USDA, will be encouraged to engage in sustainable building development that emphasizes energy-efficiency and conservation. In order to assist in the achievement of this goal, any GRRHP project that participates in one or all of the following programs may receive a maximum of twenty (20) additional points added to their project score. Participation in these nationwide initiatives is voluntary, but strongly encouraged.

Reimbursement of Losses: Any losses will be split on a pro-rata basis between the lender and the Agency from the first dollar lost.

Interest Credit: The FY 2010 appropriation act does not permit interest credit.

Surcharges for Guarantee of Construction Advances: There is no surcharge for the guarantee of construction advances for FY 2010.

Program Fees for FY 2010: As a condition of receiving a loan guarantee, the Agency will charge the following fees to the lender.

(1) There is no application fee for lenders submitting an application in FY 2010.

(2) There is a flat fee of $500 when a lender requests USDA Rural Development to extend the term of a guarantee commitment.

(3) There is a flat fee of $500 when a lender requests USDA Rural Development to reopen an application when a commitment has expired.

(4) There is a flat fee of $1,250 when a lender requests USDA Rural Development to approve the transfer of property and assumption of the loan to an eligible prospective borrower.

(5) There is no lender application fee for lender approval in FY 2010.

Eligible Lenders: An eligible lender for the section 538 GRRHP as required by 7 CFR 3565.102 must be a licensed business entity or Housing Finance Agency (HFA) in good standing in the state or states where it conducts business. Lender eligibility requirements are contained in 7 CFR 3565.102. Please review 7 CFR 3565.102 for a complete list of all of the criteria. Below is a list of some of the eligible lender criteria under 7 CFR 3565.102:

(1) Licensed business entity that meets the qualifications and has the approval of the Secretary of Housing and Urban Development (HUD) to make multi-family housing loans that are insured under the National Housing Act. A complete list of HUD approved lenders can be found on the HUD Web site at *http://www.hud.gov.*

(2) A licensed business entity that meets the qualifications and has the approval of the Ginnie Mae or Freddie Mac or Fannie Mae corporations to make multi-family housing loans that are sold to the same corporations. A complete list of Freddie Mac approved lenders can be found in Freddie Mac's Web site at *http://www.freddiemac.com.* Fannie Mae approved lenders are found at *http://www.fanniemae.com.* For a list of Ginnie Mae issuers, contact Ginnie Mae at *http://www.ginniemae.gov.*

(3) A State or local HFA with a top-tier rating from Moody's or Standard & Poors, or member of the Federal Home Loan Bank system, and the demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multi-family housing loans in a prudent manner.

(4) Be a GRRHP approved lender, defined as an entity with a current executed multi-family housing Lender's Agreement with USDA Rural Development.

(5) Lenders that can demonstrate the capacity to underwrite, originate, process, close, service, manage, and dispose of multi-family housing loans in a prudent manner. In order to be approved the lender will have to have an acceptable level of financial soundness as determined by a lender rating service. The submission of materials demonstrating capacity will be required if the lender's response is selected. Lenders who are otherwise ineligible may become eligible if they maintain a correspondent relationship with an eligible lender that does have the capacity to underwrite, originate, process, close, service, manage, and dispose of multi-family housing loans in a prudent manner. In this case, the eligible lender must submit the response and application on company letterhead. All contractual and legal documentation will be signed between USDA Rural Development and the lender that submitted the response and application.

GRRHP Lender Approval Application: Lenders whose responses are selected will be notified by the USDA Rural Development to submit a request for GRRHP lender approval application within 30 days of notification. Lenders who request GRRHP approval must

meet the standards in the 7 CFR 3565. Lenders that have received GRRHP lender approval in the past and are in good standing do not need to reapply for GRRHP lender approval. Requirements for retaining approved lender status are defined in 7 CFR 3565.

Submission of Documentation for GRRHP Lender Approval: All lenders that have not yet received GRRHP lender approval must submit a complete lender application to: Director, Multi-Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, Room 1263, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781. Lender applications must be identified as "Lender Application—Section 538 Guaranteed Rural Rental Housing Program" on the envelope.

As the Section 538 program does not have a formal application form, a complete application consists of a cover letter requesting GRRHP lender approval and the following documentation:

(1) Request for GRRHP lender approval on the lender's letterhead;

(2) Lenders who are HUD, Ginnie Mae, Freddie Mac or Fannie Mae multi-family approved lenders are required to show evidence of this status, such as a copy of a letter designating the distinction;

(3) The lender's Loan Origination, Loan Servicing, and Portfolio Management Handbooks. These handbooks should detail the lender's policies and procedures on loan origination through termination for multi-family loans;

(4) Portfolio performance data;

(5) Copies of standard documents that will be used in processing GRRHP loans;

(6) Resumes and qualifications of key personnel that will be involved in the GRRHP;

(7) Identification of standards and processes that deviate from those outlined in the GRRHP Origination and Servicing Handbook (HB–1–3565) found at *http://www.rurdev.usda.gov/regs/hblist.html#hbw6;*

(8) A copy of the most recent audited financial statements;

(9) Lender specific information including: (a) Legal name and address, (b) list of principal officers and their responsibilities, (c) certification that the officers and principals of the lender have not been debarred or suspended from Federal programs, (d) Form AD 1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transaction", (e) certification that the lender is not in default or delinquent on any Federal debt or loan, or possesses an outstanding finding of deficiency in a Federal housing program, and (f) certification of the lender's credit rating; and

(10) Documentation on bonding and insurance.

Additional Construction Lender Requirements

The Agency can guarantee the "permanent" loan. The Agency can only guarantee construction advances for the construction of the property if a guarantee for the permanent loan is requested for the same property. The Agency cannot, however, guarantee only the "construction" advances for the construction of a property.

A lender making a construction loan must demonstrate an ability to originate and service construction loans, in addition to meeting the other requirements of 7 CFR part 3565, subpart C. The Agency may, at its discretion, consider other types of construction loans—such as those for commercial development—as a substitute for multi-family construction experience.

Lender Responsibilities: Lenders will be responsible for the full range of loan origination, underwriting, management, servicing, compliance issues, and property disposition activities associated with their projects. The lender will be expected to provide guidance to the prospective borrower on the Agency requirements during the application phase. Once the guarantee is issued, the lender is expected to service each loan it underwrites or contract these services to another capable entity.

Discussion of NOFA Responses

Content of NOFA Responses: All responses require lender information and project specific data. Incomplete responses will not be considered for funding. Lenders will be notified of incomplete responses. Complete responses are to include a signed cover letter from the lender on the lender's letterhead and the following information:

(1) *Lender certification*—The lender must certify that the lender will make a loan to the prospective borrower for the proposed project, under specified terms and conditions subject to the issuance of the GRRHP guarantee. Lender certification must be on the lender's letterhead and signed by both the lender and the prospective borrower.

(2) *Project specific data*—The lender must submit the project specific data below on the lender's letterhead, signed by both the lender and the prospective borrower.

Data element	Information that must be included
Lender Name	Insert the lender's name.
Lender Tax ID #	Insert lender's tax ID #.
Lender Contact Name	Name of the lender contact for loan.
Mailing Address	Lender's complete mailing address.
Phone #	Phone # for lender contact.
Fax #	Insert lender's fax #.
E-mail Address	Insert lender contact e-mail address.
Borrower Name and Organization Type	State whether borrower is a Limited Partnership, Corporation, Indian Tribe, etc.
Equal Opportunity Survey	Optional Completion.
Tax Classification Type	State whether borrower is for profit, not for profit, etc.
Borrower Tax ID #	Insert borrower's tax ID #.
Borrower DUNS#	Insert DUNS number.
Borrower Address, including County	Insert borrower's address and county.
Borrower Phone #	Insert borrower's phone #.
Principal or Key Member for the Borrower	Insert name and title.
Borrower Information and Statement of Housing Development Experience.	Attach relevant information.
New Construction, Acquisition With Rehabilitation, or the Revitalization, Repair, and Transfer (as stipulated in 7 CFR 3560.406) of Existing Direct Section 515 Housing or MPR.	State whether the project is new construction or acquisition with rehabilitation. Transfer costs, including equity payments, are subject to Agency approval and must be an eligible use of loan proceeds in 7 CFR 3565.205.

Data element	Information that must be included
Project Location Town or City	Town or city in which the project is located.
Project County	County in which the project is located.
Project State	State in which the project is located.
Project Zip Code	Insert zip code.
Project Congressional District	Congressional District for project location.
Project Name	Insert project name.
Project Type	Family, senior (all residents 55 years or older), or mixed.
Property Description and Proposed Development Schedule	Provide as an attachment.
Total Project Development Cost	Enter amount for total project.
# of Units	Insert the # of units in the project.
Ratio of 3–5 bedroom units to total units	Insert percentage of 3–5 bedroom units to total units.
Cost Per Unit	Total development cost divided by # of units.
Rent	Proposed rent structure.
Median Income for Community	Provide median income for the community.
Evidence of Site Control	Attach relevant information.
Description of Any Environmental Issues	Attach relevant information.
Loan Amount	Insert the loan amount.
Borrower's Proposed Equity	Insert amount and source.
Tax Credits	Have tax credits been awarded? If tax credits were awarded, submit a copy of the award NOFA/evidence of award with your response. If not, when do you anticipate an award will be made (announced)? What is the [estimated] value of the tax credits?
Other Sources of Funds	List all funding sources other than tax credits and amounts for each source.
Loan to Total Development Cost	Guaranteed loan divided by the total development costs of project.
Debt Coverage Ratio	Net Operating Income divided by debt service payments.
Percentage of Guarantee	Percentage guarantee requested.
Collateral	Attach relevant information.
Empowerment Zone (EZ) or Enterprise Community (EC), Colonia, Tribal Lands, or State's Consolidated Plan or State Needs Assessment.	Yes or No. Is the project in a recognized EZ or EC, Colonia, on an Indian Reservation, or in a place identified in the State's Consolidated Plan or State Needs Assessment as a high need community for multi-family housing.
Is the Property Located in a Federally Declared Disaster Area?	If yes, please provide documentation (i.e., Presidential Declaration document).
Population	Provide the population of the county, city, or town where the project is or will be located.
Is a Guarantee for Construction Being Requested?	State yes or no. The Agency can guarantee the construction advances of the property if the guarantee for the permanent loan is requested for the same property.
Loan Term	Minimum 25-year term. Maximum 40-year term (includes construction period). May amortize up to 40 years. Balloon mortgages permitted after the 25th year.

Scoring of Priority Criteria for Selection of Projects: All 2010 responses will be scored based on the criteria set forth below to establish their priority for obligation of funds. Per 7 CFR 3565.5(b), priority will be given to projects: In smaller rural communities, in the most needy communities having the highest percentage of leveraging, having the lowest interest rate, or having the highest ratio of 3–5 bedroom units to total units.

On or prior to April 1, 2010, projects with an overall score of 25 points or more and a loan to development cost ratio less than 70 percent will be processed and, when ready, obligated on a first-come-first-serve basis, to the extent funds are available. Projects that score less than 25 points, and projects that score 25 points or more and do not have a loan to development cost ratio less than 70 percent, may be processed up to the point of obligation, but will not be obligated until after April 1, 2010. After April 1, 2010, the Agency will select the highest scoring proposals using the procedure outlined in the **DATES** section of this NOFA.

The seven priority criteria for projects are listed below.

Priority 1—Projects located in eligible rural communities with the lowest populations will receive the highest points.

Population size	Points
0–5,000 people	20
5,001–10,000 people	15
10,001–15,000 people	10
15,001–20,000 people	5

Priority 2—The neediest communities as determined by the median income from the most recent census data will receive points. The Agency will allocate points to projects located in communities having the lowest median income. Points for median income will be awarded as follows:

Median income (dollars)	Points
Less than $45,000	20
$45,000–less than $55,000	15
$55,000–less than $65,000	10
$65,000–less than $75,000	5
$75,000 or more	0

Priority 3—Projects that demonstrate partnering and leveraging in order to develop the maximum number of units and promote partnerships with state and local communities will also receive points. Points will be awarded as follows:

Loan to total development cost ratio (percentage %)	Points
90–100	0
Less than 90–70	10
Less than 70–50	20

Loan to total development cost ratio (percentage %)	Points
Less than 50	30

Priority 4—The USDA Rural Development will award points to projects with the highest ratio of 3–5 bedroom units to total units as follows:

Ratio of 3–5 bedroom units to total units	Points
More than 50%	10
21%–50%	5
Less than 21%–more than 0%	1

Priority 5—NOFA responses for the revitalization, repair, and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 housing and properties involved in the Agency's MPR program (transfer costs, including equity payments, are subject to Agency approval and must be an eligible use of loan proceeds listed in 7 CFR 3565.205) will receive an additional 10 points.

Priority 6—Projects that are energy-efficient and are certified by the following programs will receive twenty (20) points:

(1) Green Communities sponsored by The Enterprise Foundation (*http://www.enterprisefoundation.org*) or

(2) LEED for Homes Program by the U.S. Green Builders (USGBC) (*http://www.usgbc.org*) or

(3) National Association of Home Builders (NAHB) ICC 700–2008 National Green Building Standard™ (*http://www.nahb.org*) or

(4) Any other program, specific to a state or region that is similar to the above three that is approved by the Agency.

Notifications: Responses will be reviewed for completeness and eligibility. The USDA Rural Development will notify those lenders whose responses are selected via letter. The USDA Rural Development will request lenders without GRRHP lender approval to apply for GRRHP lender approval within 30 days upon receipt of notification of selection. For information regarding GRRHP lender approval, please refer to the section entitled "*Submission of Documentation for GRRHP Lender Approval*" in this NOFA.

Lenders will also be invited to submit a complete application to the USDA Rural Development State Office where the project is located.

Submission of GRRHP Applications: Notification letters will instruct lenders to contact the USDA Rural Development State Office immediately following notification of selection to schedule required agency reviews.

USDA Rural Development State Office staff will work with lenders in the development of an application package. In response to the NOFA, lenders must submit a response to the office address identified in the NOFA for the scoring and ranking of a proposed GRRHP project. The lender must provide the requested information concerning the project, to establish the purpose of the proposed project, its location, and how it meets the established priorities for funding. The Agency will determine the highest ranked responses based on priority criteria and a threshold score.

NOFA responses will at least include the following [but the Agency, at its sole discretion, may request additional information]:

(1) The Project

(a) A brief description of the proposed location of the project, including town, county, state, and congressional district.

(b) A description of the property and improvements, including lot size, number of units, building type, type of construction, etc., including preliminary drawings, if available.

(c) The proposed development schedule.

(d) Total project development cost.

(e) The proposed rent structure and area median income (HUD published area median incomes can be found online at *http://www.huduser.org*).

(f) Evidence of site control by the proposed borrower or a purchase option.

(g) Description of any environmental issues that may affect the project.

(h) Amount of loan to be guaranteed.

(i) Type of project (*e.g.,* elderly or family).

(2) The Proposed Financing

(a) Proposed loan amount and the proposed borrower's equity.

(b) Estimated development budget (total and cost/unit) and the proposed sources and uses of funds. This information should include all proposed financing sources—the amount, type, rates and terms of loans, tax credits, or grant funds. Letters of application and commitment letters should be included, if available.

(c) Estimated loan-to-development cost ratio for the guaranteed loan.

(d) Proposed Agency guarantee percentage for guaranteed loan.

(e) Collateral—all security, in addition to the real property, proposed to secure the loan.

(3) The Proposed Borrower

(a) The name of the borrower and the type of ownership entity. List the general partners if a limited partnership, officers if a corporation or members of a Limited Liability Corporation.

(b) Borrower's contact name, mailing address, phone and fax numbers, and e-mail address.

(c) Certification that the borrower or principals of the ownership are not barred from participating in Federal housing programs and are not delinquent on any Federal debt.

(d) Borrower's unaudited or audited financial statements.

(e) Statement of borrower's housing development experience.

(4) Lender Eligibility and Approval Status

Evidence that the lender is either an approved lender for the purposes of the GRRHP or that the lender is eligible to apply for approved lender status. The lender's application for approved lender status can be submitted with the response but must be submitted to the National Office within 30 calendar days of the lender's receipt of the "Notice to Proceed with Application Processing" letter.

(5) Competitive Criteria

Information that shows how the proposal is responsive to the selection criteria specified in the NOFA.

(6) Lender Certification

A commitment letter signed by the lender, on the lender's letterhead, indicating that the lender will make a loan to the borrower for the proposed project, under specified terms and conditions subject only to the issuance of a guarantee by the Agency. The deadline for the submission of a complete application and is 90 days from the date of notification of response selection. If the application is not received by the appropriate State Office within 90 days from the date of notification, the selection is subject to cancellation, thereby allowing another response that is ready to proceed with processing to be selected. The Agency has the ability to extend this 90-day deadline for receipt of an application at its own discretion.

Obligation of Program Funds: The Agency will only obligate funds to projects that meet the requirements for obligation, including having undergone a satisfactory environmental review in accordance with the National Environmental Protection Act (NEPA) and completed Form RD 3565–1 for the selected project.

Conditional Commitment: Once the required documents for obligation are received and all NEPA requirements have been met, the USDA Rural Development State Office will issue a

conditional commitment, which stipulates the conditions that must be fulfilled before the issuance of a guarantee, in accordance with 7 CFR 3565.303.

Issuance of Guarantee: The USDA Rural Development Office will issue a guarantee to the lender for a project in accordance with 7 CFR 3565.303. No guarantee can be issued without a complete application, review of appropriate certifications, satisfactory assessment of the appropriate level of environmental review, and the completion of any conditional requirements.

Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

Dated: February 4, 2010.

Tammye H. Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–3959 Filed 2–25–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Funding Opportunity Title: Crop Insurance Education in Targeted States (Targeted States Program)

Announcement Type: Announcement of Availability of Funds and Request for Application for Competitive Cooperative Agreements.

Catalog of Federal Domestic Assistance Number (CFDA): 10.458

Dates: Electronic applications submitted through Grants.gov must be received by close of business (COB) on *April 27, 2010.* Hard copy applications will not be accepted.

Summary: The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately $5,000,000 (subject to availability of funds) to fund cooperative agreements under the Crop Insurance Education in Targeted States program (the Targeted States Program). The purpose of this cooperative agreement program is to deliver crop insurance education and information to U.S. agricultural producers in certain States that have been designated as historically underserved with respect to crop insurance. The states, collectively referred to as Targeted States, are Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. Multiple cooperative agreements will be funded not to exceed the maximum funding amount established for each of the 16 Targeted States. Awardees must agree to the substantial involvement of RMA in the project. Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), and CFDA No. 10.459 (Commodity Partnerships for Small Agricultural Risk Management Education Sessions). Prospective applicants should carefully examine and compare the notices for each program.

The collections of information in this announcement have been approved by OMB under control number 0563–0067.

This Announcement Consists of Eight Sections:

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B. Background
C. Project Goal
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Full Text of Announcement

I. Funding Opportunity Description

A. Legislative Authority

The Targeted States Program is authorized under section 524(a)(2) of the Federal Crop Insurance Act (Act).

B. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information. One of RMA's strategic goals is to

ensure that its customers are well informed of risk management solutions available. This educational goal is supported by section 524(a)(2) of the Act. This section authorizes funding for the establishment of crop insurance education and information programs in States that have historically been underserved by the Federal crop insurance program. In accordance with the Act, the sixteen States designated as "underserved" are Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming (collectively referred to as "Targeted States").

C. Project Goal

The goal of the Targeted States Program is to ensure that farmers and ranchers in the Targeted States are sufficiently informed so as to take full advantage of existing and emerging crop insurance products. In carrying out the programs established under the Food, Conservation, And Energy Act of 2008, the Secretary of Agriculture has placed special emphasis on risk management strategies, education, and outreach specifically targeted at—

(A) Beginning farmers or ranchers;

(B) Legal immigrant farmers or ranchers who are attempting to become established producers in the United States;

(C) Socially disadvantaged farmers or ranchers;

(D) Farmers or ranchers who—

(i) Are preparing to retire; and

(ii) Are using transition strategies to help new farmers or ranchers get started; and

(E) New or established farmers or ranchers who are converting production and marketing systems to pursue new markets.

D. Purpose

The purpose of the Targeted States Program is to provide farmers and ranchers in Targeted States with education and information to be able to understand:

- The kinds of risk addressed by crop insurance;
- The features of existing and emerging crop insurance products;
- The use of crop insurance in the management of risk;
- How the use of crop insurance can affect other risk management decisions, such as the use of marketing and financial tools;
- How to make informed decisions on crop insurance prior to the sales closing date deadline; and
- Recordkeeping requirements for crop insurance.

In addition, for 2010, the FCIC Board of Directors and the FCIC Manager are seeking projects that also include the Special Emphasis Topics listed below which highlight the educational priorities within each of the Targeted States:

Massachusetts—LGM Dairy Cattle, Northern Potatoes, Apples, and Nursery Crop Insurance Tools

West Virginia—LGM Dairy Cattle, Apples, and Nursery Crop Insurance Tools

Pennsylvania—Apiculture Rainfall Index and Vegetation Index, LGM Dairy Cattle, Pasture Rangeland Forage Rainfall Index and Vegetation Index, Northern Potatoes, Apples, and Nursery Crop Insurance Tools

New York—Apiculture Vegetation Index, LGM Dairy Cattle, Pasture Rangeland Forage Vegetation Index, Northern Potatoes, Apples, and Nursery Crop Insurance Tools

Connecticut—LGM Dairy Cattle, Northern Potatoes, Apples, and Nursery Crop Insurance Tools

Delaware—LGM Dairy Cattle, Southern Potatoes, and Nursery Crop Insurance Tools

Maine—LGM Dairy Cattle, Northern Potatoes, Apples, and Nursery Crop Insurance Tools

Maryland—LGM Dairy Cattle, Southern Potatoes, Apples, and Nursery Crop Insurance Tools

New Hampshire—LGM Dairy Cattle, Apples, and Nursery Crop Insurance Tools

New Jersey—LGM Dairy Cattle, Southern Potatoes, Apples, and Nursery Crop Insurance Tools

Rhode Island—LGM Dairy Cattle, Northern Potatoes, and Nursery Crop Insurance Tools

Vermont—LGM Dairy Cattle, Northern Potatoes, Apples, and Nursery Crop Insurance Tools

Wyoming—Pasture, Rangeland, and Forage, Livestock Gross Margin, Specialty Crops, and Underserved Commodities

Nevada—Crop Insurance in general

Utah—Crop Insurance in general

Hawaii—Hawaii Tropical Fruits and Trees and Crop Insurance in general

II. Award Information

A. Type of Application

In FY 2010, applications may be submitted for the Crop Insurance Education in Targeted States Program as a new application. All new applications will be reviewed competitively using the selection process and evaluation criteria described in Section V—Application Review Process.

Each award will be designated as a Cooperative Agreement, which will require substantial involvement by RMA.

B. Funding Availability

There is no commitment by USDA to fund any particular application or make a specific number of awards. Approximately $5,000,000 (subject to availability of funds) is available in fiscal year 2010 to fund multiple cooperative agreements not to exceed the maximum funding amount established for each of the Targeted States. The maximum funding amount anticipated for each Targeted State's agreement is as follows. Applicants should apply for funding for that Targeted State where the applicant intends to deliver the educational activities.

Connecticut	$250,000
Delaware	287,000
Hawaii	246,000
Maine	259,000
Maryland	371,000
Massachusetts	239,000
Nevada	248,000
New Hampshire	216,000
New Jersey	282,000
New York	586,000
Pennsylvania	700,000
Rhode Island	206,000
Utah	316,000
Vermont	259,000
West Virginia	242,000
Wyoming	293,000
Total	5,000,000

Funding amounts were determined by first allocating an equal amount of $200,000 to each Targeted State. Remaining funds were allocated on a pro rata basis according to each Targeted State's share of 2007 agricultural cash receipts relative to the total for all Targeted States. Both allocations were totaled for each Targeted State and rounded to the nearest $1,000.

In the event that additional funds become available under this program or in the event that no application for a given Targeted State is recommended for funding by the evaluation panel, these additional funds may, at the discretion of the Manager of FCIC, be allocated pro-rata to State awardees for use in broadening the size or scope of awarded projects within the Targeted State, if agreed to by the awardee.

In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding

might otherwise allow. It is expected that the awards will be made approximately 120 days after the application deadline. All awards will be made and agreements finalized no later than September 30, 2010.

C. Location and Target Audience

Targeted States serviced by RMA Regional Offices are listed below. Staff from the respective RMA Regional Offices will provide substantial involvement for Targeted States projects conducted within the respective Regions.

Billings, MT Regional Office: (WY)
Davis, CA Regional Office: (HI, NV and UT)
Raleigh, NC Regional Office: (CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VT and WV)

Applicants must clearly designate the Targeted State where crop insurance educational activities for the project will be delivered in their application in block 12 of the SF–424 form, Application for Federal Assistance. Applications without this designation will be rejected. Applicants may apply to deliver education to producers in more than one Targeted State, but a separate application must be submitted for each Targeted State. Single applications proposing to conduct educational activities in more than one Targeted State will be rejected.

D. Maximum Award

Any application that requests Federal funding of more than the amount listed above for a project in a given Targeted State will be rejected.

E. Project Period

Projects will be funded for a period of up to one year from the project starting date.

F. Description of Agreement Award—Awardee Tasks

In conducting activities to achieve the purpose and goal of this program in a designated Targeted State, the awardee will be responsible for performing the following tasks:

- Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for crop insurance; (b) inform producers of the availability of crop insurance; (c) inform producers of the crop insurance sales closing dates prior to the deadline; and (d) inform producers and agribusiness leaders in the designated Targeted State of training and informational opportunities.
- Deliver crop insurance training and informational opportunities to agricultural producers and agribusiness professionals in the designated Targeted State in a timely manner prior to crop insurance sales closing dates in order for producers to make informed decisions prior to the crop insurance sales closing dates deadline. This will include organizing and delivering educational activities using instructional materials that have been assembled to meet the local needs of agricultural producers. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on crop insurance tools and decisions.
- Document all educational activities conducted under the cooperative agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The awardee may also be required to provide information to an RMA-selected contractor to evaluate all educational activities and advise RMA as to the effectiveness of activities.

G. RMA Activities

FCIC, working through RMA, will be substantially involved during the performance of the funded project through three of RMA's ten Regional Offices. Potential types of substantial involvement may include, but are not limited to the following activities.

- Collaborate with the awardee in assembling, reviewing, and approving risk management materials for producers in the designated RMA Region.
- Collaborate with the awardee in reviewing and approving a promotional program for raising awareness for risk management and for informing producers of training and informational opportunities in the RMA Region.
- Collaborate with the awardee on the delivery of education to producers and agribusiness leaders in the RMA Region. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; and (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings.
- Conduct an evaluation of the performance of the awardee in meeting the deliverables of the project.
- Assist in the selection of subcontractors and project staff.

Applications that do not contain substantial involvement by RMA will be rejected.

H. Other Tasks

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of partners.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants include State departments of agriculture, universities, non-profit agricultural organizations, and other public or private organizations with the capacity to lead a local program of crop insurance education for farmers and ranchers within a Targeted State. Individuals are eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program governed by Federal law and regulations (e.g., debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards; a determination of being considered "high risk"). Applications from ineligible or excluded persons will be rejected in their entirety.

B. Cost Sharing or Matching

Although RMA prefers cost sharing by the applicant, this program has neither a cost sharing nor a matching requirement.

IV. Application and Submission Information

A. Electronic Application Package

Only electronic applications may be submitted via Grants.gov to the Risk Management Agency in response to this RFA.

Prior to preparing an application, it is suggested that the Project Director (PD) first contact an Authorized Representative (AR) (also referred to as Authorized Organizational Representative or AOR) to determine if the organization is prepared to submit electronic applications through Grants.gov. If the organization is not prepared, the AR should see, (*http://www.grants.gov/applicants/*

get_registered.jsp), for steps for preparing to submit applications through Grants.gov.

The steps to access application materials are as follows:

1. In order to access, complete, and submit applications, applicants must download and install a version of Adobe Reader compatible with Grants.gov. This software is essential to apply for RMA Federal awards. For basic system requirements and download instructions, please see *http://www.grants.gov/help/download_software.jsp.* To verify that you have a compatible version of Adobe Reader, Grants.gov established a test package that will assist you in making that determination. Grants.gov Adobe Versioning Test Package: *http://www.grants.gov/applicants/AdobeVersioningTestOnly.jsp.*

2. The application package must be obtained via Grants.gov, go to *http://www.grants.gov*, click on "Apply for Grants" in the left-hand column, click on "Step 1: Download a Grant Application Package and Instructions," enter the funding opportunity number USDA–RMA–RME–TSGP–001000 in the appropriate box and click "Download Package." From the search results, click "Download" to access the application package. If assistance is needed to access the application package (e.g. downloading or navigating Adobe forms), refer to resources available on the Grants.gov Web site first at (*http://grants.gov/*). Grants.gov assistance is also available as follows:

• Grants.gov customer support; Toll Free: 1–800–518–4726; Business Hours: 24 hours a day; E-mail: *support@grants.*

B. Content and Form of Application Submission

A complete and valid application must include the following:

1. A completed OMB Standard Form 424, "Application for Federal Assistance."

2. A completed OMB Standard Form 424–A, "Budget Information—Non-construction Programs."

3. A completed OMB Standard Form 424–B, "Assurances, Non-constructive Programs."

4. An Executive Summary (One page) and Proposal Narrative (Not to Exceed 20 single-sided pages in Microsoft Word) which will also include a Statement of Work.

5. Budget Narrative (in Microsoft Excel) describing how the categorical costs listed on the SF 424–A are derived. The budget narrative should provide enough detail for reviewers to easily understand how costs were determined and how they relate to the goals and objectives of the project. Partnering Plan to include how each partner will aid in carrying out the project goal providing specific tasks. Include Letters of commitment from individuals and/or groups, and should include the specific tasks they have agreed to do with the applicant.

6. A completed and signed OMB Standard Form LLL, Disclosure of Lobbying Activities.

7. A completed and signed AD–1049, Certification Regarding Drug-Free Workplace.

*Applications that do not include items 1–8 above will be considered incomplete, will not receive further consideration, and will be rejected.

The percent of time devoted to the project for all key project personnel must be identified in the application. Applicants must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget (supporting agency, amount of award, effective date, expiration date, expiration date of award, etc.). An application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. The percentage of time for both "Current" and "Pending" projects must not exceed 100% of time committed.

C. Funding Restrictions

Cooperative agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles;

d. Pay for the preparation of the cooperative agreement application;

e. Fund political activities;

f. Purchase alcohol, food, beverage, or entertainment;

g. Lend money to support farming or agricultural business operation or expansion;

h. Pay costs incurred prior to receiving a partnership agreement; or

i. Fund any activities prohibited in 7 CFR Parts 3015 and 3019, as applicable.

D. Limitation on Use of Project Funds for Salaries and Benefits

Total costs for salary and benefits allowed for projects under this announcement will be limited to not more than 70 percent reimbursement of the funds awarded under the cooperative agreement. One goal of the Targeted States Program is to maximize the use of the limited funding available for crop insurance education for Targeted States. In order to accomplish this goal, RMA needs to ensure that the maximum amount of funds practicable is used for directly providing the educational opportunities. Limiting the amount of funding for salaries and benefits will allow the limited amount of funding to reach the maximum number of farmers and ranchers.

E. Indirect Cost Rates

a. Indirect costs allowed for projects submitted under this announcement will be limited to ten (10) percent of the total direct cost of the cooperative agreement. Therefore, when preparing budgets, applicants should limit their requests for recovery of indirect costs to the lesser of their institution's official negotiated indirect cost rate or 10 percent of the total direct costs.

b. RMA reserves the right to negotiate final budgets with successful applicants.

c. Applicants must provide a copy of their indirect cost rate negotiated with their cognizant agency.

F. Other Submission Requirements

Applicants are responsible for ensuring that RMA receives a complete application package by the closing date and time. The agency strongly encourages applicants to submit applications well before the deadline to allow time for correction of technical errors identified by Grants.gov. Application packages submitted after the deadline will be rejected.

G. Acknowledgement of Applications

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in their applications. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should notify RMA's point of contact indicated in Section

V. Application Review Information

A. Criteria

Applications submitted under the Targeted States program will be evaluated within each Targeted State according to the following criteria:

Project Impacts—Maximum 20 Points

The applicant must demonstrate that the project benefits to farmers and ranchers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Identify the specific actions producers will likely be able to take as a result of the educational activities described in the Statement of Work; (b) identify the specific measures for evaluating results that will be employed in the project; (c) reasonably estimate the total number of producers reached through the various methods and educational activities described in the Statement of Work; and (d) justify such estimates with clear specifics. Reviewers' scoring will be based on the scope and reasonableness of the applicant's clear descriptions of specific, expected actions producers will accomplish, and well-designed methods for measuring the project's results and effectiveness. Applicants using direct contact methods with producers will be scored higher.

Statement of Work—Maximum 20 Points

The applicant must produce a clear and specific Statement of Work for the project. For each of the tasks contained in the Description of Agreement Award (refer to Section II Award Information), the applicant must identify and describe specific subtasks, responsible entities, expected completion dates, RMA substantial involvement, and deliverables that will further the purpose of this program. Applicants will obtain a higher score to the extent that the Statement of Work is specific, measurable and reasonable, has specific deadlines for the completion of subtasks, and relates directly to the required activities and the program purpose described in this announcement. Applicants are required to submit the Statement of Work on the RME–2 Form. All narratives should give estimates of how many producers will be reached through this project. Estimates for non-producers can also be made but they should be separate from the estimates of producers.

Partnering—Maximum 20 Points

The applicant must demonstrate experience and capacity to partner with and gain the support of grower organizations, agribusiness professionals, and agricultural leaders to carry out a local program of education and information in a designated Targeted State. The applicant is required to establish a written partnering plan that includes how each partner will aid in carrying out the project goal and purpose stated in this announcement and letters of commitment dated no more than 60 days prior to submission of application stating that the partner has agreed to do this work. The applicant must ensure this plan includes a list of all partners working on the project, their titles, and how they will be contributing to the deliverables listed in the agreement. The partnering plan will not count towards the maximum length of the application narrative. Applicants will receive higher scores to the extent that they can document and demonstrate in the written partnering plan: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that a broad group of farmers and ranchers will be reached within the Targeted State; (c) that partners are contributing to the project and involved in recruiting producers to attend the training; (d) that a substantial effort has been made to partner with organizations that can meet the needs of producers; and (e) statements from each partner regarding the number of producers that partner is committed to recruit for the project that would support the estimates specified under the Project Impacts criterion.

Project Management—Maximum 15 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the respective Targeted State. The project manager must demonstrate that he/she has the capability to accomplish the project goal and purpose stated in this announcement by (a) having a previous working relationship with the farm community in the designated Targeted State of the application, including being able to recruit approximately the number of producers to be reached in the application and/or (b) having established the capacity to partner with and gain the support of grower organizations, agribusiness professionals, and agribusiness leaders locally to aid in carrying out a program of education and information, including being able to recruit approximately the number of producers to be reached in this application. Applicants are encouraged to designate an alternate Project Leader in the event the Project Leader is unable to finish the project. Applicants that will employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers in the respective Targeted State will receive higher rankings.

Budget Appropriateness and Efficiency—Maximum 15 Points

Applicants must provide a detailed budget summary that clearly explains and justifies costs associated with the project. Applicants will receive higher scores to the extent that they can demonstrate a fair and reasonable use of funds appropriate for the project and a budget that contains the estimated cost of reaching each individual producer.

Targeted Producers—Maximum 10 Points

Applicants will obtain a higher score to the extent that the project places special emphasis on risk management strategies, education, and outreach specifically targeted at:

- Beginning farmers or ranchers;
- Legal immigrant farmers or ranchers who are attempting to become established producers in the United States;
- Socially disadvantaged farmers or ranchers;
- Farmers or ranchers who—
  - Are preparing to retire; and
  - Are using transition strategies to help new farmers or ranchers get started; and
- New or established farmers or ranchers who are converting production and marketing systems to pursue new markets.

B. Review and Selection Process

Applications will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or are incomplete will not receive further consideration during the next process. Applications that meet announcement requirements will be sorted into the Targeted State which the applicant proposes to conduct the project and will be presented to a review panel for consideration.

Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers will be drawn

from USDA, other Federal agencies, and public and private organizations, as needed. After considering the merits of all applications within a Targeted State, panel members will score each application according to the criteria and point values listed above. The panel will then rank each application against others within the Targeted State according to the scores received. A lottery will be used to resolve any instances of a tie score that might have a bearing on funding recommendations. If such a lottery is required, the names of all tied applicants will be entered into a drawing. The first tied applicant drawn will have priority over other tied applicants for funding consideration.

The review panel will report the results of the evaluation to the Manager of FCIC. The panel's report will include the recommended applicants to receive cooperative agreements for each Targeted State. Funding will not be provided for an application receiving a score less than 60. An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect to not fund that application in whole or in part. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

VI. Award Administration Information

A. Award Notices

The award document will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to whom the Director has issued an award under the terms of this request for applications;

(2) Title of project;

(3) Name(s) and institution(s) of PDs chosen to direct and control approved activities;

(4) Identifying award number assigned by the Department;

(5) Project period, specifying the amount of time the Department intends to support the project without requiring recompeting for funds;

(6) Total amount of Departmental financial assistance approved by the Director during the project period;

(7) Legal authority(ies) under which the award is issued;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;

(9) Applicable award terms and conditions (see *http://www.rma.usda.gov/business/awards/awardterms.html* to view RMA award terms and conditions);

(10) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and

(11) Other information or provisions deemed necessary by RMA to carry out its respective awarding activities or to accomplish the purpose of a particular award.

Following approval by the awarding official of RMA of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into cooperative agreements with those awardees. After a cooperative agreement has been signed, RMA will extend to awardees, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the awardee by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice. Notification of denial of funding will be sent to applicants after final funding decisions have been made and awardees announced publicly. Reasons for denial of funding can include, but are not limited to, incomplete applications, applications with evaluation scores below 60, or applications with evaluation scores that are lower than those of other applications in a Targeted State.

B. Administrative and National Policy Requirements

1. Requirement To Use Program Logo

Awardees of cooperative agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials, if appropriate.

2. Requirement To Provide Project Information to an RMA-Selected Representative

Awardees of cooperative agreements may be required to assist RMA in evaluating the effectiveness of its educational programs by providing documentation of educational activities and related information to any representative selected by RMA for program evaluation purposes.

3. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Also, such entities will not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

4. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

5. Confidential Aspects of Applications and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application. When an application results in a cooperative agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original

copy of an application that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of applications not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to award.

6. Audit Requirements

Awardees of cooperative agreements are subject to audit.

7. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective awardees, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires awardees and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom awardees of their subcontractors will pay with profits or other non-appropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application and are available at the address and telephone number listed in Section VII. Agency Contact.

8. Applicable OMB Circulars

All cooperative agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

9. Requirement To Assure Compliance With Federal Civil Rights Laws

Project leaders of all cooperative agreements funded as a result of this notice are required to know and abide by Federal civil rights laws and to assure USDA and RMA that the awardee is in compliance with and will continue to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), 7 CFR Part 15, and USDA regulations promulgated thereunder, 7 CFR 1901.202. RMA requires that awardees submit an Assurance Agreement (Civil Rights), assuring RMA of this compliance prior to the beginning of the project period.

10. Requirement To Participate in a Post Award Conference

RMA requires that project leaders attend a post award conference, if conducted, to become fully aware of cooperative agreement requirements and for delineating the roles of RMA personnel and the procedures that will be followed in administering the agreement and will afford an opportunity for the orderly transition of agreement duties and obligations if different personnel are to assume post-award responsibility. In their applications, applicants should budget for possible travel costs associated with attending this conference.

11. Requirement To Submit Educational Materials to the National AgRisk Education Library

RMA requires that project leaders upload digital copies of all risk management educational materials developed because of the project to the National AgRisk Education Library (*http://www.agrisk.umn.edu/*) for posting, if electronically reporting. RMA will be clearly identified as having provided funding for the materials.

12. Requirement To Submit Proposed Results to the National AgRisk Education Library

RMA requires that project leaders submit results of the project to the National AgRisk Education Library (*http://www.agrisk.umn.edu/*) for posting if electronically reporting.

13. Requirement To Submit a Project Plan of Operation in the Event of a Human Pandemic Outbreak

RMA requires that project leaders submit a project plan of operation in case of a human pandemic event. The plan should address the concept of continuing operations as they relate to the project. This should include the roles, responsibilities, and contact information for the project team and individuals serving as back-ups in case of a pandemic outbreak.

C. Reporting Requirements

Awardees will be required to submit quarterly progress reports using the Performance Progress Report (SF–PPR) as the cover sheet, quarterly financial reports (OMB Standard Form 425), and quarterly Activity Logs (RMA 300 Form) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period. The quarterly progress reports, activity logs, and final program reports MUST be submitted through the Results Verification System. The Web site address is *http://www.agrisk.umn.edu/RMA/Reporting.*

Awardees will be required to submit prior to the award:

- A completed and signed Assurance Agreement (Civil Rights).
- A completed and signed Faith-Based Survey on EEO.

VII. Agency Contact

For Further Information Contact: Applicants and other interested parties are encouraged to contact: Leonard Randolph, Sundii Johnson-Phillips, or Lydia M. Astorga, USDA–RMA–RME, phone: 202–720–0779, e-mail: *RMA.Risk-Ed@rma.usda.gov.* You may also obtain information regarding this announcement from the RMA Web site at: *http://www.rma.usda.gov/aboutrma/agreements/.*

VIII. Other Information

A. Dun and Bradstreet Data Universal Numbering System (DUNS)

A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 70 million businesses worldwide. The Office of Management and Budget published a notice of final policy issuance in the **Federal Register** June 27, 2003 (68 FR 38402) that requires a DUNS number in every application (i.e., hard copy and electronic) for a grant or cooperative agreement on or after October 1, 2003. Therefore, potential applicants should verify that they have a DUNS number or take the steps needed to obtain one. For information about how to obtain a DUNS number, go to *http://www.grants.gov.* Please note that the registration may take up to 14 business days to complete.

B. Required Registration With the Central Contract Registry (CCR) for Submission of Proposals

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must

register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit "Get Registered" at the Web site, *http://www.grants.gov.* Allow a minimum of 5 business days to complete the CCR registration.

C. Related Programs

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), and CFDA No. 10.457 (Commodity Partnerships for Risk Management Education). These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Signed in Washington, DC on February 23, 2010.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2010–3974 Filed 2–25–10; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Funding Opportunity Title: Commodity Partnerships for Small Agricultural Risk Management Education Sessions (Commodity Partnerships Small Sessions Program) Announcement Type: Announcement of Availability of Funds and Request for Application for Competitive Cooperative Partnership Agreements

Catalog of Federal Domestic Assistance Number (CFDA): 10.459.

DATES: Electronic applications submitted through Grants.gov are due at April 27, 2010. Hard copy applications will NOT be accepted.

SUMMARY: The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately $1.1 million (subject to availability of funds) for Commodity Partnerships for Small Agricultural Risk Management Education Sessions (the Commodity Partnerships Small Sessions Program). The purpose of this cooperative partnership agreement program is to deliver training and information in management of production, marketing, and financial risk to U.S. agricultural producers. The program gives priority to educating producers of crops currently not insured under Federal crop insurance, specialty crops, and underserved commodities, including livestock and forage. A maximum of 110 cooperative partnership agreements will be funded, with a minimum of ten in each of the ten designated RMA Regions. The maximum award for any cooperative partnership agreement will be $10,000. Awardees must demonstrate non-financial benefits from a cooperative partnership agreement and must agree to the substantial involvement of RMA in the project. Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), and CFDA No. 10.458 (Crop Insurance Education in Targeted States). Prospective applicants should carefully examine and compare the notices for each program.

The collections of information in this announcement have been approved by OMB under control number 0563–0067.

This Announcement Consists of Eight Sections

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- B. Background
- C. Definition of Priority Commodities
- D. Project Goal
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  13. Requirement To Submit a Project Plan of Operation in the Event of a Human Pandemic Outbreak
- C. Reporting Requirements

Section VII—Agency Contact

Section VIII—Additional Information
- A. Dun and Bradstreet Data Universal Numbering System (DUNS)
- B. Required Registration With the Central Contract Registry (CCR) for Submission of Proposals
- C. Related Programs

Full Text of Announcement

I. Funding Opportunity Description

A. Legislative Authority

The Commodity Partnerships Small Sessions Program is authorized under section 522(d)(3)(F) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1522(d)(3)(F)).

B. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information.

One of RMA's strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 522(d)(3)(F) of the Act, which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private

organizations. With respect to such partnerships, priority is to be given to reaching producers of Priority Commodities, as defined below.

C. Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

• *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.

• *Specialty crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.

• *Underserved commodities.* This group includes: (a) Commodities, including livestock and forage, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock and forage, with inadequate crop insurance coverage.

A project is considered as giving priority to Priority Commodities if 75 percent of the educational activities of the project are directed to producers of any of the three classes of commodities listed above or any combination of the three classes.

D. Project Goal

The goal of this program is to ensure that "* * * producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools."

E. Purpose

The purpose of the Commodity Partnership Small Session Program is to provide U.S. farmers and ranchers with training and informational opportunities to be able to understand:

• The kinds of risks addressed by existing and emerging risk management tools;

• The features and appropriate use of existing and emerging risk management tools; and

• How to make sound risk management decisions.

In addition, for 2010, the FCIC Board of Directors and the FCIC Manager are seeking projects that also include the Special Emphasis Topics listed below which highlight the educational priorities with each of the ten RMA Regional Offices:

• Billings, Montana Regional Office (MT, ND, SD, and WY)—Pasture, Rangeland, Forage, Livestock Gross Margin, Specialty Crops, Underserved Commodities, and 2011 Final Common Crop Regulations, Basic Provisions; and various crop insurance provisions.

• Davis, California Regional Office (AZ, CA, HI, NV, and UT)—Apiculture program, drought mitigation and lack of irrigation water, risk management tools for invasive pests, Specialty Crops, Hawaii Tropical Fruits and Trees, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and risk management tools to maximize strategic solutions for using Farm Service Agency and RMA programs.

• Jackson, Mississippi Regional Office (AR, KY, LA, MS, and TN)—AGR-Lite Insurance tools (TN), Nursery Price Endorsement Crop Insurance (all States), Nursery Insurance Tools (all States), 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Specialty Crops.

• Oklahoma City, Oklahoma Regional Office (NM, OK, and TX)—Native American issues and Limited English Proficiency (all States), Specialty Crops, 2011 Final Common Crop Regulations, Basic Provision and various crop insurance provisions.

• Raleigh, North Carolina Regional Office (CT, DE, MA, MD, ME, NC, NH, NJ, NY, PA, RI, VA, VT, and WV)—2011 Final Common Crop Regulations, Basic Provision and various crop insurance provisions.

• Connecticut—LGM Dairy Cattle, Northern Potatoes, Apples, Specialty Crops, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Nursery Crop Insurance Tools.

• Delaware—LGM Dairy Cattle, Southern Potatoes, Specialty Crops and 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Nursery Crop Insurance Tools.

• Maine—LGM Dairy Cattle, Northern Potatoes, Apples, Specialty Crops, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Nursery Crop Insurance Tools.

• Maryland—LGM Dairy Cattle, Southern Potatoes, Apples, Specialty Crops, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Nursery Crop Insurance Tools.

• Massachusetts—LGM Dairy Cattle, Northern Potatoes, Apples, Specialty Crops, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions and Nursery Crop Insurance Tools.

• New Hampshire—LGM Dairy Cattle, Apples, Specialty Crops, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Nursery Crop Insurance Tools.

• New Jersey—LGM Dairy Cattle, Southern Potatoes, Apples, Specialty Crops, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Nursery Crop Insurance Tools.

• New York—Specialty Crops, Apiculture Vegetation Index, LGM Dairy Cattle, Pasture Rangeland Forage Vegetation Index, Northern Potatoes, Apples, Cabbage, Grapes, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Nursery Crop Insurance Tools.

• North Carolina—Specialty Crops, Apiculture, Pasture Rangeland Forage Vegetation Index, LRP for Feeder Cattle, Fed Cattle, Lamb, and Swine, Southern Potatoes, Apples, Cabbage, Grapes, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Nursery Crop Insurance Tools.

• Pennsylvania—Specialty Crops, Apiculture, LGM Dairy Cattle, Pasture Rangeland Forage, Northern Potatoes, Apples, Cabbage, Grapes, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Nursery Crop Insurance Tools.

• Rhode Island—Specialty Crops, LGM Dairy Cattle, Northern Potatoes, Apples, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Nursery Crop Insurance Tools.

• Virginia—Specialty Crops, Apiculture, Pasture Rangeland Forage, LRP for Feeder Cattle, Fed Cattle, Lamb, Swine, Southern Potatoes, Apples, Cabbage, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Nursery Crop Insurance Tools.

• Vermont—Specialty Crops, LGM Dairy Cattle, Northern Potatoes, Apples, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, and Nursery Crop Insurance Tools.

• West Virginia—Specialty Crops, LGM Dairy Cattle, Apples, 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance

provisions, and Nursery Crop Insurance Tools.

• Spokane, Washington Regional Office (AK, ID, OR, and WA)—WA Regional Office (AK, ID, OR, and WA)—2011 Final Common Crop Regulations, Basic Provisions and Various Crop Insurance Provision, Crop Insurance Choices for Willamette Valley Oregon Producers, Livestock Gross Margin for Dairy Cattle (LGM), Cherry Actual Revenue History (ARH), Grape Insurance Program for Western Washington, Adjusted Gross Revenue Programs (AGR/AGR-Lite), Dry Pea and Lentil Insurance, and Specialty Crops.

• Springfield, Illinois Regional Office (IL, IN, MI, and OH) Specialty Crops and 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions.

• St. Paul, Minnesota Regional Office (IA, MN, and WI)—AGR-Lite, understanding how Revenue Policies function and their relationship to marketing decisions, Specialty Crops, and 2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions.

• Topeka, Kansas Regional Office (CO, KS, MO, and NE)—2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, Specialty Crops, and Pasture, Rangeland and Forage in States and counties with the program.

• Valdosta, Georgia Regional Office (AL, FL, GA, SC, and Puerto Rico)—2011 Final Common Crop Regulations, Basic Provisions and various crop insurance provisions, Specialty Crops and Pasture, Rangeland, and Forage/Apiculture in States and counties with the program.

II. Award Information

A. Type of Application: In FY 2010, applications may be submitted to the Commodity Partnership for Small Agricultural Risk Management Education Small Sessions Program as a new application. All new applications will be reviewed competitively using the selection process and evaluation criteria described in Section V—Application Review Process. Each award will be designated as a Cooperative Agreement, which will require substantial involvement by RMA.

B. Funding Availability: There is no commitment by USDA to fund any particular application. Approximately $1.1 million (subject to availability of funds) is available in fiscal year 2010 to fund up to 110 cooperative partnership agreements. The maximum award for any agreement will be $10,000. It is anticipated that a minimum of ten agreements will be funded in each of the ten designated RMA Regions.

In the event that all funds available for this program are not obligated after the maximum number of agreements are awarded or if additional funds become available, these funds may, at the discretion of the Manager of FCIC, be used to award additional applications that score highly by the technical review panel or allocated pro-rata to awardees for use in broadening the size or scope of awarded projects, if agreed to by the awardee. In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. It is expected that the awards will be made approximately 120 days after the application deadline. All awards will be made and agreements finalized no later than September 30, 2010.

C. Location and Target Audience: RMA Regional Offices and the States serviced within each Region are listed below. Staff from the respective RMA Regional Offices will provide substantial involvement for projects conducted within the Region.

Billings, Montana Regional Office: (MT, ND, SD, and WY.)

Davis, California Regional Office: (AZ, CA, HI, NV, and UT.)

Jackson, Mississippi Regional Office: (AR, KY, LA, MS, and TN.)

Oklahoma City, Oklahoma Regional Office: (NM, OK, and TX.)

Raleigh, North Carolina Regional Office: (CT, DE, MA, MD, ME, NC, NH, NJ, NY, PA, RI, VA, VT, and WV.)

Spokane, Washington Regional Office: (AK, ID, OR, and WA.)

Springfield, Illinois Regional Office: (IL, IN, MI, and OH.)

St. Paul, Minnesota Regional Office: (IA, MN, and WI.)

Topeka, Kansas Regional Office: (CO, KS, MO, and NE.)

Valdosta, Georgia Regional Office: (AL, FL, GA, SC, and Puerto Rico.)

Applicants must clearly designate the RMA Region where educational activities will be conducted in their application narrative in block 12 of the SF–424 form. Applications without this designation will be rejected. Priority will be given to producers of Priority Commodities previously identified in this RFA. Applicants proposing to conduct educational activities in States served by more than one RMA Regional Office (RMA Region) must submit a separate application for each RMA Region. Single applications proposing to conduct educational activities in States served by more than one RMA Region will be rejected.

D. Maximum Award: Any application that requests Federal funding of more than $10,000 for a project will be rejected. RMA also reserves the right to fund successful applications at an amount less than requested if it is judged that the application can be implemented at a lower funding level.

E. Project Period: Projects will be funded for a period of up to one year from the project starting date.

F. Description of Agreement Award

Awardee Tasks

In conducting activities to achieve the purpose and goal of this program in a designated RMA Region, the awardee will be responsible for performing the following tasks:

• Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for risk management; (b) inform producers of the availability of risk management tools; and (c) inform producers and agribusiness leaders in the designated RMA Region of training and informational opportunities.

• Deliver risk management training and informational opportunities to agricultural producers and agribusiness professionals in the designated RMA Region. This will include organizing and delivering educational activities using the instructional materials assembled by the grantee to meet the local needs of agricultural producers. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on risk management tools and decisions.

• Document all educational activities conducted under the cooperative partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The awardee will also be required to provide information to RMA as requested for evaluation purposes.

G. RMA Activities

FCIC, working through RMA, will be substantially involved during the performance of the funded project through RMA's ten Regional Offices. Potential types of substantial involvement may include, but are not limited to the following activities.

• Collaborate with the awardee in assembling, reviewing, and approving

risk management materials for producers in the designated RMA Region.

• Collaborate with the awardee in reviewing and approving a promotional program for raising awareness for risk management and for informing producers of training and informational opportunities in the RMA Region.

• Collaborate with the awardee on the delivery of education to producers and agribusiness leaders in the RMA Region. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; and (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings.

• Conduct an evaluation of the performance of the awardee in meeting the deliverables of the project.

Applications that do not contain substantial involvement by RMA will be rejected.

H. Other Tasks

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of partners. The applicant must also identify specific ways in which RMA would have substantial involvement in the proposed project task.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants include State departments of agriculture, universities, non-profit agricultural organizations, and other public or private organizations with the capacity to lead a local program of risk management education for farmers and ranchers in an RMA Region. Individuals are not eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program governed by Federal law and regulations (*e.g.* debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or cooperative partnership; a determination of a violation of applicable ethical standards; a determination of being considered "high risk"). Applications from ineligible or excluded persons will be rejected in their entirety.

B. Cost Sharing or Matching

Although RMA prefers cost sharing by the applicant, this program has neither a cost sharing nor a matching requirement.

C. Other—Non-Financial Benefits

To be eligible, applicants must also be able to demonstrate that they will receive a non-financial benefit as a result of a cooperative partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the cooperative partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program). Applications that do not demonstrate a non-financial benefit will be rejected.

IV. Application and Submission Information

A. Electronic Application Package

Only electronic applications may be submitted via Grants.gov to the Risk Management Agency in response to this RFA.

Prior to preparing an application, it is suggested that the Project Director (PD) first contact an Authorized Representative (AR) (also referred to as Authorized Organizational Representative or AOR) to determine if the organization is prepared to submit electronic applications through Grants.gov. If the organization is not prepared, the AR should see *http://www.grants.gov/applicants/get_registered.jsp* for steps for preparing to submit applications through Grants.gov.

The steps to access application materials are as follows:

1. In order to access, complete, and submit applications, applicants must download and install a version of Adobe Reader compatible with Grants.gov. This software is essential to apply for RMA Federal awards. For basic system requirements and download instructions, please see *http://www.grants.gov/help/download_software.jsp.* To verify that you have a compatible version of Adobe Reader, Grants.gov established a test package that will assist you in making that determination. Grants.gov Adobe Versioning Test Package: *http://www.grants.gov/applicants/AdobeVersioningTestOnly.jsp.*

2. The application package must be obtained via Grants.gov, go to *http://www.grants.gov*, click on "Apply for Grants" in the left-hand column, click on "Step 1: Download a Grant Application Package and Instructions," enter the funding opportunity number USDA–RMA–RME–SSGP–002000 in the appropriate box and click "Download Package." From the search results, click "Download" to access the application package. If assistance is needed to access the application package (*e.g.* downloading or navigating Adobe forms), refer to resources available on the Grants.gov Web site first (*http://grants/gov/*). Grants.gov assistance is also available as follows:

• Grants.gov customer support.
Toll Free: 1–800–518–4726.
Business Hours: 24 Hours a day.
E-mail: support@grants.gov.

B. Content and Form of Application Submission

A complete and valid application must include the following:

1. A completed OMB Standard Form 424, "Application for Federal Assistance."

2. A completed OMB Standard Form 424–A, "Budget Information—Non-construction Programs." Federal funding requested (the total of direct and indirect costs) must not exceed $10,000.

3. A completed OMB Standard Form 424–B, "Assurances, Non-constructive Programs."

4. An Executive Summary (One page) and Proposal Narrative (Not to Exceed 10 single-sided pages in Microsoft Word) which will also include a Statement of Work.

5. Budget Narrative (in Microsoft Excel) describing how the categorical costs listed on the SF 424–A are derived. The budget narrative should provide enough detail for reviewers to easily understand how costs were determined and how they relate to the goals and objectives of the project.

6. Partnering Plan to include how each partner will aid in carrying out the project goal providing specific tasks. Include Letters of commitment from individuals and/or groups, and should include the specific tasks they have agreed to do with the applicant.

7. A completed and signed OMB Standard Form LLL, Disclosure of Lobbying Activities.

8. A completed and signed AD–1049, Certification Regarding Drug-Free Workplace.

a. * 1234. A complete RME–1 Form Risk Management Education Project Narrative (RME–1 Form). Complete all required parts.

* Applications that do not include items 1–8 above will be considered incomplete, will not receive further consideration, and will be rejected.

The percent of time devoted to the project for all key project personnel must be identified in the application. Applicants must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget (supporting agency, amount of award, effective date, expiration date, expiration date of award, *etc.*). An application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. The percentage of time for both "Current" and "Pending" projects must not exceed 100% of time committed.

C. Funding Restrictions: Cooperative partnership agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles;

d. Pay for the preparation of the cooperative partnership agreement application;

e. Fund political activities;

f. Purchase alcohol, food, beverage or entertainment;

g. Lend money to support farming or agricultural business operation or expansion;

h. Pay costs incurred prior to receiving a partnership agreement; or

i. Fund any activities prohibited in 7 CFR Parts 3015 and 3019, as applicable.

D. Limitation on Use of Project Funds for Salaries and Benefits

Total costs for salary and benefits allowed for projects under this announcement will be limited to not more than 70 percent reimbursement of the funds awarded under the cooperative partnership agreement as indicated in Section III. Eligibility Information, C. Other—Non-financial Benefits. One goal of the Commodity Partnerships Small Sessions Program is to maximize the use of the limited funding available for risk management education for producers of Priority Commodities. In order to accomplish this goal, RMA needs to ensure that the maximum amount of funds practicable is used for directly providing the educational opportunities. Limiting the amount of funding for salaries and benefits will allow the limited amount of funding to reach the maximum number of farmers and ranchers.

E. Indirect Cost Rates

a. Indirect costs allowed for projects submitted under this announcement will be limited to ten (10) percent of the total direct cost of the cooperative partnership agreement. Therefore, when preparing budgets, applicants should limit their requests for recovery of indirect costs to the lesser of their institution's official negotiated indirect cost rate or 10 percent of the total direct costs.

b. RMA reserves the right to negotiate final budgets with successful applicants.

c. Applicants must provide a copy of their indirect cost rate negotiated with their cognizant agency.

F. Other Submission Requirements

Applicants are responsible for ensuring that RMA receives a complete application package by the closing date and time. *The agency strongly encourages applicants to submit applications well before the deadline* to allow time for correction of technical errors identified by Grants.gov. Application packages submitted after the deadline will be rejected.

G. Acknowledgement of Applications

Receipt of timely applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in their applications. If an e-mail address is not indicated on an application, timely receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until after the awards have been made. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should notify RMA's point of contact indicated in Section VII, Agency Contact.

V. Application Review Information

A. Criteria

Applications submitted under the Commodity Partnerships Small Sessions Program will be evaluated within each RMA Region (area defined by States served by the Regional Office) according to the following criteria:

Project Impacts—Maximum 20 Points

The applicant must demonstrate that the project benefits to farmers and ranchers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Identify the specific actions producers will likely be able to take as a result of the educational activities described in the Statement of Work; (b) identify the specific measures for evaluating results that will be employed in the project; (c) reasonably estimate the total number of producers reached through the various methods and educational activities described in the Statement of Work; and (d) justify such estimates with clear specifics. Reviewers' scoring will be based on the scope and reasonableness of the applicant's clear descriptions of specific expected actions producers will accomplish, and well-designed methods for measuring the project's results and effectiveness. Applicants using direct contact methods with producers will be scored higher.

Statement of Work—Maximum 20 Points

The applicant must produce a clear and specific Statement of Work for the project. For each of the tasks contained in the Description of Agreement Award (refer to Section II Award Information), the applicant must identify and describe specific subtasks, responsible entities, expected completion dates, RMA substantial involvement, and deliverables that will further the purpose of this program. Applicants will be scored higher to the extent that the Statement of Work is specific, measurable, reasonable, has specific deadlines for the completion of subtasks, relates directly to the required activities and the program purpose described in this announcement, which is to provide producers with training and informational opportunities so that the producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools. Applicants are required to submit this Statement of Work on Form RME–2 Form. All narratives should give estimates of how many producers will be reached through this project. Estimates for non-producers can also be

made but they should be separate from the estimate of producers.

Project Management—Maximum 20 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the respective RMA Region. The project manager must demonstrate that he/she has the capability to accomplish the project goal and purpose stated in this announcement by (a) having a previous working relationship with the farm community in the designated RMA Region of the application, including being able to recruit approximately the number of producers to be reached in the application and/or (b) having established the capacity to partner with and gain the support of grower organizations, agribusiness professionals, and agribusiness leaders locally to aid in carrying out a program of education and information, including being able to recruit approximately the number of producers to be reached in this application. Applicants are encouraged to designate an alternate Project Leader in the event the Project Leader is unable to finish the project. Applicants that will employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers in the respective RMA Region will receive higher rankings.

Budget Appropriateness and Efficiency—Maximum 20 Points

Applicants must provide a detailed budget summary that clearly explains and justifies costs associated with the project. Applicants will receive higher scores to the extent that they can demonstrate a fair and reasonable use of funds appropriate for the project and a budget that contains the estimated cost of reaching each individual producer.

Priority Commodity—Maximum 20 Points

The applicant can submit projects that are not related to Priority Commodities. However, priority will be given to projects relating to Priority Commodities. Priority will also be given to projects related to the Special Emphasis Topics. Projects that relate to Priority Commodities and the Special Emphasis Topics will be eligible for the most points.

B. Review and Selection Process

Applications will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or that are incomplete will not receive further consideration during the next process. Applications that meet announcement requirements will be sorted into the RMA Region in which the applicant proposes to conduct the project and will be presented to a review panel for consideration.

Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers will be drawn from USDA, other Federal agencies, and public and private organizations, as needed. After considering the merits of all applications within an RMA Region, panel members will score each application according to the criteria and point values listed above. The panel will then rank each application against others within the RMA Region according to the scores received. A lottery will be used to resolve any instances of a tie score that might have a bearing on funding recommendations. If such a lottery is required, the names of all tied applicants will be entered into a drawing. The first tied applicant drawn will have priority over other tied applicants for funding consideration.

The review panel will report the results of the evaluation to the Manager of FCIC. The panel's report will include the recommended applicants to receive cooperative partnership agreements for each RMA Region. Funding will not be provided for an application receiving a score less than 45. Funding will not be provided for an application that is highly similar to a higher-scoring application in the same RMA Region. Highly similar is one that proposes to reach the same producers likely to be reached by another applicant that scored higher by the panel and the same general educational material is proposed to be delivered.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect not to fund that application in whole or in part. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

VI. Award Administration Information

A. Award Notices

The award document will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to whom the Director has issued an award under the terms of this request for applications;

(2) Title of project;

(3) Name(s) and institution(s) of PDs chosen to direct and control approved activities;

(4) Identifying award number assigned by the Department;

(5) Project period, specifying the amount of time the Department intends to support the project without requiring recompeting for funds;

(6) Total amount of Departmental financial assistance approved by the Director during the project period;

(7) Legal authority(ies) under which the award is issued;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;

(9) Applicable award terms and conditions (see *http://www.rma.usda.gov/business/awards/awardterms.htm*l to view RMA award terms and conditions);

(10) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and

(11) Other information or provisions deemed necessary by RMA to carry out its respective awarding activities or to accomplish the purpose of a particular award.

Following approval by the awarding official of RMA of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into cooperative partnership agreements with those selected applicants.

After a cooperative agreement has been signed, RMA will extend to awardees, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of

Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding will be sent to applicants after final funding decisions have been made and the awardees announced publicly. Reasons for denial of funding can include, but are not limited to, incomplete applications, applications with evaluation scores that are lower that other applications in an RMA Region, or applications that are highly similar to a higher-scoring application in the same RMA Region. Highly similar is an application that proposes to reach the same producers likely to be reached by another applicant that scored higher by the panel and the same general educational material is proposed to be delivered.

B. Administrative and National Policy Requirements

1. Requirement To Use Program Logo

Applicants awarded cooperative partnership agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials, when deemed appropriate.

2. Requirement To Provide Project Information to an RMA-Selected Representative

Applicants awarded cooperative partnership agreements may be required to assist RMA in evaluating the effectiveness of its educational programs by providing documentation of educational activities and related information to any representative selected by RMA for program evaluation purposes.

3. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Also, such entities will not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

4. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

5. Confidential Aspects of Applications and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application. When an application results in a partnership agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of an application that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of applications not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to award.

6. Audit Requirements

Applicants awarded cooperative partnership agreements are subject to audit.

7. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and Tribal organizations. Current and prospective awardees, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires awardees and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom awardees of their subcontractors will pay with profits or other non-appropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application, are available at the address, and telephone number listed in Section VII. Agency Contact.

8. Applicable OMB Circulars

All partnership agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

9. Requirement To Assure Compliance With Federal Civil Rights Laws

Awardees of all cooperative partnership agreements funded as a result of this notice are required to know and abide by Federal civil rights laws and to assure USDA and RMA that the awardee is in compliance with and will continue to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), 7 CFR Part 15, and USDA regulations promulgated thereunder, 7 CFR 1901.202. RMA requires awardees to submit an Assurance Agreement (Civil Rights), assuring RMA of this compliance prior to the beginning of the project period.

10. Requirement To Participate in a Post Award Teleconference

RMA requires that project leaders participate in a post award teleconference, if conducted to become fully aware of agreement requirements and for delineating the roles of RMA personnel and the procedures that will be followed in administering the agreement and will afford an opportunity for the orderly transition of agreement duties and obligations if different personnel are to assume post-award responsibility.

11. Requirement To Submit Educational Materials to the National AgRisk Education Library

RMA requires that project leaders upload digital copies of all risk management educational materials developed because of the project to the National AgRisk Education Library (*http://www.agrisk.umn.edu/*) for posting, if electronically reporting. RMA will be clearly identified as having provided funding for the materials.

12. Requirement To Submit Proposed Results to the National AgRisk Education Library

RMA requires that project leaders submit results of the project to the National AgRisk Education Library (*http://www.agrisk.umn.edu/*) for posting if electronically reporting.

13. Requirement To Submit a Project Plan of Operation in the Event of a Human Pandemic Outbreak

RMA requires that project leaders submit a project plan of operation in case of a human pandemic event. The plan should address the concept of continuing operations as they relate to the project. This should include the roles, responsibilities, and contact information for the project team and individuals serving as back-ups in case of a pandemic outbreak.

C. Reporting Requirements

Awardees will be required to submit quarterly progress reports using the Performance Progress Report (SF–PPR) as the cover sheet, quarterly financial reports (OMB Standard Form 425), and quarterly Activity Logs (Form RMA–300) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period. The quarterly progress reports, Activity Logs, and final program reports MUST be submitted through the Results Verification System. The Web site address is *http://www.agrisk.umn.edu/RMA/Reporting.*

Awardees will be required to submit prior to the award:

- A completed and signed Assurance Agreement (Civil Rights).
- A completed and signed Faith-Based Survey on EEO.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact: Leonard Randolph, Sundii Johnson-Phillips, or Lydia M. Astorga, USDA–RMA–RME, *phone:* 202–720–0779, *e-mail: RMA.Risk-Ed@rma.usda.gov.* You may also obtain information regarding this announcement from the RMA Web site at: *http://www.rma.usda.gov/aboutrma/agreements.*

VIII. Other Information

A. Dun and Bradstreet Data Universal Numbering System (DUNS)

A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 70 million businesses worldwide. The Office of Management and Budget published a notice of final policy issuance in the **Federal Register** June 27, 2003 (68 FR 38402) that requires a DUNS number in every application (*i.e.,* hard copy and electronic) for a grant or cooperative agreement on or after October 1, 2003. Therefore, potential applicants should verify that they have a DUNS number or take the steps needed to obtain one. For information about how to obtain a DUNS number, go to *http://www.grants.gov.* Please note that the registration may take up to 14 business days to complete.

B. Required Registration With the Central Contract Registry (CCR) for Submission of Proposals

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit "Get Registered" at the Web site, *http://www.grants.gov.* Allow a minimum of 5 business days to complete the CCR registration.

C. Related Programs

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), and CFDA No. 10.458 (Crop Insurance Education in Targeted States). These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Signed in Washington, DC on February 23, 2010.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2010–3975 Filed 2–25–10; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, March 31, 2010. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: The meeting will be held March 31, 2010 at 6 pm.

ADDRESSES: The meeting will be held at the Ketchikan-Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, do District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to Diane Daniels, RAC Coordinator at *ddaniels@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Diane Daniels, RAC Coordinator Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4105.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Forrest Cole,

Forest Supervisor.

[FR Doc. 2010–3782 Filed 2–25–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC)

will meet in Willows, California. Agenda items covered include: (1) Introductions, (2) Approve Minutes, (3) RAC Admin Updates, (4) Public Comment, (5) FY08 and FY09 New Project Presentations and Voting if Time Allows, (6) FY10 New Project Presentations and Voting if Time Allows, (7) General Discussion, (8) Meeting Schedule, (9) Adjourn.

DATES: The meeting will be held on April 26, 2010, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals who wish to speak or propose agenda items send their names and proposals to Eduardo Olmedo, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Laurie Trombley, Glenn/Colusa RAC Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 160, Stonyford, CA 95979 (530) 963–3128 *e-mail: ltrombley@fs.fed.us.* Eduardo Olmedo, District Ranger, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt St., Willows, CA 95988 (530) 934–3316 *e-mail: eolmedo@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee will file written statements with the Committee staff before or after the meeting. Public input sessions are provided and individuals who made written requests by April 12, 2010 have the opportunity to address the committee at those sessions.

Dated: February 9, 2010.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. 2010–3649 Filed 2–25–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of a Meeting of the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of a meeting.

SUMMARY: The Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on air quality issues relating to agriculture.

DATES: The meeting will convene at 8 a.m. beginning Tuesday through Thursday (March 9–11, 2010), and conclude at 5 p.m. each day except Thursday, when the meeting will conclude at noon. A public comment period will be held on March 11, 2010. Individuals making oral presentations should register in person at the meeting site and must bring with them 50 copies of any materials they would like distributed.

ADDRESSES: The meeting will be held at the Hotel Duval located at 415 North Monroe Street, Tallahassee, Florida 32301; telephone: (850) 391–3783 or (866) 966–1389.

FOR FURTHER INFORMATION CONTACT: Elvis Graves, Acting Designated Federal Official, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6165 South Building, Washington, DC 20013; telephone: (336) 370–3347; or e-mail: *elvis.graves@gnb.usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning the AAQTF may be found at the following Web site: *http://www.airquality.nrcs.usda.gov/AAQTF/.*

AAQTF Meeting

Draft Agenda

Tuesday, March 9, 2010

- Welcome to Florida.
- Discussion of Florida Air Quality Issues.
- Discussion of Greenhouse Gas.
- Reactive Nitrogen.
- Public Comments.

(Time will be reserved on March 11, 2010, to receive public comment. Individual presentations will be limited to 5 minutes).

Wednesday, March 10, 2010

- Discussion of Conservation Innovation Grant Animal Feeding Operation Index Tool.
- Fire As An Ecosystem Management Tool.

Thursday, March 11, 2010

- Discussion of Subcommittee Recommendations.
- Public Comment.
- Next Meeting, Time, and Place; Adjournment.

**Please note that the timing of events in the agenda is subject to change to accommodate changing schedules of expected speakers.*

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Those persons wishing to make oral presentations should register in person at the meeting site. Those wishing to distribute written materials at the meeting (in conjunction with spoken comments) must bring 50 copies of the materials with them.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Mr. Graves. The Department of Agriculture (USDA) prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). USDA is an equal opportunity provider and employer.

Signed this February 22, 2010, in Washington, DC.

Dave White,

Chief.

[FR Doc. 2010–3996 Filed 2–25–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Afshin Rezaei

In the Matter of: Afshin Rezaei, 2310 Valley Brook Way, NE., Atlanta, GA 30319.

Order Denying Export Privileges

On May 15, 2008, in the U.S. District Court for the Northern District of Georgia, Afshin Rezaei ("Rezaei") pleaded guilty to violating the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA") for knowingly and willfully exporting and causing to be exported laptop computers from the United States to Iran without having obtained the required authorization from the U.S. Department of the Treasury. Rezaei was sentenced to time

served, followed by three years of supervised release.

Section 766.25 of the Export Administration Regulations ("EAR" or "Regulations") [1] provides, in pertinent part, that "[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the [Export Administration Act ("EAA")], the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778)." 15 CFR Section 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR Section 766.25(d); see also 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security ("BIS") licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Rezaei's conviction for violating IEEPA, and have provided notice and an opportunity for Rezaei to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Rezaei. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Rezaei's export privileges under the Regulations for a period of ten years from the date of Rezaei's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Rezaei had an interest at the time of his conviction.

Accordingly, *it is hereby*

Ordered.

I. Until May 15, 2018, Afshin Rezaei, with a last known address at: 2310 Valley Brook Way, NE., Atlanta, GA 30319, and when acting for or on behalf of Rezaei, his representatives, assigns, agents, or employees, (collectively referred to hereinafter as the "Denied Person") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Afshin Rezaei by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until May 15, 2018.

VI. In accordance with Part 756 of the Regulations, Rezaei may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Rezaei. This Order shall be published in the **Federal Register**.

Issued this February 18, 2010.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2010–3994 Filed 2–25–10; 8:45 am]

BILLING CODE 3510–DT–P

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2009). The Regulations are issued pursuant to the Export Administration Act ("EAA"), which is currently codified at 50 U.S.C. app. §§ 2401–2420 (2000). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 FR 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)).

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1663]

Approval for Subzone Expansion and Expanded Manufacturing Authority; Foreign-Trade Subzone 119B, Uponor, Inc. (Polyethylene Tubing); Apple Valley, MN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Metropolitan Area Foreign-Trade Zone Commission,

grantee of Foreign-Trade Zone 119 (Minneapolis, Minnesota), has submitted a request on behalf of Uponor, Inc. (Uponor), operator of Subzone 119B at the Uponor polyethylene tubing manufacturing and distribution facilities in Apple Valley, Minnesota, to expand and reorganize the subzone and to expand the scope of FTZ manufacturing authority to include new production capacity (FTZ Docket 61–2008, filed 10–28–08);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 65582, 11–4–08) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand and reorganize the subzone and to expand the scope of FTZ manufacturing authority within Subzone 119B, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, February 5, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–4052 Filed 2–25–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Pan American Grain Co.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Appeal.

SUMMARY: This announcement provides notice that Pan American Grain Co., has filed an administrative appeal with the Department of Commerce (Department), requesting that the Secretary override an objection by the Puerto Rico Planning Board (Board) to the proposed improvement of port facilities located in San Juan Bay, Puerto Rico.

DATES: Comments regarding this appeal or requests for a public hearing must be sent in writing to the NOAA, Office of General Counsel for Ocean Services postmarked or e-mailed no later than March 29, 2010.

ADDRESSES: Materials from the appeal record will be available at the NOAA, Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 and on the following Web site: *http://www.ogc.doc.gov/czma.htm.*

FOR FURTHER INFORMATION CONTACT: Gladys P. Miles, Attorney-Advisor, NOAA, Office of General Counsel, 301–713–7384, or at *gcos.inquiries@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

On January 27, 2010, Pan American Grain Co. filed notice of an appeal with the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the Board to Pan American's consistency certification for proposed improvements to its port facilities located in San Juan Bay, Puerto Rico.

Under the CZMA, the Secretary may override Alabama's objection on grounds that the project is consistent with the objectives or purposes of the CZMA or otherwise necessary in the interest of national security. To make the determination that the proposed activity is "consistent with the objectives or purposes of the CZMA," the Department must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the applicable coastal management program. 15 CFR 930.121. Conversely, to make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired were the activity not permitted to go forward as proposed. 15 CFR 930.122.

II. Opportunity for Federal Agency and Public Comment

Pursuant to Department of Commerce regulations, the public and interested federal agencies may submit comments on this appeal. Written comments must be sent no later than March 29, 2010 to the attention of Gladys P. Miles, NOAA, Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 or via e-mail to *gcos.comments@noaa.gov.*

III. Opportunity for a Public Hearing

Pursuant to Department of Commerce regulations, the Secretary may hold a public hearing on this appeal, either in response to a request for a public hearing or at the Secretary's own initiative. If a public hearing is held, it shall be noticed in the **Federal Register**, and the Secretary shall reopen the public and Federal agency comment period for a 10-day period following the hearings. Written requests for a public hearing must be sent no later than March 29, 2010 to the attention of Gladys P. Miles, NOAA, Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 or via e-mail to *gcos.comments@noaa.gov.*

IV. Appeal Documents

NOAA intends to provide the public with access to all publicly available materials and related documents comprising the appeal record on the following Web site: *http://www.ogc.doc.gov/czma.htm;* and during business hours, at the NOAA, Office of General Counsel for Ocean Services. For additional information concerning this appeal, please contact Gladys P. Miles, NOAA, Office of General Counsel for Ocean Services, 301–713–7384 or *gcos.inquiries@noaa.gov.*

Dated: February 23, 2010.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services, NOAA.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

[FR Doc. 2010–4076 Filed 2–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1662]

Grant of Authority for Subzone Status; Danisco USA, Inc., Sweeteners Division (Xylitol, Xylose, Galactose and Mannose); Thomson, IL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Jo-Carroll Foreign Trade Zone Board, grantee of Foreign-Trade Zone 271, has made application to the Board for authority to establish a special-purpose subzone at the xylitol, xylose, galactose and mannose manufacturing facility of Danisco USA, Inc., Sweeteners Division, located in Thomson, Illinois, (FTZ Docket 4–2009, filed 2/4/2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 6856–6857, 2/11/2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing of xylitol, xylose, galactose and mannose at the facility of Danisco USA, Inc., Sweeteners Division, located in Thomson, Illinois (Subzone 271A), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this February 5th, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–4078 Filed 2–25–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1664]

Grant of Authority for Subzone Status; IKEA Distribution Services (Distribution of Home Furnishings and Accessories); Baltimore, MD

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Maryland Department of Transportation, grantee of Foreign-Trade Zone 73, has made application to the Board for authority to establish a special-purpose subzone at the warehouse and distribution facility of IKEA Distribution Services, located in Perryville, Maryland, (FTZ Docket 26–2009, filed July 2, 2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 33415, July 13, 2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to home furnishings and accessories warehousing and distribution at the facility of IKEA Distribution Services, located in Perryville, Maryland (Subzone 73C), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, February 5, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–4049 Filed 2–25–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1653]

Grant of Authority; Establishment of a Foreign-Trade Zone, Kern County, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for * * * "the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection (CBP) ports of entry;

Whereas, the County of Kern Department of Airports (the Grantee) has made application to the Board (FTZ Docket 18–2009, filed 04/28/09) requesting the establishment of a foreign-trade zone at sites in Kern County, California;

Whereas, the Meadows Field Airport (proposed Site 1) was designated as a CBP user fee airport facility on October 31, 2006;

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 20459, 05/04/09; correction 74 FR 27506, 06/10/09), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the

examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 276, at the sites described in the application, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this January 19, 2010.

Foreign-Trade Zones Board.

Gary Locke,

Secretary of Commerce, Chairman and Executive Officer.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–4051 Filed 2–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1665]

Grant of Authority for Subzone Status; Brightpoint North America L.P. (Cell Phone Kitting and Distribution) Indianapolis, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, has made application to the Board for authority to establish a special-purpose subzone at the cell phone kitting and distribution facilities of Brightpoint North America L.P., located in Plainfield, Indiana, (FTZ Docket 30–2009, filed July 21, 2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 37689–37690, July 29, 2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the kitting and distribution of cell phones at the facilities of Brightpoint North America L.P., located in Plainfield, Indiana (Subzone 72S), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, February 5, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–4047 Filed 2–25–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU55

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

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

ACTION: Notice; issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued one-year Letters of Authorization (LOAs) to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: These authorizations are effective from February 27, 2010 through February 26, 2011 and May 15, 2010 through May 14, 2011.

ADDRESSES: The application and LOAs are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs The Secretary of Commerce (who has delegated the authority to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt capture, or kill marine mammals.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to EROS were published on June 19, 2008 (73 FR 34889), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are

bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*).

Pursuant to these regulations, NMFS has issued an LOA to Energy Resource Technology GOM, Inc., Noble Energy, Inc, and Demex International, Inc. Issuance of the LOAs are based on a finding made in the preamble to the final rule that the total taking by these activities (with monitoring, mitigation, and reporting measures) will result in no more than a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS also finds that the applicants will meet the requirements contained in the implementing regulations and LOAs, including monitoring, mitigation, and reporting requirements.

Dated: February 22, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–4074 Filed 2–25–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, Pub. L. 97–375 and Pub. L. 105–153), we are announcing a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will address ways in which the national economic accounts can be presented more effectively for current economic analysis and recent statistical developments in national accounting.

DATES: Friday, May 7, 2010, the meeting will begin at 9 a.m. and adjourn at 3:30 p.m.

ADDRESSES: The meeting will take place at the Bureau of Economic Analysis at 1441 L St., NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey Newman, Media and Outreach Lead, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone number: (202) 606–9265.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Jeffrey Newman of BEA at (202) 606–9265 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Jeffrey Newman at (202) 606–9265.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies, and provides recommendations from the perspectives of the economics profession, business, and government. This will be the Committee's twenty-first meeting.

Dated: February 5, 2010.

Brian C. Moyer,

Acting Deputy Director, Bureau of Economic Analysis.

[FR Doc. 2010–3985 Filed 2–25–10; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the first meeting of the Civil Nuclear Trade Advisory Committee (CINTAC). The members will discuss issues outlined in the following agenda.

DATES: The meeting is scheduled for Tuesday, March 23, 2010, from 9 a.m. to 2:30 p.m. Eastern Standard Time (EST).

ADDRESSES: The meeting will be held in Room 1414, U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Lopp, Office of Energy & Environmental Industries, International Trade Administration, Room 4053, 1401 Constitution Ave., NW., Washington, DC 20230. (*Phone:* 202–482–3851; *Fax:* 202–482–5665; *e-mail: Sarah.Lopp@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable United States regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the March 23, 2010, CINTAC meeting is as follows:

1. Welcome & introduction of new members
2. Ethics Briefing
3. Public comment period
4. Discussion of civil nuclear trade priority issues

Public Participation: The meeting will be open to the public and the room is disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Ms. Sarah Lopp at the contact information below by 5 p.m. EST on Friday, February 26, 2010, in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Ms. Lopp and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5 p.m. EST on

Tuesday, February 23, 2010. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration (ITA) may conduct a lottery to determine the speakers. Speakers are requested to bring at least 20 copies of their oral comments for distribution to the participants and public at the meeting.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 4053, 1401 Constitution Ave., NW., Washington, DC 20230. To be considered during the meeting, comments must be received no later than 5 p.m. EST on Tuesday, February 23, 2010, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: February 22, 2010.

Henry P. Misisco,

Deputy Assistant Secretary for Manufacturing, Acting.

[FR Doc. 2010–3940 Filed 2–25–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU68

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council's Joint Spiny Dogfish Committee will hold a public meeting.

DATES: The meeting will be held on Tuesday, March 16, 2010, from 8 a.m. to noon.

ADDRESSES: The workshop will be held at the Kingsmill Conference Center, 1010 Kingsmill Road, Williamsburg, VA 23185; telephone: (800) 832–5665.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to consider the provisional MAFMC quota recommendation from its December meeting. A review of that recommendation is necessary in light of updates to spiny dogfish stock status that occurred through the recent Transboundary Resource Assessment Committee (TRAC) review.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified 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.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Bryan, (302) 674–2331, at least 5 days prior to the meeting date.

Dated: February 23, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–4017 Filed 2–25–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1661]

Reorganization of Foreign-Trade Zone 274 Under Alternative Site Framework; City and County of Butte-Silver Bow, MT

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the City and County of Butte-Silver Bow, Montana, grantee of Foreign-Trade Zone 274, submitted an application to the Board (FTZ Docket 33–2009, filed 8/4/2009) for authority to reorganize under the ASF with a service area of Butte-Silver Bow County, Montana, within and adjacent to the Butte-Silver Bow Customs and Border Protection port of entry, and FTZ 274's existing Site 1 would be categorized as a magnet site;

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 40566–40567, 8/12/09) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 274 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project.

Signed at Washington, DC, this February 5, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–4054 Filed 2–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the

firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT

[1/21/2010 through 2/22/2010]

Firm	Address	Date accepted for filing	Products
VR Industries, Inc	333 Strawberry Field Road, Warwick, RI 02886.	2/2/2010	VR Industries is an electronic contract manufacturer that assembles proprietary products for its customers. The production steps involved, utilize a variety of manual and automated assembly soldering processes as well as test procedures required to insure the integrity of the assemblies. The primary materials
Action Publishing, Inc	2415 Blue Heron Road, Grand Junction, CO 81505.	2/12/2010	The company produces custom notebooks and planners for schools. The planners are designed, produced, customized, and printed by Action Publishing, Inc., Grand Junction, CO.
Bells Powder Coating Inc	500 John Dietsch Blvd., N., Attleboro, MA 02763.	2/12/2010	Powder coating for a variety of industries.
C&D Lumber Co	1182 Pruner Rd, P.O. Box, Riddle, OR 97469.	2/16/2010	C&D Lumber produced Port Oxford and incense cedar wood, and Douglas Fir products, shop products, and dimension lumber products.
Maine Woods Company, LLC	P.O. Box 111, 92 Fish Lake, Portage Lake, ME 04768.	2/16/2010	Maine Woods manufactures dry hardwood lumber, from hardwood logs, for five specific end uses in furniture, molding, cabinets, flooring and cants.
Venango Steel, Inc	1655 Pittsburgh Road, Franklin, PA 16323.	2/16/2010	Venango Steel is a steel fabricator and manufactures parts for structures such as buildings and bridges. We also perform industrial weldments.
Apple Archery Products LLC	60 Leigh Drive, York, PA 17406	2/17/2010	Apple Archery manufactures archery repair tools and equipment.
Optimax Systems, Inc	6367 Dean Parkway, Ontario, NY 14519–8939.	2/17/2010	Fabrication Precision Optics.
River Street Metal Finishings, Inc	35 Johnson Lane, Braintree, MA 02184	2/18/2010	Finishing Agents, Dye Carriers, Nes for use in textile, paper, leather industries.
Christen Carter Inc. d/b/a Busy Beaver Button Co.	3279 W. Armitage, Chicago, IL 60647	2/22/2010	Custom pin-back buttons.
Columbia Pipe & Supply Co	1120 W. Pershing Road, Chicago, IL 60609.	2/22/2010	Industrial pipe/valve/fittings, plumbing equipment and supplies, HVAC/Hydronic Equipment and supplies, automated valves and process specialties, pipe hangers and supports.
Hillside Jetty Pelagic, LLC	1532 NW 56th Street, Seattle, WA 98107.	2/22/2010	Marketer/Broker of seafood including salmon, sole, pollock, etc. Services include all marketing activities related to selling seafood products.
Larkin Industries, Inc	2020 Energy Park Drive, St. Paul, MN 55108.	2/22/2010	The company is a provider of print finishing services for the paper industry. The firm provides foil stamping, embossing, die-cutting, hologram, folding, gluing, packaging, taping and shrink wrapping services for the paper industry.
T.R.A. Industries, Inc. d/b/a Huntwood	23800 E. Appleway, Liberty Lake, WA 99019.	2/22/2010	Huntwood Industries is a manufacturer of custom kitchen and bath cabinets, as well as commercial cabinetry and office furniture, with products produced by a combination of purchased raw materials.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room

7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 22, 2010.

Bryan Borlik,

Program Director.

[FR Doc. 2010–3962 Filed 2–25–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review

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

EFFECTIVE DATE: February 26, 2010.

SUMMARY: The Department of Commerce (the Department) is conducting a changed circumstances review of the antidumping duty finding on pressure sensitive plastic tape from Italy pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3). We preliminarily determine that Evotape S.p.A was the successor–in-interest to Tyco Adhesives Italia S.p.A. (Tyco), and that Evotape Packaging S.r.l. (Evotape Packaging) and Evotape Masking S.r.l. (Evotape Masking) are both successors–in-interest to Evotape S.p.A for purposes of determining antidumping liability. Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Rebecca Trainor, 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) 482–1280 and (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 2009, Evotape Packaging requested that the Department conduct an expedited changed circumstances review to determine that it is the successor–in-interest to Tyco for purposes of determining antidumping liability.[1] Evotape Packaging provided additional information at the Department's request on August 28, 2009. On September 10, 2009, the Department initiated a changed circumstances review but did not expedite the review, as requested by Evotape Packaging, because questions remained as to the factual claims forming the basis of the change circumstances review request. *See Pressure Sensitive Plastic Tape from Italy: Notice of Initiation of Antidumping Duty Changed Circumstances Review*, 74 FR 47555 (September 16, 2009). On October 26, 2009, the Department placed on the record a memorandum regarding corrections to the scope language contained in the initiation notice. (See October 26, 2009, Memorandum to The File regarding "Corrections to Scope Language"). On November 3, 2009, the Department requested additional information from Evotape Packaging, and on November 24, 2009, Evotape Packaging submitted its response to the Department's information request.

Scope of the Finding

The products covered by the finding are shipments of pressure sensitive plastic tape measuring over one and three–eighths inches in width and not exceeding four mils in thickness, currently classifiable under subheadings 3919.10.20 and 3919.90.50 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and for customs purposes. The written description remains dispositive.

Successor–in-Interest Determination

In making a successor–in-interest determination, the Department typically examines several factors including, but not limited to: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 67890 (November 22, 2004) (Polychloroprene Rubber from Japan) citing; B*rass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (Canadian Brass); and, *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Initiation of Antidumping Duty Changed Circumstances Review*, 70 FR 17063 (April 4, 2005). While no single factor or combination of these factors will necessarily be dispositive, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Polychloroprene Rubber from Japan; Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994); *Canadian Brass; Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results of Antidumping Duty Changed Circumstances Review and Notice of Intent to Revoke in Part* 74 FR 39042 (August 5, 2009); (unchanged in final results *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Notice of Revocation in Part* 74 FR 52452 (October 13, 2009)). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will generally accord the new company the same antidumping duty treatment as its predecessor.

Preliminary Results

In its request for a changed circumstances review, Evotape Packaging explained that, in May 2005, its parent company, Evotape S.p.A, acquired Tyco's business and assets, which included two production units (packaging and masking tape) and related sales offices. Subsequently, in December 2007, Evotape S.p.A went through a restructuring that created two wholly–owned subsidiaries (*i.e.*, Evotape Packaging and Evotape Masking S.r.l. (Evotape Masking)) using the assets and business of the two production units. In response to the Department's questions concerning the corporate restructuring, Evotape Packaging stated that Evotape Masking produces two in–scope products, but does not ship or sell these products to the United States, and has no future plans to do so (*see* August 28, 2009, and November 24, 2009, responses).[2]

Based on the facts on the record surrounding the acquisition and

[1] The cash deposit rate currently applicable to Tyco is zero percent. The all-others rate is 10 percent.

[2] Notwithstanding this fact and Evotape Packaging's original changed circumstances review request to determine that only it is the successor-in-interest to Tyco, Evotape Packaging acknowledged in its November 24, 2009, response that it may be appropriate to consider both Evotape Packaging and Evotape Masking as successors-in-interest to Tyco because they are both wholly-owned subsidiaries of Evotape S.p.A.

subsequent corporate restructuring described above, and in accordance with 19 CFR 351.221(c)(3)(i), we have made two preliminary successor–in-interest determinations.

1. Evotape S.p.A Was the Successor–In-Interest to Tyco

Our first preliminary successor–in-interest determination is that Evotape S.p.A was the successor–in-interest to Tyco. Evotape Packaging submitted documentation to demonstrate that Evotape S.p.A acquired Tyco in May 2005 (*see* Evotape Packaging's July 27, 2009, submission at Exhibit 1). Evotape Packaging also provided information pertaining to changes in management, production, suppliers, and customers that occurred after Evotape S.p.A. acquired Tyco. The information indicated that, except for three changes in management and some minor changes in customers, the company's business operations had not been substantially affected by the change in ownership (*see* November 24, 2009, response). Thus, we preliminary find that in May 2005, Evotape S.p.A. became the successor–in-interest to Tyco, because the changes in management and customers that took place after Tyco's acquisition by Evotape S.p.A. did not alter the production or business operations of the company.

2. Evotape Packaging and Evotape Masking are Successors–In-Interest to Evotape S.p.A

For our second preliminary successor–in-interest determination, we find that both Evotape Packaging and Evotape Masking are successors–in-interest to Evotape S.p.A. Evotape Packaging submitted copies of the documents that established Evotape Packaging and Evotape Masking as separate wholly–owned subsidiaries of Evotape S.p.A in December 2007 (*see* November 24, 2009, response at Exhibit 1). Evotape Packaging also provided information indicating that, while some minor changes in business operations occurred after the companies' transition from production units to formal companies, they continued to operate essentially as they did as production units under Evotape S.p.A. Specifically, the restructuring resulted in the reallocation of duties among managers, and a slight reduction in the number of employees at both companies. The companies also experienced slight changes to their supplier and customer lists, but maintained their top supplier and customer relationships. Evotape Packaging added two products to its product mix, but the two companies continued to use the same separate production facilities that they used as production units under Evotape S.p.A. (*see* November 24, 2009, response). Moreover, the ownership of the two entities remains essentially the same as both companies are wholly–owned subsidiaries of Evotape S.p.A. Because both companies continue to operate essentially as they did as production units of Evotape S.p.A., after the December 2007, restructuring, irrespective of the minor changes described above, we preliminary find that in December 2007, both Evotape Packaging and Evotape Masking became the successors–in-interest to Evotape S.p.A. for purposes of determining antidumping liability.

In conclusion, as a result of both of these determinations, we preliminary find that Evotape Packaging and Evotape Masking should receive Tyco's antidumping duty cash deposit rate with respect to the subject merchandise (*i.e.*, 0.00 percent). If the above preliminary results are affirmed in the Department's final results, the cash deposit rate resulting from this changed circumstances review will apply to all entries of the subject merchandise from Evotape Packaging and Evotape Masking entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003).

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than 14 days after the date of publication of these preliminary results. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Any interested party may request a hearing within 14 days of publication of this notice. Any hearing, if requested, will be held no later than 30 days after the date of publication of this notice, or the first workday thereafter. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of hearing. In accordance with 19 CFR 351.216(e), the Department will issue the final results of this antidumping duty changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary results.

During the course of this antidumping duty changed circumstances review, cash deposit requirements for the subject merchandise produced and exported by Evotape Packaging and Evotape Masking will continue to be the all–others rate established in the investigation. *See Pressure Sensitive Plastic Tape From Italy; Determination of Injury or Likelihood Thereof*, 42 FR 44853 (September 7, 1977). The cash deposit rate requirement for Evotape Packaging and Evotape Masking will be altered, if warranted, pursuant only to the final results of this review.

We are issuing and publishing these preliminary results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: February 22, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–4072 Filed 2–25–10; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* March 29, 2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 12/28/2009 (74 FR 68587), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide

the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products:

NSN: 9905–00–NIB–0141—Rack Cards, Double-Sided, DeCA Marketing POS Kit
NSN: 9905–00–NIB–0142—Banner, DeCA Marketing Signage Kit, 3' x 10', Each
NSN: 9905–00–NIB–0143—Buttons, DeCA Marketing Signage Kit, 3", Each
NSN: 9905–00–NIB–0144—Dangler, Round, Double-Sided, DeCA POS Signage
NSN: 9905–00–NIB–0145—Poster, DeCA Marketing Signage Kit, 20" x 30"
NSN: 9905–00–NIB–0146—Kit, DeCA Marketing Signage, Point of Sale (POS)
NPA: Envision, Inc., Wichita, KS
Contracting Activity: Defense Commissary Agency (DECA), Fort Lee, VA Coverage: C–List for the requirements of the Defense Commissary Agency (DECA), Fort Lee, VA

Service:

Service Type/Location: Landscaping Services, Basewid, Fort Hood, TX.
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX
Contracting Activity: Dept of the Army, XR W6BB ACA Hood, Fort Hood, TX

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–3943 Filed 2–25–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

Comments must be received on or before: March 29, 2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to the Procurement List for production by the nonprofit agency listed:

Products

NSN: 8955–01–E10–1648—Beverage Base, Non-nutritive Sweetened, Lemonade
NSN: 8955–01–E10–1650—Beverage Base, Non-nutritive Sweet, Raspberry Ice
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN
Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia, Philadelphia, PA
Coverage: C-List for the requirements for the Defense Supply Center Philadelphia, Philadelphia, PA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–3944 Filed 2–25–10; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Autism Services Demonstration Project for TRICARE Beneficiaries Under the Extended Care Health Option

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice.

SUMMARY: This notice provides a 2-year extension of the Department of Defense Enhanced Access to Autism Services Demonstration Project under the Extended Care Health Option for beneficiaries diagnosed with an Autism Spectrum Disorder (ASD). Under the demonstration, the Department implemented a provider model that allows reimbursement for Intensive Behavioral Intervention (IBI) services, in particular, Applied Behavior Analysis, rendered by providers who are not otherwise eligible for reimbursement.

DATES: The demonstration will continue through March 14, 2012.

ADDRESSES: TRICARE Management Activity, Medical Benefits and Reimbursement Branch, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kottyan, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676–3520.

SUPPLEMENTARY INFORMATION: On December 4, 2007, the Department of

Defense published a Notice in the **Federal Register** (FR) (72 FR 68130) of a TRICARE demonstration to increase access to IBI services.

The effective date was 60 days following publication of the Notice, and the demonstration was implemented on March 15, 2008 for a period of 2 years. The purpose of the demonstration is to allow the Department to determine whether such a provider model increases access to services, the services are reaching those most likely to benefit from them, the quality of the services rendered meets the standard of care currently accepted by the community of providers, and whether State requirements for licensure or certification of providers of IBI services, where such exists, are being met. The Demonstration began enrolling beneficiaries and developing the network of providers of IBI services on March 15, 2008. Subsequently, the Department determined that participation by both beneficiaries and providers was considerably less than expected due primarily to administrative requirements of the demonstration. In response, the Department developed and published revised operational guidance in September 2008. Although preliminary review indicates the demonstration can provide a measurable increase in access to IBI services, the need to modify our guidance contributed to a 6 month delay in evaluating the effectiveness of the demonstration. In addition, the Department recognizes that the subject of ASDs is complex, in particular, with respect to the number of individuals diagnosed with ASD, the treatment of ASD that generally includes several years of behavior modification through educational services, and the ability of the provider community to increase the number of qualified providers.

Consequently, the Department has determined that continuation of the demonstration is both in the best interest of TRICARE beneficiaries diagnosed with an ASD, and necessary to collect sufficient comprehensive data, including the results of the recent survey of beneficiaries and providers participating in the demonstration, in order to fully evaluate the effectiveness of the delivery model employed by the demonstration. This extension will determine whether the demonstration met its stated purpose and provide the Department with the information necessary to make sound judgments regarding payment of benefits. The demonstration continues to be authorized by 10 U.S.C. 1092.

Dated: February 22, 2010.

Patricia Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–3990 Filed 2–25–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Announcement of IS–GPS–200, IS–GPS–705, IS–GPS–800Interface Control Working Group (ICWG) Teleconference Meeting

AGENCY: Department of the Air Force, DoD.

ACTION: Teleconference Meeting notice.

SUMMARY: This notice informs the public that the Global Positioning Systems Wing will be hosting an Interface Control Working Group (ICWG) teleconference meeting for document/s IS–GPS–200E (NAVSTAR GPS Space Segment/Navigation User Interfaces), IS–GPS–705A (NAVSTAR GPS Space Segment/User Segment L5 Interfaces), and IS–GPS–800A (NAVSTAR GPS Space Segment/User Segment L1C Interfaces). The main focus of this meeting is to address proposed changes relevant to the topics of signal coherence, carrier phase noise, and correlation loss.

The ICWG Teleconference is open to the general public. Dial-in information is provided below. More information, including Comments Resolution Matrixes (CRMs) and track changed documents, will be posted at: *http://www.losangeles.af.mil/library/factsheets/factsheet.asp?id=9364.*

Please send all CRM comments to Vimal Gopal by 5 March 2010.

DATES: 10 March 2010: IS–GPS–200E/IS–GPS–705A/IS–GPS–800A. 8 a.m.–12 p.m. (Pacific Time).

Dial in Information: Phone: 1–800–FON–SAIC (1–800–366–7242) Code: 4511074.

FOR FURTHER INFORMATION CONTACT: Vimal Gopal *vimal.gopal.ctr@losangeles.af.mil* 1–310–909–7294 or Captain Neal Roach *neal.roach@losangeles.af.mil* 1–310–653–3771.

Bao-Anh Trinh, YA–3,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–3645 Filed 2–25–10; 8:45 am]

BILLING CODE 5001–05–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 29, 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 send e-mail to *oira_submission@omb.eop.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, 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.

Dated: February 23, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Native American Career and Technical Education Program (NACTEP).

Frequency: Annually.

Affected Public: Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 30.

Burden Hours: 1,200.

Abstract: The Native American Career and Technical Education Program (NACTEP) is requesting approval to collect semi-annual, annual/continuation reports, and final performance reports from currently funded NACTEP grantees. This information is necessary to (1) manage and monitor the current NACTEP grantees, and (2) award continuation grants for years four and five of the grantees' performance periods. The continuation performance reports will include budgets, performance/statistical reports, Government Performance and Results Act (GPRA) reports, and evaluation reports. The data, collected from the performance reports, will be used to determine if the grantees successfully met their project goals and objectives, so that NACTEP staff can award continuation grants. Final performance reports are required to determine whether or not the grant can be closed out in compliance with the grant's requirements.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 4202. 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 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. 2010–3690 Filed 2–25–10; 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 29, 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, Information Collection Clearance Divison, 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 23, 2010.

Sheila Carey,

Acting Director, IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Formula Grant EASIE (Electronic Application System for Indian Education).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 11,270.

Burden Hours: 9,440.

Abstract: The Office of Indian Education (OIE) of the Department of Education (ED) requests clearance for the Indian Education Formula Grant Application authorized under Title VII, Part A, Subpart 1 of the Elementary and Secondary Education Act, as amended. The Indian Education Formula Grant (CFDA 84.060A), is not competitive or discretionary and requires the annual submission of the application from the local education agency and or tribe. The grant applications submitted for this program assist applicants to provide Indian students with the opportunity to meet the same challenging state standards as all other students and meet the unique educational and culturally related academic needs of American Indian and Alaska Native students. The amount of the award for each applicant is determined by a formula based on the reported number of American Indian/Alaska Native students identified in the application and the state per pupil expenditure.

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 4177. 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 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. 2010–4004 Filed 2–25–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education Overview Information; Native Hawaiian Education Program—Competition for Novice Applicants

Notice inviting applications for new awards for fiscal year (FY) 2010.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.362A.

Dates:

Applications Available: February 26, 2010.

Deadline for Transmittal of Applications: April 27, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Native Hawaiian Education program is to support innovative projects that enhance the educational services provided to Native Hawaiian children and adults. These projects may include those activities authorized under section 7205(a)(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Note: Under Public Law 111–117, the Consolidated Appropriations Act, 2010, construction, renovation, or modernization of any elementary school, secondary school, or structure related to an elementary school or secondary school, run by the Department of Education of the State of Hawaii, that serves a predominantly Native Hawaiian student body is a permissible use of FY 2010 funds under this program.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority for this competition is from 34 CFR 75.225(c)(1). In accordance with 34 CFR 75.105(b)(2)(iv), the competitive preference priorities are from section 7205(a)(2) of the ESEA (20 U.S.C. 7515(a)(2)).

Absolute Priority: For FY 2010, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Novice Applicants. Applicants must be novice applicants as defined in 34 CFR 75.225(a). In accordance with 34 CFR 75.225, the Secretary is only making awards to applicants that have never received a grant or subgrant under the Native Hawaiian Education program, have never been a member of a group application, submitted in accordance with 34 CFR 75.127 through 75.129, that received a grant under the Native Hawaiian Education program, and have not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the program. For purposes of this absolute priority, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Competitive Preference Priorities: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets one or more of these priorities.

These priorities are:

(a) Projects that are designed to address beginning reading and literacy among students in kindergarten through third grade.

(b) Projects that are designed to address the needs of at-risk children and youth.

(c) Projects that are designed to address the needs in fields or disciplines in which Native Hawaiians are underemployed.

(d) Projects that are designed to address the use of the Hawaiian language in instruction.

Note: In order to receive additional points under a competitive preference priority, an application should provide adequate and sufficient information that clearly substantiates its claim that it meets at least one of the priorities addressed.

Program Authority: 20 U.S.C. 7511–7517; Public Law 111–117, the Consolidated Appropriations Act, 2010.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $2,895,000

Estimated Range of Awards: $250,000–$950,000.

Estimated Average Size of Awards: $413,500.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Native Hawaiian educational organizations; Native Hawaiian community-based organizations; public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language; and consortia of the previously mentioned organizations, agencies, and institutions, if they meet the definition of novice applicant in 34 CFR 75.225.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/nathawaiian/applicant.html.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA 84.362A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 25 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1′ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the five-page narrative budget justification; the assurances and certifications; the one-page abstract; the resumes; the bibliography; or the five letters of support. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit. Appendices to the narrative are not permitted, with the exception of resumes and endnotes. None of the material sent as appendices to the narrative, with the exception of resumes and endnotes, will be sent to the reviewers.

3. *Submission Dates and Times:*

Applications Available: February 26, 2010.

Deadline for Transmittal of Applications: April 27, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Under section 7205(b) of the ESEA, not more than five percent of funds provided to a grantee under this competition for any fiscal year may be used for administrative purposes. We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Native Hawaiian Education program—CFDA Number 84.362A must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until 8 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8 p.m. on Sundays and 6 a.m. on Mondays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Irene Harwarth, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E244, Washington, DC 20202–6200. FAX: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.362A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.362A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210. The maximum possible score for all criteria is 100 points. The maximum possible score for each criterion is indicated in parentheses. The selection criteria for this competition are as follows:

a. Need for project (15 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(ii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

(iii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

b. Quality of the project design (30 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible

replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(ii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(iii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(iv) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(v) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

c. Quality of project services (20 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(ii) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(iv) The extent to which the services to be provided by the proposed project are focused on those with greatest needs.

d. Quality of the management plan (15 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(ii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iv) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

e. Quality of the project evaluation (20 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation will provide timely guidance for quality assurance.

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

2. Review and Selection Process: The Department will only consider novice applicants for this competition. An applicant is considered a "novice applicant" if it meets the following criteria in 34 CFR 75.225(a)(1) and (b):

The applicant must—

(i) Have never received a grant or subgrant under the Native Hawaiian Education program;

(ii) Have never been a member of a group application, submitted in accordance with 34 CFR 75.127 through 75.129, that received a grant under the Native Hawaiian Education program; and

(iii) Have not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications in this competition. For purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Section 34 CFR 75.225(a)(2) addresses the requirements for group applications submitted by novice applicants. In the case of a group application submitted in accordance with 34 CFR 75.127 through 75.129, each group member must meet the requirements in 34 CFR 75.225(a)(1) and (b), previously described in this section of the notice, in order to qualify as a novice applicant. All applicants should follow the instructions in the application package to ensure they properly indicate in their application their status as a novice applicant.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed the following performance measures for evaluating the overall effectiveness of the Native Hawaiian Education program:

(1) The percentage of Native Hawaiian students in schools served by the program who meet or exceed proficiency standards in reading, mathematics, and science on the State assessments;

(2) The percentage of Native Hawaiian children participating in early education programs who consistently demonstrate school readiness in literacy as measured

by the Hawaii School Readiness Assessment (HSRA);

(3) The percentage of students in schools served by the program who graduate from high school with a regular high school diploma, as defined in 34 CFR 200.19(b)(1)(iv), in four years; and

(4) The percentage of students participating in a Hawaiian language program conducted under the Native Hawaiian Education program who meet or exceed proficiency standards in reading on a test of the Hawaiian language.

All grantees will be expected to submit an annual performance report that includes data addressing these performance measures, to the extent that they apply to the grantee's project.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Irene Harwarth, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E244, Washington, DC 20202–6200. Telephone: (202) 401–3751 or by e-mail: *Irene.Harwarth@ed.gov*.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on the GPO Access at *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 23, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–4058 Filed 2–25–10; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9115–6; Docket ID No. EPA–HQ–OAR–2010–0108]

Integrated Science Assessment for Lead (Pb)

AGENCY: Environmental Protection Agency.

ACTION: Notice; call for information.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that the Office of Research and Development's National Center for Environmental Assessment (NCEA) is preparing an Integrated Science Assessment (ISA) as part of the review of the National Ambient Air Quality Standards (NAAQS) for Lead (Pb). This ISA is intended to update and revise, where appropriate, the scientific assessment presented in the Air Quality Criteria for Lead (EPA/600/R–5/144aF), published on October 1, 2006. Interested parties are invited to assist the EPA in developing and refining the scientific information base for the review of the Pb NAAQS by submitting research studies that have been published, accepted for publication, or presented at a public scientific meeting.

DATES: All communications and information should be received by EPA by April 30, 2010.

ADDRESSES: Information may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the section of this notice entitled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For details on the period for submission of research information from the public, contact the Office of Environmental Information (OEI) Docket; *telephone:* 202–566–1752; *facsimile:* 202–566–1753; or *e-mail: OAR.Docket@epa.gov.* For technical information, contact Ellen Kirrane, Ph.D., NCEA, telephone, 919–541–1340; *facsimile:* 919–541–2985; or *e-mail: kirrane.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project

Section 108 (a) of the Clean Air Act directs the Administrator to identify pollutants that meet certain criteria, including emissions which "may reasonably be anticipated to endanger public health and welfare" and whose presence "in the ambient air results from numerous or diverse mobile or stationary sources," and to issue air quality criteria for them. These air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air * * *." Welfare effects as defined in section 302(h) (42 U.S.C. 7602(h)) include, but are not limited to, "effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being." Under section 109 of the Act, EPA is then to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Lead (Pb) is one of six "criteria" pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA), formerly called an Air Quality Criteria Document (AQCD). The ISA and its supplementary annexes are the scientific basis for the additional technical and policy assessments that form the basis for EPA decisions on the adequacy of current NAAQS and the appropriateness of new or revised standards. Early steps in this process include announcing the beginning of this periodic NAAQS review and the development of the ISA, and EPA requesting that the public submit scientific literature that they want to bring to the attention of the Agency as it begins this process. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee mandated by the Clean Air Act and part of the EPA's Science Advisory Board (SAB), is charged with independent expert scientific review of EPA's draft ISAs. As the process proceeds, the public will have opportunities to review and comment on drafts of the Pb ISA. These opportunities will also be announced in the **Federal Register**.

The Agency is interested in obtaining information concerning toxicological studies of effects of controlled exposure to Pb on laboratory animals and in vitro systems, epidemiologic (observational) studies of health effects associated with exposures of human populations to Pb, and ecological effects of Pb exposure. Information particular to air-related

pathways, including those involving deposition, are also of interest to the Agency. EPA also seeks recent information in other areas of Pb research such as toxicokinetic modeling, exposure assessment and exposure assessment methodologies, sources and emissions, chemistry and physics, analytical methodology, fate and transport in the environment, ambient concentrations, including concentration changes in response to changes in Pb deposition, and effects on public welfare or the environment. This and other selected literature relevant to a review of the NAAQS for Pb will be assessed in the forthcoming Pb ISA.

As part of this review of the Pb NAAQS, EPA intends to sponsor a workshop in May 2010, which will be announced in the **Federal Register**, to highlight significant new and emerging Pb research, and to make recommendations to the Agency regarding the design and scope of the review of the air quality criteria and the primary (health-based) and secondary (welfare-based) Pb standards to ensure that it addresses key policy-relevant issues and considers the new science that is relevant to informing our understanding of these issues. In addition, other opportunities for submission of new peer-reviewed, published (or in-press) papers will be possible as part of public comment on the draft ISAs that will be reviewed by CASAC.

II. How To Submit Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0108 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: OAR.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (*Mail Code:* 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0108. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: February 12, 2010.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–3970 Filed 2–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8988–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146 or *http://www.epa.gov/compliance/nepa/.*

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Notice: In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register.** Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register.**

Draft EISs

EIS No. 20090272, ERP No. D–UAF–B11025–00, Modification of the Condor 1 and Condor 2 Military Operation Areas, 104th Fighter Wing of the Massachusetts Air National Guard Base (ANG) Proposes to Combine the Condor 1 and Condor 2 MOA, ME and NH.

Summary: EPA expressed environmental concerns about noise impacts, and recommended that ANG

work with impacted residents, and to consider ways to better inform the public of training schedules. Rating EC2.

EIS No. 20090363, ERP No. D–SFW–G99004–TX, Hays County Regional Habitat Conservation Plan, Application for an Incidental Take Permit, Hays County, TX.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20090384, ERP No. D–NOA–K39124–CA, Fruit Growers Supply Company's Multi-Species Habitat Conservation Plan, Implementation, Authorization for Incidental Take Permit, Siskiyou County, CA.

Summary: EPA expressed environmental concern about water resource impacts, air quality impacts, the timing of road decommissioning and maintenance, and local requirements for timber harvest. Rating EC2.

EIS No. 20090402, ERP No. D–NRC–F06027–MN, Generic—License Renewal of Nuclear Plants for the Prairie Island Nuclear Generating Plant, Units 1 and 2, Supplement 39, NUREG–1437, Implementation, City of Red Wing, Dakota County, MN.

Summary: EPA expressed environmental concern about radiation, emergency access, wetlands, floodplains, environmental justice, and noise. Rating EC2.

EIS No. 20090419, ERP No. D–COE–F01003–MN, U.S. Steel Keetac Taconite Mine Expansion Project, Propose to Restart an Idled Production Line and Expand Contiguous Sections of the Open Pit Iron Ore Mine, located near Keewatin, Itasca and St. Louis Counties, MN.

Summary: EPA expressed environmental objections because of wetland impacts and insufficient avoidance, minimization/mitigation measures. EPA also offered comments on water quality and air quality impacts. Rating EO2.

EIS No. 20090426, ERP No. D–FRA–D53011–VA, Richmond and the Hampton Roads Passenger Rail Project, Proposed Higher Speed Intercity Passenger Rail, VA.

Summary: EPA expressed environmental concerns about air and water impacts. Rating EC2.

EIS No. 20090442, ERP No. D–COE–G39053–00, Sabine-Neches Waterway Channel Improvement Project, Proposed Ocean Dredged Material Disposal Site Designation, Southeast Texas and Southwest Louisiana.

Summary: EPA does not object to the proposed action. Rating LO.

Final EISs

EIS No. 20090016, ERP No. F–FAA–B40165–MA, New Bedford Regional Airport Improvements Project, To Enhance Aviation Capacity, Air Traffic, Jet Traffic, Air Cargo and General Aviation Traffic, Southeastern Massachusetts Region, City of New Bedford, Bristol County, MA.

Summary: EPA does not object the proposed project.

EIS No. 20090197, ERP No. F–WAP–J08026–00, Big Stone II Power Plant and Transmission Project, Addresses the Impacts of Changes to the Proposed Action relative to Cooling Alternatives and the Use of Groundwater as Backup Water Source, US Army COE Section 10 and 404 Permits, Grant County, SD and Big Stone County, MN.

Summary: EPA continues to have environmental concerns about CO2 emissions.

EIS No. 20090398, ERP No. F–BPA–L91029–WA, Chief Joseph Hatchery Program, Construction, Operation and Maintenance of a Chinook Salmon Hatchery Production Program, Confederated Tribes of the Colville Reservation (Colville Tribes), Okanogan River and Columbia River, Okanogan County, WA.

Summary: EPA continues to have environmental concerns about water quality impacts. EPA recommended including mitigation and terms and conditions in the ROD to protect water quality.

EIS No. 20090415, ERP No. F–FHW–F59004–MI, Detroit Intermodal Freight Terminal (DIFT) Project, Proposes Improvement to Intermodal Freight Terminals in Wayne and Oakland Counties, MI.

Summary: EPA reiterated its position about the need for a hot spot analysis for fine particulate matter. EPA also recommended the Record of Decision commit to additional construction and terminal operation mitigation measures.

EIS No. 20090428, ERP No. F–NOA–L91033–AK, Bering Sea Chinook Salmon Bycatch Management, Establish New Measures to Minimize Chinook Salmon Bycatch, To Amend the Fishery Management Plan, Implementation, Bering Sea Pollock Fishery, AK.

Summary: EPA's primary concerns were addressed; therefore, EPA does not object to the proposed amendment.

EIS No. 20090430, ERP No. F–AFS–L65550–00, Selway-Bitterroot Wilderness Plants Management Project, To Prevent the Establishment of New Invaders and Reduce the Impacts of Established Invasive Plants on Native Plant Community Stability, Sustainability and Diversity, Nez Perce, Clearwater, Lolo, and Bitterroot National Forests, ID and MT.

Summary: EPA does not object to the proposed project.

EIS No. 20090443, ERP No. F–FHW–D80032–DC, ADOPTION—Department of Homeland Security Headquarters at the St. Elizabeth's West Campus, To Consolidate Federal Office Space on a Secure Site, Washington, DC.

Summary: EPA continues to have environmental concerns about the East Campus resource impacts.

EIS No. 20090448, ERP No. F–FHW–L40228–WA, South Park Bridge Project, Proposes to Rehabilitate or Replace the Historic South Park Bridge over the Duwamish Waterway at 14th/16 Avenue S, US Coast Guard Permit and U.S. Army COE Section 10 and 404 Permits, King County, WA.

Summary: EPA continues to have environmental concerns about contaminated sediment impacts.

EIS No. 20100002, ERP No. F–AFS–K65380–NV, Middle Kyle Canyon Complex Project, Construction and Operation of a Recreation Complex within the Spring Mountains National Recreation Area, Humboldt-Toiyabe National Forest, Clark County, NV.

Summary: While EPA's previous issues have been resolved, EPA did request that mitigation plans developed for "biodiversity hotspots" are closely monitored and enforced.

Dated: February 23, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–4021 Filed 2–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8988–3]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 02/15/2010 through 02/19/2010.

Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100045, Draft Supplement, BIA, CA, Campo Regional Landfill Project, Construction and Operation, Permit Lease and Sublease Use of Reservation Land, Campo Indian Reservation, San Diego County, CA, Comment Period Ends: 04/28/2010, Contact: John Rydzik 916–978–6051.

EIS No. 20100046, Second Final EIS (Tiering), USFS, ID, South Fork Salmon River Subbasin Noxious and Invasive Weed Management Program, Implementation, Krassel and McCall Ranger Districts, Payette National Forest and Cascade Ranger District, Valley and Idaho Counties, ID, Wait Period Ends: 03/29/2010, Contact: Cyd Weiland 208–373–4135.

EIS No. 20100047, Draft EIS, USFWS, 00, Lewis and Clark National Wildlife Refuge and Julia Butler Hansen Refuge for the Columbian White-tailed Deer, Comprehensive Conservation Plan, Implementation, Wahkiakum County, WA and Clatsop and Columbia Counties, OR, Comment Period Ends: 04/12/2010, Contact: Charlie Stenvall 360–484–3482.

EIS No. 20100048, Final Supplement, FHWA, HI, Saddle Road (HI–200) Improvements Project. Proposed Improvement from Mamalahoa Highway (HI–190) to Milepost 41, Hawaii County, HI, Wait Period Ends: 03/29/2010, Contact: Melissa Dickard 720–963–3691.

EIS No. 20100049, Final EIS, IBWC, TX, Presidio Flood Control Project, Flood Control Improvements and Partial Levee Relocation, Presidio, TX, Wait Period Ends: 03/29/2010, Contact: Daniel Borunda 915–832–4767.

EIS No. 20100050, Draft EIS, BLM, CA, Stirling Energy Systems (SES) Solar 2 Project, Construct and Operate, Electric-Generating Facility, Imperial Valley, Imperial County, CA, Comment Period Ends: 04/12/2010, Contact: Erin Dreyfuss 916–978–4642.

EIS No. 20100051, Draft EIS, USAF, UT, South Unit Oil and Gas Development Project, Master Development Plan, Implementation, Duchesne/Roosevelt Ranger District, Ashley National Forest, Duchesne County, UT, Comment Period Ends: 04/12/2010, Contact: David Herron 435–781–5218.

EIS No. 20100052, Draft Supplement, USFS, CA, Tahoe National Forest Motorized Travel Management, Implementation, Corrections to the National Forest Transportation System Data, Sierra Nevada Mountains, Nevada, Placer, Plumas, Sierra and Yuba Counties, CA, Comment Period Ends: 04/12/2010, Contact: David Arrasmith 530–478–6220.

EIS No. 20100053, Draft EIS, NRC, NE, Generic—License Renewal of Nuclear Plants, Regarding Cooper Nuclear Station, Unit 1, Supplement 41 to NUREG–1437, Nemaha County, NE, Comment Period Ends: 05/05/2010, Contact: Bennett Brady 301–415–2981.

EIS No. 20100054, Draft EIS, NOAA, VA, Wallops Flight Facility, Shoreline Restoration and Infrastructure Protection Program, Implementation, Wallops Island, VA, Comment Period Ends: 04/12/2010, Contact: Joshua A. Bundick 757–824–2319.

EIS No. 20100055, Final EIS, NPS, CA, Yosemite National Park Project, Construction of Yosemite Institute Environment Education Campus, Implementation, Mariposa County, CA, Wait Period Ends: 03/29/2010, Contact: Ann Roberts 209–379–1383.

EIS No. 20100056, Draft EIS, USFS, MT, Sparring Bulls Project, Proposes Timber Harvest, Non-commercial Fuels Reduction, Prescribed Burning, and Watershed Improvement Activities, Three Rivers Ranger District, Kootenal National Forest, Lincoln County, MT, Comment Period Ends: 04/12/2010, Contact: Timory Peel 406–295–4893.

Amended Notices

EIS No. 20090421, Draft EIS, NRC, WY, Moore Ranch In-Situ Uranium Recovery (ISR) Project, Proposal to Construct, Operate, Conduct Aquifer Restoration, and Decommission an In-Situ Recovery (ISR) Facility, NUREG–1910, Campbell County, WY, Comment Period Ends: 03/03/2010, Contact: Behram Shroff 301–415–0666. Revision to FR Notice Published 12/11/2009: Extending Comment from 02/01/2010 to 03/03/2010.

EIS No. 20090423, Draft EIS, NRC, WY, Nichols Ranch In-Situ Uranium Recovery (ISR) Project, Proposal to Construct, Operate, Conduct Aquifer Restoration, and Decommission and In-Situ Recovery Uranium Milling Facility, Campbell and Johnson Counties, WY, Comment Period Ends: 03/03/2010, Contact: Irene Yu 301–415–1951. Revision to FR Notice Published 12/11/2009: Extending Comment Period from 02/01/2010 to 03/03/2010.

EIS No. 20090425, Draft EIS, NRC, WY, Lost Creek In-Situ Uranium Recovery (ISR) Project, Proposal to Construct, Operate, Conduit Aquifer Restoration, and Decommission an In-Situ Recovery (ISR) Uranium Milling Facility, Sweetwater County, WY, Comment Period Ends: 03/03/2010, Contact: Alan B. Bjornsen 301–415–1195. Revision to FR Published 12/11/2009: Extending Comment Period from 02/01/2010 to 03/03/2010.

Dated: February 23, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–4010 Filed 2–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9119–4; Docket ID No. EPA–HQ–ORD–2010–0047]

Development of a Relative Potency Factor (RPF) Approach for Polycyclic Aromatic Hydrocarbon (PAH) Mixtures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and listening session.

SUMMARY: EPA is announcing a 60-day public comment period and a public listening session for the external review draft document titled, "Development of a Relative Potency Factor (RPF) Approach for Polycyclic Aromatic Hydrocarbon (PAH) Mixtures" (EPA/635/R–08/012A). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within the EPA's Office of Research and Development (ORD). The public comment period and the EPA Science Advisory Board (SAB) peer review meeting, which will be scheduled at a later date and announced in the **Federal Register,** are separate processes that provide opportunities for all interested parties to comment on the document.

EPA intends to forward the public comments that are submitted in accordance with this notice to the SAB peer review panel prior to the meeting for their consideration. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice.

EPA is also announcing a listening session to be held on April 7, 2010, during the public comment period for this draft document. This listening session is a step in EPA's revised IRIS process, announced on May 21, 2009, for developing human health assessments for inclusion in the IRIS database. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties during the public comment period and before the peer review meeting. EPA welcomes the comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft document in response to the independent SAB peer review and the public comments. All presentations submitted to EPA according to the instructions below will become part of the official public record.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

DATES: The public comment period begins February 26, 2010, and ends April 27, 2010. Comments should be in writing and must be received by EPA by April 27, 2010.

The listening session on the draft document for PAH mixtures will be held on April 7, 2010, beginning at 9 a.m. and ending at 4 p.m., Eastern Standard Time. If you would like to attend the listening session, you should register by March 31, 2010. If you would like to make a presentation at the listening session, you should register by March 31, 2010, indicate that you wish to make oral comments at the session, and indicate the length of your presentation. When you register, please indicate if you will need audio-visual aid (e.g., laptop computer and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by March 31, 2010, the listening session will be cancelled and EPA will notify those registered of the cancellation.

Listening session participants who want EPA to share their comments with the external peer reviewers should also submit written comments during the public comment period using the detailed and established procedures described in the **SUPPLEMENTARY INFORMATION** section of this notice. Comments submitted to the docket prior to the end of the public comment period will be submitted to the external peer reviewers and considered by EPA in the disposition of public comments. All comments received will be submitted to the docket, but comments received after the public comment period closes will not be submitted to the external peer reviewers and will only be considered by EPA if time permits.

ADDRESSES: The draft "Development of a Relative Potency Factor (RPF) Approach for Polycyclic Aromatic Hydrocarbon (PAH) Mixtures" is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (*Address:* Information Management Team, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703–347–8561; *facsimile:* 703–347–8691). If you are requesting a paper copy, please provide your name, mailing address, and the document title.

Comments may be submitted electronically via *http://www.regulations.gov,* by e-mail, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

The listening session on the draft PAH Mixtures document will be held at the EPA offices at Two Potomac Yard (North Building), Room 7100, 2733 South Crystal Drive, Arlington, Virginia 22202. To attend or give verbal comments at the listening session, register by March 31, 2010, by sending an e-mail to *IRISListeningSession@epa.gov* (subject line: PAH Mixtures Listening Session), by calling Christine Ross at 703–347–8592; or by faxing a registration request to 703–347–8689. Please reference the "PAH Mixtures Listening Session" and include your name, title, affiliation, full address and contact information. Please note that to gain entrance to this EPA building to attend the meeting, attendees must have photo identification with them and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, attendees should give the name Christine Ross and the telephone number 703–347–8592 to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188 and the access code is 926–378–7897, followed by the pound sign (#). The teleconference line will be activated at 8:45 am, and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the "PAH Mixtures Listening Session" and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Christine Ross by phone at 703–347–8592 or by e-mail at *IRISListeningSession@epa.gov.* To request accommodation of a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, please contact the Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* 202–566–1752; *facsimile:* 202–566–1753; or *e-mail: ORD.Docket@epa.gov.*

For information on the public listening session, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703–347–8592; *facsimile:* 703–347–8689; or *e-mail: IRISListeningSession@epa.gov.*

If you have questions about the document, please contact Lynn Flowers,

National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703–347–8537; *facsimile:* 703–347–8689; or *e-mail: flowers.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. How To Submit Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2010–0047, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Facsimile:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The telephone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment and cannot contact you for clarification, EPA may not be able to consider your comment.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0047. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: January 22, 2010.

Rebecca Clark,

Director, National Center for Environmental Assessment.

[FR Doc. 2010–4082 Filed 2–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010– 0130; FRL–8812–8]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing an active ingredient not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before March 29, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0130, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through

Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0130. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov*.

SUPPLEMENTARY INFORMATION

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. FIFRA Registration Applications

On October 10, 2006, EPA received applications from Bayer CropScience LLC, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, to register three new pesticide products containing the active ingredient spirotetramat – a tetramic acid derivative insecticide – under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a, for use on a wide variety of agricultural crops and on Christmas trees. On February 5, 2007, EPA received another application from Bayer Environmental Science for a spirotetramat end-use product for insect control in greenhouses, nurseries, and interior plantscapes. On April 27, 2007, EPA received an application from Bayer CropScience for another spirotetramat end-use product for agricultural use. The applications are described in Unit IV. of this Notice.

Although later vacated by court order (described in this unit), the Agency approved the applications for the technical and one end-use product on June 30, 2008, as Spirotetramat Technical and Movento (EPA Registration Number 264–1049 and 264–1050, respectively) for control of insects on several agricultural crops and Christmas trees. The Agency approved the application for Spirotetramat 240 SC Greenhouse and Nursery (EPA Registration Number 432–1471) on August 8, 2008 for insect control in greenhouses, nurseries, and interior plantscapes. The Agency approved the application for BYI 8330 150 OD

Insecticide (EPA Registration Number 264–1051) on September 24, 2008 for control of insects on several agricultural crops and Christmas tree plantations. The Agency approved the application for Ultor (EPA Registration Number 264–1065) on December 16, 2008 for control of insects on several agricultural crops and Christmas tree plantations.

On December 23, 2009, due to lack of publication of a notice of receipt of the spirotetramat registration applications in the **Federal Register** under section 3(c)(4) of FIFRA, the U.S. District Court for the Southern District of New York issued an order vacating the spirotetramat registrations that the Agency issued in 2008, and remanding the matter to EPA for further proceedings in accordance with FIFRA and the Administrative Procedure Act (APA). See *Natural Resources Defense Council, Inc.* v. EPA, 2009 WL 5033959 (Dec. 23, 2009). As a result of the court's order, the spirotetramat registration applications submitted to EPA in 2008 are currently pending before the Agency.

While the 2009 case was pending before the U.S. District Court for the Southern District of New York, EPA published in the **Federal Register** on August 6, 2009 (74 FR 39321) (FRL–8431–6), a Notice of Pesticide Product Registration Approval; Opportunity for Public Comment, seeking comment on the spirotetramat registrations. EPA received a number of comments in response to the August 6, 2009 Notice, but has not responded to those comments. As described in Unit III. of this Notice, EPA is now issuing a new notice of receipt of the pending spirotetramat registration applications and opening a new comment period. EPA will place the comments received in response to the August 6, 2009 Notice in the new docket and consider those comments, along with all new comments received, in issuing a decision on the pending applications. Commenters who wish the Agency to consider their earlier comments are welcome to submit additional comments, as well, if they so desire.

B. FFDCA Tolerances

Along with the applications for registration of Spirotetramat Technical, Movento 240 SC Insecticide, and Movento 150 OD Insecticide filed on October 10, 2006, Bayer CropScience also filed a petition under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to establish tolerances for residues of spirotetramat in or on the raw agricultural commodities citrus (Crop Group 10); cucurbit vegetables (Crop Group 9); fruiting vegetables (Crop Group 8); grape (Crop Subgroup 13F); hops; leafy Brassica vegetables (Crop Group 5); leafy Non-Brassica vegetables (Crop Group 4); pome fruit (Crop Group 11); potato and other tuberous and corm vegetables (Crop Subgroup 1C); stone fruit (Crop Group 12); tree nuts (Crop Group 14); import tolerances on onions and strawberries; milk; meat, fat, and meat byproducts of cattle, goat, hog, sheep and horse.

EPA issued a Notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), in the **Federal Register** of July 25, 2007 (72 FR 40877) (FRL–8137–1) announcing the filing of the petition for tolerances. EPA issued a Final Rule establishing tolerances for spirotetramat in the **Federal Register** of July 9, 2008 (73 FR 39251) (FRL–8367–1). The final rule establishing tolerances for spirotetramat was not before the court in *Natural Resources Defense Council, Inc.* v. EPA, 2009 WL 5033959 (Dec. 23, 2009), and that rule remains in effect.

III. What Action is the Agency Taking?

EPA is now issuing a new notice of receipt of the pending spirotetramat registration applications and opening a new comment period pursuant to section 3(c)(4) of FIFRA. EPA will place the comments received in response to the August 6, 2009 Notice (74 FR 39321) (FRL–8431–6) in the new docket (OPP–2010–0130) and consider those comments, along with all new comments received in response to the present Notice, in issuing a decision on the pending applications. Commenters to the August 6, 2009 Notice may elect to:

1. Submit new, amended, or additional comments; or
2. Do nothing and rely on their original comments.

With respect to this new comment period, the question has arisen as to whether the spirotetramat applications will be subject to the new comment period opportunity EPA has been providing on certain pesticide applications since October 1, 2009 (see EPA's website at *http://epa.gov/pesticides/regulating/registration–public–involvement.html*). Because of the very limited information available for comment in the early stages of pesticide applications, EPA last year established a second comment period for certain applications that takes place at the end of the application period, when EPA has completed its scientific reviews of the application and has prepared a draft decision. Given the amount of information that is now available to commenters with respect to spirotetramat, including the Agency's science reviews and risk assessments and the public availability of the earlier decision that EPA reached on the applications without the benefit of public comment, EPA does not believe it necessary to have two separate new comment periods on the spirotetramat applications; the comment period here commenced will provide the robust comment opportunity that the Agency sought to provide with the policy that went into effect on October 1, 2009.

IV. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *Applicant*: Bayer CropScience LLC, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name:* Spirotetramat Technical. *Product type:* Insecticide. *Active ingredient*: Spirotetramat at 97.37%. *PC Code:* 392201. *Proposed classification:* None. *Use:* For formulating use only.

2. *Applicant:* Bayer CropScience LLC, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name:* Movento. *Product type:* Insecticide. *Active ingredient*: Spirotetramat at 22.4%. *PC Code:* 392201. *Proposed classification*: None. *Use:* For insect control on citrus, grapes, pome fruit, stone fruit, tree nuts, hops, Christmas tree plantations, vegetables, and potato.

3. *Applicant:* Bayer CropScience LLC, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name:* Spirotetramat 240 SC Greenhouse and Nursery. *Product type: Insecticide*. *Active ingredient*: Spirotetramat at 22.4%. *PC Code:* 392201. *Proposed classification:* None. *Use:* For insect control on ornamentals, fruit and nut trees, and vegetable plants in greenhouses, nurseries, and interiorscapes.

4. *Applicant:* Bayer CropScience LLC, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name:* BYI 8330 150 OD Insecticide. *Product type:* Insecticide. *Active ingredient:* Spirotetramat at 15.3%. *PC Code:* 392201. *Proposed classification:* None. *Use:* For insect control on citrus, grapes, pome fruit, stone fruit, tree nuts, hops, Christmas tree plantations, vegetables, and potato.

5. *Applicant:* Bayer CropScience LLC, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name:* Ultor. *Product type:* Insecticide. *Active ingredient:* Spirotetramat at 14.5%. *PC*

Code: 392201. *Proposed classification:* None. *Use:* For insect control on citrus, grapes, pome fruit, stone fruit, tree nuts, hops, Christmas tree plantations, vegetables, and potato.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 18, 2010.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–3857 Filed 2–25–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0977; FRL–8813–6]

Maneb; Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Order.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrant and accepted by the Agency, of products containing the pesticide maneb, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a January 6, 2010 **Federal Register** Notice of Receipt of Requests from the registrant, Drexel Chemical Company, to voluntarily cancel these product registrations. These are not the last products containing this pesticide registered for use in the United States. In the January 6, 2010 notice, EPA indicated that it would issue an order implementing the cancellations unless the Agency received substantive comments within the 30–day comment period that would merit its further review of these requests or unless the registrant withdrew their requests within this period. The Agency did not receive any comments on the notice. Further, the registrant did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective February 26, 2010.

FOR FURTHER INFORMATION CONTACT: Barbara Briscoe, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8177; fax number: (703) 308–8090; e-mail address: *Briscoe.Barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0977. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by registrants, of products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1.

TABLE 1.—MANEB PRODUCT CANCELLATIONS

EPA Registration Number	Product Name
019713–00378	Drexel Manzeb 80W
019713–00379	IDA, Inc. Maneb 80W
019713–00380	Drexel Manzi Flowable
019713–00381	IDA Maneb 4L

Table 2 below includes the name and address of record for the registrant of the products listed in Table 1.

TABLE 2.—REGISTRANT OF CANCELED PRODUCTS

EPA Company Number	Company Name and Address
019713	Drexel Chemical Company 1700 Channel Ave. P. O. Box 13327 Memphis, TN 38113

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the January 6, 2010 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellation of the products listed in Table 1.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the maneb registrations identified in Table 1. Accordingly, the Agency orders that the product registrations identified in Table 1 are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Table 1 in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. EPA anticipates allowing sale, distribution and use in the cancellation order as described below.

1. The registrant may continue to sell or distribute existing stocks of maneb

end-use products until such stocks are exhausted.

2. Persons other than the registrant may continue to sell or distribute existing stocks of maneb products identified in Table 1 with previously approved labeling until such stocks are exhausted.

3. Persons other than the registrant may use the maneb end use products identified in Table 1 until exhausted. Any use of existing stocks must be in a manner consistent with the previously approved labeling for that product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 18, 2010.

Richard P. Keigwin, Jr.

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–4083 Filed 2–25–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9119–1]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Inland Empire Utilities Agency, California. Project # C–06–5332–110 Funded by the California CWSRF ARRA Loan # 08–823–550

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) [applying the Buy American provision would be inconsistent with the public interest] to the Inland Empire Utilities Agency ("IEUA") for the purchase of foreign data collection transducers. This is a project-specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The IEUA's Rancho Cucamonga groundwater recharge project will include the purchase of three transducers with associated hardware manufactured by Solinst in Canada, for monitoring in two recharge basins. Beginning in about 2005 (prior to the enactment of ARRA), the IEUA started procuring Solinst transducers, and they developed standard training and maintenance procedures for using the Solinst transducers. They currently use approximately 20 Solinst transducers at eight recharge basins. The IEUA submitted a memorandum dated January 21, 2010, explaining the basis in performance characteristics for the pre-ARRA selection of Solinst transducers, and explaining the IEUA's prior decision to make Solinst transducers their standard transducer for this type of application. This pre-ARRA selection of a product on which to standardize was undertaken to best enable the IEUA to comply with water quality permit requirements for recharged water imposed by State regulatory agencies. The procurement of transducers for the IEUA's ARRA project is subject to ARRA section 1605 requirements, but IEUA has requested a waiver of these requirements as they pertain to the transducers, because the use of non-standard transducers would detrimentally affect performance, operation and maintenance of the recharge project. Based on review of the information provided, EPA has concluded a waiver of the Buy American provision is justified pursuant to Section 1605(b)(1) [applying the Buy American provision would be inconsistent with the public interest]. The Assistant Administrator of the Office of Administration and Resources Management has concurred with this decision to make an exception to Section 1605 of ARRA. This action permits the IEUA to purchase three transducers manufactured by Solinst, a Canadian company, as specified in its November 3, 2009 request, as amended by its January 21, 2010 memorandum.

DATES: *Effective Date:* February 10, 2010.

FOR FURTHER INFORMATION CONTACT: Abimbola Odusoga, Environmental Engineer, Water Division (WTR–4), USEPA Region 9, (415) 972–3437, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Sections 1605(c) and 1605(b)(1), the EPA is hereby granting a project waiver of the requirements of Sections 1605(a) of Public Law 111–5, Buy American requirements, to the IEUA, Chino, California, for the purchase of transducers manufactured by Solinst, a Canadian company. EPA has evaluated the IEUA's basis for standardizing to the Solinst transducers. Based on the information provided by the applicant, EPA has determined it is inconsistent with the public interest for the IEUA to pursue the purchase of incompatible domestically manufactured transducers.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency; here the EPA. A waiver may be provided if EPA determines (1) applying these requirements would be inconsistent with public the interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The IEUA has requested a waiver from the Buy American Provision for the purchase of the foreign made transducers as part of its project to meet the permit and other regulatory requirements of the Santa Ana Regional Water Quality Control Board (RWQCB) and the State Department of Health. According to the IEUA, to recharge recycled water into the Chino Groundwater Basin through the Victoria Basin and San Sevaine Basin No. 5 in Rancho Cucamonga, California, IEUA must comply with discharge requirements issued by the Santa Ana Regional Water Quality Control Board (RWQCB) for recharge. As part of the regulatory requirements set by the RWQCB and the State Department of Public Health, monitoring devices are to be installed to ensure recharged water meets the water quality requirements specified in the permit. In compliance with the permit, the Agency is installing three local monitoring wells and two lysimeter clusters.

Once the monitoring wells are constructed, a device—which is called a transducer—is installed to measure the water level. The IEUA now uses approximately twenty transducers manufactured by Solinst, a Canadian company, to support the data collection for the monitoring wells at eight of the current recharge basins, to meet regulatory requirements and discharge permit conditions.

Beginning in April 2005, the IEUA purchased Solinst transducers a few at a time as ground water recharge monitoring wells were contracted to be built, and were individually installed in the monitoring wells over the past several years as the wells were

constructed. Thus, over this time period prior to the enactment of ARRA, the IEUA standardized its use of the Solinst transducers. At the time of the initial transducer procurements, the IEUA concluded the Solinst transducers had superior durability and more efficient data output compared to the domestically-manufactured transducers. Solinst transducers have metal connections that the IEUA determined at that time to be more robust and durable than the plastic connections of the U.S.-made product, because the plastic connections tend to strip if sand or grit gets inside the threading. The IEUA also determined the Solinst product provides a consistent data file so that data reduction will not have different formats, and require different steps and different software. Thus, data manipulation can be streamlined and semi-automated. Fewer components are required for installation of the Solinst transducers, which reduces the costs for labor and equipment. Also, since this transducer has become the IEUA's standard, staff has been trained on how to use and maintain this particular equipment and software. If another type of transducer was utilized for the three monitoring wells being installed for this project, there would be approximately $10,000 a year in additional costs for labor and training, as well as additional capital costs for equipment due to the much higher cost of the domestic-made product.

EPA finds these considerations as stated by IEUA provide ample functional justification for standardization, particularly because the use of a functionally effective and reliable set of transducers is integral to compliance with State-imposed regulatory requirements. Furthermore, as the IEUA's decision to standardize on the Solinst transducers took place years before ARRA was enacted, that decision was clearly not an attempt to avoid application of the Buy American provisions of ARRA. If the mandate of section 1605(a) was applied here to require the IEUA to use the domestically-manufactured good under these circumstances, it would either force the IEUA to use two different and incompatible types of equipment for the same purpose, or alternatively to resolve the incompatibility by in effect requiring them to buy only the American-made product for their entire system. It is not in the public interest to require the IEUA either to bear the duplicative (or more) life-cycle costs for two incompatible types of goods, or to replace their twenty pre-ARRA Solinst transducers with the domestic product, and thereby to extend the scope of the ARRA Buy American provision far beyond the procurement of three transducers for an ARRA-funded project.

The purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already "shovel ready" by requiring SRF eligible recipients such as the IEUA to revise their design standards and specifications, or to impair the efficient operation of project facilities thereafter. The imposition of ARRA Buy American requirements in this case would result in unreasonable delay for this project, and an unjustifiable burden to the IEUA, in the form of wasteful and duplicative life-cycle costs in the future, as well as problematic performance of its recharge well monitoring system due to incompatible transducers. Both results would directly conflict with fundamental economic purposes of ARRA, to create or retain jobs, and to build recovery by investments in effective infrastructure.

The information provided is sufficient to meet the following criteria listed under Section 1605(b)(1) of the ARRA, OMB's regulations at 2 CFR 176.60–176.170, and in the April 28, 2009 EPA memorandum for implementation of ARRA Buy American provisions of Public Law 111–5. Applying the Buy American requirements of ARRA would be inconsistent with the public interest.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that application of the Buy American requirements would be inconsistent with the public interest, the IEUA is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the purchase of the specified Solinst transducers as documented in the IEUA's waiver request submittal dated January 21, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b)(1).

Authority: Public Law 111–5, section 1605.

Dated: February 10, 2010.

Jared Blumenfeld,

Regional Administrator, EPA Pacific Southwest Region.

[FR Doc. 2010–4073 Filed 2–25–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Premier Commerce Bancorp, Inc., Palos Hills, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of G.R. Bancorp, Ltd., Grand Ridge, Illinois, and thereby indirectly acquire voting shares of The First National Bank of Grand Ridge, Grand Ridge, Illinois.

Board of Governors of the Federal Reserve System, February 23, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–3992 Filed 2–25–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 2010.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Bryn Mawr Bank Corporation, Bryn Mawr, Pennsylvania; to acquire First Keystone Financial, Inc. Media, Pennsylvania, and thereby indirectly acquire First Keystone Bank, Media, Pennsylvania, and thereby engage in operating a savings and loan assocation, pursuant to 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, February 23, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–3991 Filed 2–25–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

February 2, 2010.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
11–JAN–10	20100293	G	Tang Hsiang Chien.
		G	TTM Technologies, Inc.
		G	TTM Technologies, Inc.
	20100306	G	Admiral Beverage Corporation.
		G	Joe G. Maloof and Company.
		G	Maloof Distributing LLC.
	20100309	G	Apollo Investment Fund VII, L.P.
		G	Cedar Fair, L.P.
		G	Cedar Fair, L.P.
12–JAN–10	20100277	G	Intermediate Capital Group PLC.
		G	Computer Patent Annuities Holdings Limited.
		G	Computer Patent Annuities Holdings Limited.
	20100308	G	Johnson & Johnson.
		G	Acclarent, Inc.
		G	Acclarent, Inc.
13–JAN–10	20100262	G	American Express Company.
		G	Stephen M. Case.
		G	Revolution Money Inc.
	20100268	G	Microsoft Corporation.
		G	Sentillion, Inc.
		G	Sentillion, Inc.
	20100294	G	George J. Pedersen.
		G	Michael Gualario.
		G	Sensor Technologies Incorporated.
14–JAN–10	20100296	G	Francisco Partners II, LP.
		G	QuadraMed Corporation.
		G	QuadraMed Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
15–JAN–10	20100275	G	A. Schulman, Inc.
		G	ICO, Inc.
		G	ICO, Inc.
	20100319	G	Chardan 2008 China Acquisition Corp.
		G	David J. Stern.
		G	Default Servicing Inc.
		G	DJS Processing, LLC.
		G	Professional Title and Abstract Companyof Florida, LLC.
		G	Professional Title and Abstract Company of Florida, Inc.
		G	The Law Offices of David J. Stern.
		G	Default Servicing, LLC.
19–JAN–10	20100282	G	Superior Plus Corp.
		G	Griffith Holdings, Inc.
		G	Griffith Energy, Inc.
20–JAN–10	20100289	G	International Business Machines Corporation.
		G	Lombardi Software, Inc.
		G	Lombardi Software, Inc.
	20100297	G	General Atlantic Partners (Bermuda) II, L.P.
		G	Markit Group Holdings Limited.
		G	Markit Group Holdings Limited.
21–JAN–10	20100288	G	Carl C. Icahn.
		G	Take-Two Interactive Software, Inc.
		G	Take-Two Interactive Software, Inc.
22–JAN–10	20100328	G	The Oklahoma Publishing Company.
		G	Pavestone Holdings, LLC.
		G	Pavestone Holdings, LLC.
25–JAN–10	20100318	G	Atlas Copco AB.
		G	EnPro Industries, Inc.
		G	Coltec Industries, Inc.
	20100326	G	Morgan Stanley Capital Partners V U.S. Holdco LLC.
		G	The Penn Traffic Company.
		G	The Penn Traffic Company.
	20100332	G	Fort Chicago Energy Partners, L.P.
		G	United States Power Fund, L.P.
		G	EIF Northbrook, LLC.
	20100333	G	SAIC, Inc.
		G	Cloudshield Technologies, Inc.
		G	Cloudshield Technologies, Inc.
	20100355	G	The Williams Companies, Inc.
		G	Williams Partners L.P.
		G	Williams Partners L.P.
	20100358	G	Liberty Media Corporation.
		G	Live Nation, Inc.
		G	Live Nation, Inc.
26–JAN–10	20100349	G	Atlas Acquisition Holdings Corp.
		G	D. Stephen Sorensen.
		G	New Koosharem Corporation.
		G	Koosharem Corporation.
27–JAN–10	20090725	G	Danaher Corporation.
		G	MDS Inc.
		G	MDS Analytical Technologies (Shanghi).
		G	Limted MDS Analytical Technolgies GmbH.
		G	MDS Analytical Technologies (Hong Kong) Limited.
		G	MDS Analytical Technologies (GB) Ltd.
		G	MDS Analytical Technologies Instrumentacao Cientifica.
		G	MDS Analytical Technolgies (US) Inc.
		G	Molecular Devices Korea, LLC.
		G	Applied Biosystem s/MDS Analytical Technologies Instruments.
		G	MDS Life Sciences (Sinapore) Ptd. Ltd.
		G	Nihon Molecular Devices Co., Ltd.
		G	Blueshift Biotechnologies, Inc.
		G	PerkinElmer Sciex Instruments.
		G	MDS.
	20100343	G	72 Mobile Investors, LLC.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Airvana, Inc.
		G	Airvana, Inc.
	20100018	G	Coventry Health Care, Inc.
		G	Marian Health System, Inc.
		G	Preferred Health Systems, Inc.
	20100019	G	Coventry Health Care, Inc.
		G	Ascension Health.
		G	Preferred Health Systems, Inc.
	20100317	G	Novartis Pharma AG.
		G	Corthera, Inc.
		G	Corthera, Inc.
	20100340	G	Pattern Energy Group Holdings LP.
		G	Babcock & Brown Limited (Liquidators Appointed).
		G	Texas Gulf Wind LLC.
	20100344	G	China National Petroleum Corporation.
		G	ION Geophysical Corporation.
		G	ION Geophysical Corporation.
29–JAN–10	20100329	G	EMC Corporation.
		G	Yahoo! Inc.
		G	Zimbra, Inc.
	20100350	G	Shenandoah Valley Electric Cooperative.
		G	Allegheny Energy, Inc.
		G	The Potomac Edison Company.
	20100352	G	Rappahannock Electric Cooperative.
		G	Allegheny Energy, Inc.
		G	The Potomac Edison Company.
	20100356	G	GridPoint, Inc.
		G	David Gelbaum and Monica Chavez Gelbaum.
		G	Standard Renewable Energy, LP.
	20100362	G	Molina Healthcare, Inc.
		G	Unisys Corporation.
		G	Unisys Corporation.
	20100363	G	Elevation Partners, L.P.
		G	Yelp!, Inc.
		G	Yelp!, Inc.
	20100368	G	Limelight Networks, Inc.
		G	EyeWonder, Inc.
		G	EyeWonder, Inc.
	20100372	G	Liberty Media Corporation.
		G	Live Nation Entertainment, Inc.
		G	Live Nation Entertainment, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303 Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–3590 Filed 2–25–10; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 051 0252]

M. Catherine Higgins; 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 8, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "M. Catherine Higgins, File No. 051 0252" 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: (*http://www.ftc.gov/opa/2008/12/allcare.shtm*) 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: (*http://www.ftc.gov/opa/2008/12/allcare.shtm*). 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 "M. Catherine Higgins, File No. 051 0252" 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: Gary H. Schorr (202-326-3063), 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 5, 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, 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 with M. Catherine Higgins ("Ms. Higgins"), the executive director of the Boulder Valley Individual Practice Association ("BVIPA"). The agreement settles charges that Ms. Higgins violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by, among other things, orchestrating and implementing agreements among competing physician members of BVIPA to fix the prices at which BVIPA physicians contract with health plans.

This matter relates to the Commission's prior action against BVIPA. In December 2008, the Commission accepted for public comment a proposed consent order to settle charges that BVIPA orchestrated and carried out illegal agreements to set prices and other terms that BVIPA physicians would accept from health plans. The accompanying complaint against BVIPA alleged that the IPA's executive director, Ms. Higgins, played a key role in the challenged conduct; the complaint did not, however, name her as a respondent. The order against BVIPA, by its terms, applies to Ms. Higgins' conduct as the executive director of BVIPA but does not apply to her actions in her individual capacity.

Based on Ms. Higgins' conduct after BVIPA signed its consent order, the Commission has reason to believe that Ms. Higgins may attempt to evade the order's prohibitions by acting in her individual capacity. There is evidence that, shortly after BVIPA signed the consent agreement, Ms. Higgins represented physicians in her individual capacity. As alleged in today's complaint ("Complaint"), Ms. Higgins told an insurer that she could continue to negotiate fees on behalf of BVIPA physicians, declaring:

> I could do this as an individual, not with my BVIPA hat, but as an individual. I'm not named in the settlement. There's nothing that precludes me from doing my own work. I could just do it outside.

Absent an order against Ms. Higgins in her individual capacity, there is a substantial danger that she will continue to orchestrate unlawful price fixing agreements among physicians in the Boulder County area and that consumers will continue to suffer the adverse effects of her conduct.[2]

[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).

[2] The U.S. Supreme Court has clearly held that it is appropriate for the Commission to name individuals, as well as organizations, where evidence exists that an individual otherwise would be likely to "evade orders by the Commission." Fed. Trade Comm'n v. Standard Education Soc., 302 U.S. 112, 119 (1937).

The proposed consent order ("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 decide whether to 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 Ms. Higgins that she 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.

Ms. Higgins is the executive director of BVIPA, an association of approximately 365 independent primary care and specialist physicians in solo or small group practices in the Boulder County area that contracts with payers on behalf of its physician members. As part of Ms. Higgins' duties, BVIPA's Board granted her blanket authority to negotiate contracts with payers on behalf of BVIPA and its physician members, including the authority to enter into contracts without obtaining approval from the BVIPA Board, Finance Committee, or any of its members.

The Complaint challenges Ms. Higgins' conduct starting in 2001, when she began negotiating the prices and other terms at which BVIPA's otherwise competing physicians would deal with payers. From approximately 2001 through 2006, Ms. Higgins negotiated with numerous payers on behalf of BVIPA physicians and successfully extracted higher fees from them. In order to maximize BVIPA's bargaining leverage, Ms. Higgins exhorted BVIPA members to contract jointly through BVIPA, rather than individually. For example, in a 2002 BVIPA newsletter, Ms. Higgins reminded BVIPA members that "our strength will lie in contracting together, not separately." In reporting that BVIPA had signed a new contract at a favorable rate, Ms. Higgins noted that "[t]his is due to your support of our efforts and [the payer's] inability to get providers to sign individual contracts. Thank you for your support!!"

Beginning in late in 2007 and continuing until early 2009, Ms. Higgins, as BVIPA's executive director, negotiated and consulted for some of BVIPA's physician members who sought to contract individually with a payer, thereby facilitating the exchange of rate information among them, and facilitating the coordination of rates during the individual negotiations.

As a result of Ms. Higgins' collective negotiations of physician fees for BVIPA members, payers contracted with and reimbursed BVIPA members for physician services in Boulder County at rates approximately 15 to 27 percentage points higher than those paid in individual contracts with non-member physicians in Boulder County.

In 2004, Ms. Higgins drafted and gave a "white paper" to payers at the start of a negotiation, which purported to offer three options for contracting with BVIPA members: a single-signature contract that "delivered the entire BVIPA network"; a "modified messenger model" that "may or may not deliver our entire network"; and direct contracting with individual members outside the IPA. BVIPA's contracting practices and Ms. Higgins' conduct, however, did not change. BVIPA still sent proposals to BVIPA's individual members for review only after Ms. Higgins deemed the prices acceptable. Further, many BVIPA physicians refused to discuss contracting on an individual basis, instead, referring the payers to BVIPA, and others offered to negotiate individual contracts with Ms. Higgins representing them in their individual capacity.

Ms. Higgins' conduct had the effect of unreasonably restraining trade and hindering competition in the provision of physician services by unreasonably restraining price and other forms of competition among physicians; increasing prices for physician services; and depriving health plans, employers, and individual consumers of the benefits of competition among physicians. BVIPA members did not engage in any efficiency-enhancing integration of their practices sufficient to justify Ms. Higgins' challenged conduct. Accordingly, the Complaint alleges that Ms. Higgins violated Section 5 of the FTC Act.

The Proposed Consent Order

The Proposed Order is designed to remedy the illegal conduct charged in the Complaint and to prevent its recurrence. To preserve the ability to engage in potentially procompetitive conduct while ensuring that physicians reach contracting decisions independently, the Proposed Order also includes certain "fencing-in" limitations on Ms. Higgins' activities. The Proposed Order is otherwise similar to prior consent orders the Commission has issued to settle charges that individuals, as well as physician groups, engaged in unlawful agreements to raise the fees that physician groups receive from health plans.

The Proposed Order's specific provisions are as follows:

Paragraph II.A prohibits Ms. Higgins from entering into or facilitating any agreement between or among any physicians: (1) to negotiate with payers on any physician's behalf; (2) to refuse to deal, or threaten to refuse to deal, with payers in furtherance of any conduct or agreement prohibited by any other provision of Paragraph II; (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 BVIPA.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits Ms. Higgins 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 Ms. Higgins from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing collective bargaining on behalf of providers with health care purchasers, Paragraph II excludes certain kinds of agreements from its prohibitions. Thus, Ms. Higgins 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 prices or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Paragraph III, one of the fencing-in prohibitions, limits for one year Ms. Higgins' activities as an agent or messenger with regard to payer contracts. Subject to the notification requirement of Paragraph V, Ms. Higgins may only receive and transmit offers and responses to those offers between payers and physicians. Paragraph VI sets out the information necessary to make the notification complete.

Paragraph IV, another fencing-in provision, prohibits Ms. Higgins for two years from negotiating on behalf of or advising any physician member of BVIPA with regard to any payer contract offer or term. Both Paragraphs III and Paragraph IV exclude from their prohibitions, however, information Ms. Higgins may provide regarding whether any contract for proposed physician services includes terms required by Colorado state law. Paragraph IV further excludes from its prohibition certain negotiations should Ms. Higgins cease to be employed by BVIPA.

Paragraph V requires Ms. Higgins to notify the Commission, for one year before acting as a limited messenger, and for an additional two years before acting as a messenger or agent, with payers regarding contracts. Paragraph VI sets out the information necessary to make the notification complete.

Paragraph VII requires Ms. Higgins for three years to notify the Commission before contracting with health plans on behalf of either a Qualified Risk-Sharing or a Qualified Clinically-Integrated Joint Arrangement. Paragraph VIII sets out the information necessary to satisfy the notification requirement.

Paragraphs IX, X, and XI impose various obligations on Ms. Higgins to report or provide access to information to the Commission to facilitate the monitoring of compliance with the Order. Finally, Paragraph XII provides that the Proposed Order will expire in 20 years.

By direction of the Commission, Commissioner Rosch dissenting.

Donald S. Clark

Secretary.

Statement of the Commission

Today, the Commission issues for public comment a consent agreement and proposed Decision and Order against M. Catherine Higgins, the executive director of Boulder Valley Individual Practice Association (BVIPA). The Commission previously accepted for public comment a consent agreement and proposed Decision and Order against BVIPA, resolving charges that BVIPA orchestrated and carried out illegal agreements to set prices and other terms that BVIPA physician members would accept from health plans.[3] Based on events that occurred during the BVIPA public comment period, the Commission has reason to believe that an order naming Ms. Higgins is necessary. When an employee of an association, especially a senior one like Ms. Higgins, tries to evade an order against the association by acting in her individual capacity, the Commission has little choice but to seek additional relief to protect competition and health care consumers.

The proposed order against BVIPA, by its terms, covers Ms. Higgins' conduct as the executive director of BVIPA,[4] but does not apply to Ms. Higgins' actions in her individual capacity. There is evidence, however, that Ms. Higgins attempted to evade the BVIPA consent order shortly after it was signed by representing physicians in her individual capacity. As alleged in the draft complaint that accompanies the settlement announced today, Ms. Higgins told an insurer that she could continue to negotiate fees on behalf of BVIPA physicians, declaring:

> "I could do this as an individual, not with my BVIPA hat, but as an individual. I'm not named in the settlement. There's nothing that precludes me from doing my own work. I could just do it outside."[5]

Based on this and other evidence discussed more fully below, we find reason to believe that, absent the Commission's order, Ms. Higgins is likely to continue to negotiate potentially unlawful agreements in her individual capacity, thus skirting an order prohibiting the same conduct by BVIPA. This alleged conduct, which likely would harm consumers and competition, requires the Commission to issue a complaint against Ms. Higgins, and also provides a sound basis for the Commission to accept a consent order against her.

In light of Commissioner Rosch's dissenting statement, we write to further explain the basis for today's Commission action.

The Commission's Decision to Issue a Complaint Against Ms. Higgins is Necessary

We respectfully disagree with Commissioner Rosch's view that the acts alleged do not justify a complaint against Ms. Higgins.

Ms. Higgins played a central role in BVIPA's negotiations with insurers. As alleged in the complaint, Ms. Higgins had "blanket authority" to negotiate and enter contracts on behalf of BVIPA's members.[6] For a period of five years, according to the complaint, she "successfully extracted higher fees" from payers on behalf of individual competing physicians, often threatening to terminate contracts unless the insurer accepted a price increase, while reminding BVIPA members that "our strength will lie in contracting together, not separately."[7] That conduct allegedly increased fees by 15 to 27 percentage points above the prices paid to other area doctors who negotiated individually.[8]

In December 2008, the Commission chose not to name Ms. Higgins in the BVIPA order because the order would, by its terms, cover conduct by officers, employees, and other representatives of BVIPA, including her actions as executive director.[9] Based on Ms. Higgins' actions after the BVIPA proposed consent agreement was signed, however, the Commission has reason to believe that, absent injunctive relief against her in her individual

[3] In the Matter of Boulder Valley Individual Practice Ass'n, FTC File No. 051-0252, *Analysis of Agreement Containing Consent Order to Aid Public Comment* (Dec. 24, 2008), *available at* (*http://www2.ftc.gov/os/caselist/0510252/081224boulderanal.pdf*).

[4] *See* In the Matter of Boulder Valley Individual Practice Ass'n, *supra* note 1 (draft Decision and Order issued Dec. 24, 2008), ¶ I.A, *available at* (*http://www2.ftc.gov/os/caselist/0510252/081224bouldedo.pdf*) [hereinafter BVIPA Order].

[5] In the Matter of M. Catherine Higgins, FTC File No. 051-0252 (draft complaint issued Feb. 5, 2010), ¶ 3, *available at* (*www.ftc.gov*) [hereinafter Higgins Complaint].

[6] Higgins Complaint ¶ 19.

[7] *Id.* ¶¶ 20, 21, 34-36.

[8] *Id.* ¶ 25.

[9] BVIPA Order ¶ I.A.

capacity, Ms. Higgins is likely to engage in conduct that is prohibited by the BVIPA order.[10]

There is no support for Commissioner Rosch's assertion that the Commission's decision to issue a separate complaint against Ms. Higgins is punitive. The order provisions are similar to those in other orders naming individuals. For a period of time, the respondent may act only as a limited messenger;[11] in addition, the respondent may not represent both the IPA and, separately, individual doctors or practices.[12] Especially given the evidence of Ms. Higgins' efforts to circumvent the order against BVIPA, the order against Ms. Higgins is a reasonable way to prevent future price fixing.

Nor is the Commission reneging on any "deal" it made with BVIPA.[13] Rather, the proposed order announced today is a natural consequence of actions Ms. Higgins took after the BVIPA consent agreement was signed.[14] The Commission cannot – and did not – bargain away its right to secure adequate relief to protect consumers.

The BVIPA Enforcement Action is Consistent with the Commission's Prior IPA Cases

Although Commissioner Rosch continues to support entering a final Decision and Order against BVIPA, he states that the BVIPA order is "not just a logical successor to other finalized decrees the Commission entered against" IPAs.[15] We disagree; the order the Commission proposes to enter against BVIPA is no different than numerous orders the Commission has entered against other IPAs. As in a number of other cases, the Commission has alleged that BVIPA jointly negotiated prices with insurers. And, the BVIPA order, like all of the orders in those cases, bans joint negotiations except where reasonably necessary to the formation or operation of a clinically or financially integrated arrangement.[16]

Finally, we note three areas where we disagree, on factual and legal grounds, with the views expressed by Commissioner Rosch in his dissent. First, we disagree with Commissioner Rosch's interpretations of *International Healthcare Management* and *Tunica Web Advertising*. Neither the inclusion of non-price terms in negotiations among competitors, nor customer acquiescence to a *per se* illegal agreement among competitors, insulates such an agreement among competitors from *per se* treatment.

Second, we do not think this situation raises any legal issues surrounding non-price negotiations because BVIPA's negotiations were primarily focused on raising prices. At most, any discussion of non-price terms was tangential to joint negotiations of price terms.

Third, we reject any implication that if conduct is not a *per se* violation of the antitrust laws, it can be prohibited only by virtue of "fencing-in" relief.

Irrespective of whether facts such as those presented in this case ultimately could support a *per se* violation of the antitrust laws, we have reason to believe that the conduct in which BVIPA allegedly engaged would violate Section 5 of the Federal Trade Commission Act if allowed to continue. Further, in light of Ms. Higgins' alleged attempts to evade the order against BVIPA, we believe an order against her is proper and necessary.[17]

Dissenting Statement of Commissioner J. Thomas Rosch

Today's events represent a sad conclusion to an unnecessarily sordid tale. Four years ago, in October 2005, the Commission opened an investigation into whether the Boulder Valley Individual Practice Association ("Boulder Valley" or "BVIPA") and Mary Catherine Higgins (Boulder Valley's Executive Director) violated the antitrust laws by allowing competing physicians to jointly negotiate terms with payors. Boulder Valley ultimately agreed to enter into a consent decree. That consent decree, however, was not just a logical successor to other finalized decrees the Commission has entered against Individual Practice Associations ("IPAs") composed of competing physicians who have jointly negotiated rates with payors. The underlying conduct in those cases was horizontal price-fixing – which is per se illegal, or, to be charitable, conduct that violates the rule of reason. *See In re N. Tex. Specialty Physicians*, 140 F.T.C. 715 (2005), *aff'd*, 528 F.3d 346 (5th Cir. 2008). Boulder Valley's underlying conduct, however, consisted at least in part of joint negotiation of non-price terms – conduct that is not a per se violation. *See Internat'l Healthcare Mgmt. v. Haw. Coal. for Health*, 332 F.3d 600, 605 (9th Cir. 2003). Moreover, insofar as Boulder Valley's underlying conduct did consist of joint negotiation of rates, it consisted, in part, of alleged horizontal price-fixing in which some of the alleged "victims" were payors who agreed to the conduct, apparently believing joint negotiation of rates to be efficient and in the payors' self-interest. Joint negotiations by horizontal competitors with those who invite those joint negotiations are not a per se antitrust violation either. *Tunica Web Adver. v. Tunica Casino Operators Ass'n*, 496 F.3d 403, 410 (5th Cir. 2007). Thus, insofar as the consent decree against Boulder Valley bars either of these kinds of conduct, it can legitimately do so only by way of "fencing-in" or not at all. Boulder Valley chose not to litigate these issues, instead electing to enter into a consent decree that names Boulder Valley alone and not Ms. Higgins as a respondent. This was

[10] The U.S. Supreme Court has clearly held that it is appropriate for the Commission to name individuals, as well as organizations, where evidence exists that an individual otherwise would be likely to "evade orders of the Commission." Fed. Trade Comm'n v. Standard Education Soc., 302 U.S. 112, 119 (1937). Nor is today's action unprecedented. The Commission previously has named individuals and secured relief against them, including non-physician contracting agents in IPA consent orders. *See, e.g.,* White Sands Health Care System, LLC, FTC Dkt. No. C-4130 (consent order issued Jan. 11, 2005); Southeastern New Mexico Physicians IPA, Inc., FTC Dkt. No. C-4113 (consent order issued Aug. 5, 2004); The Maine Health Alliance, FTC Dkt. No. C-4095 (consent order issued Aug. 27, 2003).

[11] Piedmont Health Alliance, Inc., FTC Dkt. No. 9314 (consent order issued Oct. 1, 2004).

[12] New Century Health Quality Alliance, Inc., FTC Dkt. No. C-4169 (consent order issued Sep. 29, 2006); White Sands Health Care System, LLC, FTC Dkt. No. C-4130 (consent order issued Jan. 11, 2005); Physician Network Consulting, LLC, FTC Dkt. No. C-4094 (consent order issued Aug. 27, 2003).

[13] Commissioner Rosch's dissenting statement implies that the Commission's decision not to name Ms. Higgins back in December 2008 was a *quid pro quo* for BVIPA's acceptance of the proposed consent agreement. In the Matter of M. Catherine Higgins, *supra* note 3, Dissenting Statement of Commissioner J. Thomas Rosch, at 2, *available at* (*www.ftc.gov*) [hereinafter Rosch Dissent]. We disagree with Commissioner Rosch's interpretation of the facts. Moreover, BVIPA has not suggested that such an agreement ever existed. Nor has BVIPA argued that the Commission should not finalize the BVIPA consent order.

[14] Commissioner Rosch's dissenting statement suggests that Ms. Higgins may not have understood that the proposed consent agreement required immediate compliance from the time it was signed. Rosch Dissent at 2. Our decision is not based on whether Ms. Higgins thought the order was effective. Rather, the order against Ms. Higgins is justified by her belief that acting in her individual capacity would put her beyond the order's reach, even once the order was effective. Moreover, she knew or should have known, based on the action against BVIPA, that jointly negotiating on behalf of physicians was illegal.

[15] Rosch Dissent at 1.

[16] *See especially* Independent Physician Associates Medical Group, Inc., d/b/a AllCare IPA, FTC Dkt. No. C-4245, (consent order issued Feb. 2, 2009) (unanimous Commission vote, including Commissioner Rosch); Colegio de Optometras, FTC Dkt. No. C-4199 (consent order issued Sept. 6, 2007) (same); Advocate Health Partners, FTC Dkt. No. C-4184 (consent order issued Dec. 29, 2007) (same); New Century Health Quality Alliance, Inc., FTC Dkt. No. C-4169 (consent order issued Sept. 29, 2006) (same).

[17] Because this matter relates to the matter against BVIPA, the Commission will defer a decision to make final the order against BVIPA until after the close of the comment period for the proposed order against Ms. Higgins.

consistent with Commission practice: when an individual is just an employee of the organizational respondent (as opposed to an owner of the organization or someone who is shown to control the organization's decisions), the Commission has rarely named the individual as a separate respondent; it has instead simply provided that the order will apply to the directors of the organizational respondent, its officers, and employees. Despite my doubts about whether liability based on the two species of conduct discussed above could be found, I found that there was "reason to believe" that Boulder Valley could be fenced-in in this fashion, and I voted for the decree.[1] One of the factors I considered, however, was that Ms. Higgins was not joined as a respondent.

Thereafter, it is undisputed that the following events occurred. First, Ms. Higgins denounced the consent decree in the press, asserting, among other things, that Boulder Valley had agreed to the consent decree only to avoid the substantial expense that litigation would entail.[2] Second, in response to the notice for public comment on Boulder Valley's proposed consent, Anthem Blue Cross Blue Shield complained that "the terms of the Consent Order may be interpreted to allow individuals associated with . . . BVIPA" to continue to attempt to facilitate collusive pricing.[3] Third, following those complaints and conversations with Anthem, staff notified Ms. Higgins that it was evaluating whether to add her to the *Boulder Valley* complaint or name her separately. Fourth, Ms. Higgins then separately met with the Commissioners (with the exception of the undersigned) in an effort to persuade them not to pursue her individually. Fifth, following those meetings, staff offered Ms. Higgins a consent decree that restricts Ms. Higgins's ability to participate in a pure "messenger system" in obtaining rates for those physicians that Boulder Valley represents. Sixth, Ms. Higgins rejected that consent decree, but rather than litigate, the Commission has since agreed to a consent decree that (unlike the Commission's consent decree with Boulder Valley) (1) restricts Ms. Higgins to a limited messenger model for one year and (2) prevents Ms. Higgins from negotiating with any payor on behalf of any physician that participates in the BVIPA for two years.

Under these circumstances, I cannot vote in support of the consent decree against Ms. Higgins. First, I do not believe that the Commission has adduced evidence that warrants switching its stance from not naming Ms. Higgins at all to requiring her to enter into a consent decree that restricts her ability to participate in a pure "messenger system." There is a factual dispute as to whether when Ms. Higgins made her post-consent statements to Anthem, Ms. Higgins understood that she (or Boulder Valley) was subject to the binding consent decree in *Boulder Valley,* which had not yet been made final. I do not believe that such disputed facts supply a sufficient basis for the Commission to now proceed against Ms. Higgins separately and require that she engage in more restrictive conduct as a condition of settlement.

Second, in my view, the Commission's decision today is unnecessarily punitive: Ms. Higgins cannot possibly do her job to the fullest extent for Boulder Valley if she is limited in her conduct as described. Moreover, I am gravely concerned that the Commission's abrupt decision to change its tune can be viewed as retaliation for Ms. Higgins's decision to exercise her First Amendment rights when she publicly criticized the Commission's initial decision against Boulder Valley and for her ensuing decision to meet individual Commissioners in an effort to persuade them not to pursue her separately.

Third, I believe that by separately naming Ms. Higgins, the Commission has reneged on its deal. Such actions will inevitably undermine the Commission's ability to effectively negotiate consent decrees in the future.

I greatly regret this chain of events, and I hope that it does not happen again.

[FR Doc. 2010–4045 Filed 2–25–10; 8:45 am]

BILLING CODE 6750–01–S

[1] Complaint, *In the Matter of Boulder Valley Individual Practice Assoc.*, FTC File No. 051-0252 (Dec. 24, 2008), *available at* (*http://www.ftc.gov/os/caselist/0510252/081224bouldercmpt.pdf*).

[2] *See, e.g.*, John Aguilar, *Doctors Settle with FTC; Boulder County Physicians' Group: Feds Wrong with price-fixing claims*, DAILY CAMERA, Dec. 30, 2008, at A1; Greg Blesch, *FTC's Not Done Yet; Calif., Colo. Doc partnerships latest to be scrutinized*, 39 MODERN HEALTHCARE 10 (Jan. 5, 2009).

[3] Comment submitted by Wellpoint, Inc., *In re Boulder Valley Independent Practice Assoc.*, FTC File No. 051-0252 (Jan. 22, 2009), *available at* (*http://www.ftc.gov/os/comments/bouldervalley%20ipa/539810-00002.pdf*).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0937–0025]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

Agency Information Collection Request; 60-Day Public Comment Request

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: Application for Appointment as a Commissioned Officer in the United States Public Health Service Commissioned Corps, OMB No. 0937–0025 Revision, Office of Commissioned Corps Force Management, Office of Public Health and Science.

Abstract: Pursuant to the Paperwork Reduction Act of 1995, the Office of Commissioned Corps Force Management (OCCFM), Office of Public Health and Science (OPHS), requests that the Office of Management and Budget (OMB) approve form PHS–50, "Application for Appointment as a Commissioned Officer in the United States Public Health Service Commissioned Corps," (OMB No. 0937–0025) and form PHS–1813, "Reference Request for Applicants to the United States Public Health Service Commissioned Corps" (OMB No. 0937–0025).

The principal purpose for collecting the information is to permit HHS to determine eligibility for appointment of applicants into the Commissioned Corps

of the U.S. Public Health Service (Corps). The application packet pertains only to individual health professionals who wish to apply for appointment in the Corps. This is a request for a 3-year approval.

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
PHS–50	Applicant to Corps	2,500	1	1	2500
PHS–1813	Reference for Applicant	10,000	1	15/60	2500
Total		12,500	1		5000

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–3981 Filed 2–25–10; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–; 30-day notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

Agency Information Collection Request; 30-Day Public Comment Request

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 collection 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) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Evaluation of the Parents Speak Up National Campaign (PSUNC): Focus Groups with Adolescents. OMB No. 0990—NEW—Office of the Secretary/Office of Public Health and Science/Office Adolescent Pregnancy Programs.

Abstract: The data collection will take place once, over a three-day period, in early 2010. An estimated 2000 adults will be screened to identify parents who are willing for their child to participate in the study and whose child is eligible. Screening will take an estimated 3 minutes, on average. Study participants will total 160 adolescents ages 13–15. Participation in the study will take an estimated 2 hours on average; including time spent responding to a mini-questionnaire and participating in a bulletin board focus group. Participants will self-administer the mini-questionnaire at home on personal computers and will also participate in the focus group online. The specific aim of this study is to assess qualitatively what kinds of information about sex adolescents want to hear from their parents and their perspectives on the factors that either hinder or facilitate effective communication.

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
Screener	Adults	2,000	1	3/60	100
Focus group discussion guide and mini-questionnaire.	Adolescents ages 13–15	160	1	2	320
Total		2,160			420

Seleda M. Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–3982 Filed 2–25–10; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the

National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on March 17, 2010, from 10 a.m. to 4 p.m./Eastern Time.

Location: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC. The hotel telephone number is 202–234–0700.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, *e-mail: judy.sparrow@hhs.gov* Please call the contact person 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.

Agenda: The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the Certification/Adoption Workgroup, the NHIN Workgroup, the Privacy & Security Policy Workgroup, and the Strategic Plan Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

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 10, 2010. Oral comments from the public will be scheduled between approximately 3:30 p.m. to 4 p.m. Time allotted for each presentation is limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: February 19, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–4041 Filed 2–25–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on March 24, 2010, from 9 a.m. to 4 p.m./Eastern Time.

Location: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC. The hotel telephone number is 202–234–0700.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person 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.

Agenda: The committee will hear reports from its workgroups, including the Clinical Operations, Clinical Quality, Privacy & Security, and Implementation Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posed on ONC's Web site after the meeting, at *http://healthit.hhs.gov*

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 16, 2010. Oral comments from the public will be scheduled between approximately 3 p.m. and 3:30 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: February 19, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–4069 Filed 2–25–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0761]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Randomized Controlled Trial of Routine Screening for Intimate Partner Violence—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) requests OMB approval of revisions to a currently approved collection entitled "Randomized Controlled Trial of Routine Screening for Intimate Partner Violence" (approved 01/24/2008; expiration date 01/29/2011). The proposed changes are a result of findings from the Pretest that showed high numbers of Spanish speakers at recruitment clinics, a higher prevalence of reported exposure to intimate partner violence (IPV), and redundancy of the 20-item mental health scale with other measures being used. As a result, we are requesting approval to extend trial inclusion criteria to Spanish speakers, a reduction in sample size, and deletion of a 20-question mental health scale. These last two changes will result in a decrease in burden to respondents. In addition, we are requesting an extension of three years to complete this information collection. The overarching purpose of the information collection has not changed nor are there substantial changes to the study methods.

The revisions requested will reduce annual burden by 410 hours. Deletion of the mental health scale will reduce the burden response by 2 minutes; the reduction of sample size will reduce number of respondents; and extension of information collection time will decrease annualized burden. The Pretest has already been conducted and the estimates of burden for the interview in the Main Study are based on results from the Pretest. Based on our new sample size estimates adjusted as a result of findings in the Pretest, in the Main Study, we will approach an estimated total of 3340 women to establish eligibility and recruit about 2675 (total) women. The annualized average response burden equals 308 hours, which is a reduction of 410 burden hours.

There is no cost to respondents.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden/ response (in hours)
Women Seeking Health Care Services.	Eligibility Script for Pretest	70	1	1/60
	Baseline Questionnaire Pretest	65	1	15/60
	Follow-up Questionnaire Pretest	59	1	12/60
	Eligibility Script for Main Study	668	1	1/60
	Baseline Questionnaire Main Study	535	1	16/60
	Follow-up Questionnaire Main Study (estimated 30% lost to follow-up).	356	1	21/60

Dated: February 22, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–4001 Filed 2–25–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10184]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to

be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Eligibility Error Rate Measurement in Medicaid and the Children's Health Insurance Program; *Use:* The collection of information is necessary for CMS to produce national error rates for Medicaid and CHIP as required by Public Law 107–300, the IPIA of 2002. The collection of information is also necessary to implement provisions from the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3) with regard to the Medicaid Eligibility Quality Control (MEQC) and Payment Error Rate Measurement (PERM) programs. The information collected from the States selected for review will be used by CMS to ensure States use a statistically sound sampling methodology, to ensure the States complete reviews on all cases sampled, and will be used by the federal contractor to calculate State and national Medicaid and CHIP eligibility error rates. *Form Number:* CMS–10184 (OMB#: 0938–1012); *Frequency:* Reporting—Occasionally; *Affected Public:* State, Local, Tribal Governments; *Number of Respondents:* 34; *Total Annual Responses:* 53; *Total Annual Hours:* 942,764. (For policy questions regarding this collection contact Jessica Woodard at 410–786–9249. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *March 29, 2010:*

OMB, Office of Information and Regulatory Affairs,

Attention: CMS Desk Officer,

Fax Number: (202) 395–6974,

E-mail: OIRA_submission@omb.eop.gov.

Dated: February 22, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–4020 Filed 2–25–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–10–10BR]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation and Development of Hearing Loss Interventions—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH, under Public Law 91–596, Sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970) has the responsibility to conduct research relating to innovative methods, techniques, and approaches dealing with occupational safety and health problems.

This research relates to reducing the incidence of noise induced hearing loss in the coal mining industry through improved development and dissemination of hearing loss prevention products. The overall objective of this project is to improve the effectiveness of hearing loss prevention research products through development, refinement, promotion, and long term evaluation. Research products developed in previous projects and new products developed in current projects will be evaluated and promoted for industry-wide adoption and impact.

Noise-induced hearing loss (NIHL) is the most common occupational illness in the United States today, with 30 million workers exposed to excessive noise levels. Mining has the highest prevalence of hazardous noise exposure of any major industry sector (Tak, Davis, & Calvert, 2009) and is second only to the railroad industry in prevalence of workers reporting hearing difficulty (Tak & Calvert, 2008). The Hearing Loss Prevention Branch at NIOSH Office of Mine Safety and Health Research (OMSHR) has developed multiple hearing loss prevention research products with the intent of controlling noise exposure and reducing the occurrence of NIHL in mining. However, many of the products are not widely used in industry. The current project has several goals related to determining the effectiveness of our products and developing additional products; however it is also necessary to determine why the products are not receiving greater field utilization so that we can amend the procedure for dissemination and to assure that future products are transferred to industry in a more efficient manner.

The outcomes of this project will include a culmination of various physical measures such as noise dosimetry, noise measures, and audiometry. These are common industry hygiene methods that typically do not require special approval. However, it will also be necessary to conduct semi-structured interviews and questionnaire-based assessments with various mine personnel who are using NIOSH-developed noise controls to gain an understanding of the barriers to acceptance. Employees will be asked about their motivation to implement noise controls, their attitude towards the specific control being assessed, their attitude toward safety, and the methods they use to find and implement health and safety information. These interviews will take place with health

and safety managers, mine foremen, maintenance supervisors, production coordinators and operators of equipment with installed noise controls. The proposed time schedule for conducting these assessments is before installation of a control and on a predetermined schedule for the duration of the life of the control. For example, one noise control may have an expected performance life of 6 months. In that case the interviews will occur before installation, 2 weeks, 6 weeks, 14 weeks, and 24 weeks post installation.

Although we plan to follow this general time table, due to the nature of the mining industry, slight deviation may occur. No noise control will require greater than 5 interviews per respondent. The goal is to achieve 6 mines and 6 individuals per mine per noise control.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Managers Foreman Supervisors Coordinators Operators.	Assessment of the Urethane-Coated Chain for Continuous Mining Machines.	36	5	20/60	60
Managers Foreman Supervisors Coordinators Operators.	Assessment of the Roof Bolting Machine Noise Control Products.	36	5	20/60	60
Managers Foreman Supervisors Coordinators Operators.	Assessment for the Enclosure for Vibrating Screen.	36	5	20/60	60
Total		108			180

Dated: February 22, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–3999 Filed 2–25–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0373]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Mental Models Study of Recruitment and Retention of Pregnant Women Into An Asthma Pregnancy Registry

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 29, 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 Mental Models Study of Recruitment and Retention of Pregnant Women Into An Asthma Pregnancy Registry. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@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.

Mental Models Study of Recruitment and Retention of Pregnant Women Into An Asthma Pregnancy Registry—(OMB Control Number 0910)—NEW

The authority for FDA to collect the information derives from the FDA Commissioner's authority, as specified in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)).

The proposed information collection will help FDA advance public health by identifying priorities, perceptions, and communication needs about how pregnant women and their health care providers make decisions about participation in a pregnancy registry. Understanding these priorities, perceptions, and communication needs will foster more effective approaches to recruitment of pregnant women into pregnancy registries and full retention of those women until the end of the registry study period. Ultimately, early enrollment and complete followup of women in pregnancy registries will strengthen the quality of safety data about use of needed medications during pregnancy.

Before a medication is approved by FDA for sale in the United States, pregnant women are rarely included in experimental research studies of the medication because of concerns that the experimental treatment may harm the developing fetus and/or the pregnant woman. As a result, when a medication is approved for marketing in the United States, little systematically collected human data are available to define the chance of serious side effects in pregnant women and/or their developing fetuses from use of the medication during pregnancy.

A pregnancy registry is a research study conducted after a medication has been approved, during which pregnant women being treated with the medication are observed to identify possible harms to the woman and/or to her developing fetus. Pregnant women voluntarily enroll in a pregnancy registry; data about the pregnancy, labor, delivery, and newborn are collected and analyzed to identify any serious adverse outcomes and consider whether use of the medication may be linked to any observed harm. The quality of pregnancy registry data is enhanced by enrollment of women early in their pregnancy and by complete followup of all enrolled pregnancies to the end of the registry study period. Ultimately, high quality human

pregnancy data gathered through a pregnancy registry and incorporated into medical product labeling will provide patients and their health care providers useful information so they may make informed medical treatment decisions during pregnancy. Data collected from this mental models study will be incorporated into recommendations for improvement of the quality of pregnancy registries, ultimately improving medical treatment decisions, and potentially improving pregnancy outcomes.

FDA engages in various regulatory and communication activities to support and at times require collection of safety data through establishment of a pregnancy registry. Pregnancy exposure registries are a major source of human pregnancy data for product labeling; therefore, FDA is committed to fostering ongoing improvements in the design and conduct of pregnancy registries. In 2002, FDA issued a guidance document entitled "Establishing Pregnancy Exposure Registries" (see *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm071639.pdf*). This guidance provides an overview of pregnancy exposure registries, describing when and how to conduct a pregnancy registry about treatment of a disease in pregnancy or use of a specific medication or group of medications during pregnancy. FDA's Office of Women's Health maintains a list of current pregnancy registries on its Web site, see *http://www.fda.gov/ScienceResearch/SpecialTopics/WomensHealthResearch/ucm134844.htm*. FDA regulations (21 CFR 201.57) describe the content of required product labeling for prescription drugs. In the **Federal Register** of May 29, 2008 (73 FR 30831), FDA published a proposed rule to amend the agency's regulations for required labeling for drugs and biologics when they are used during pregnancy or breastfeeding. When finalized, these revised regulations will improve labeling information about the effects of medicines used during pregnancy and breastfeeding. Enactment of the Food and Drug Administration Amendments Act of 2007 gave FDA new legal authority to require postapproval studies to assess certain safety concerns, including, in certain situations, establishment of a pregnancy registry. Through this data collection and analysis, FDA will identify and address the perceptions and communication needs of pregnant women and health care providers to support their participation in pregnancy registries.

The project will use "mental modeling," a qualitative research method that compares a model of the priorities, perceptions, communication needs, and decisionmaking processes of a group or groups to a model of the same priorities, perceptions, communication needs, and decisionmaking processes developed from expert knowledge and experience. In this study, the decision models of women who are current or potential participants in a pregnancy registry and of health care providers who have participated or might participate in a pregnancy registry will be derived through qualitative structured interviews. The project focuses on an asthma disease-based pregnancy registry; the three cohorts to be interviewed are described in detail in the following paragraphs.

Using information gathered from the interviews, the decision model about pregnancy registry involvement for pregnant women and health care providers will be developed. Once developed, that decision model will be compared to decision models about pregnancy registry involvement that were derived from experts in the fields of obstetrical and asthma treatment during pregnancy, design and conduct of pregnancy registries, FDA medication regulation, and biomedical ethics. FDA will use telephone interviews with the three cohorts to determine the priorities, perceptions, communication needs, and other factors that influence decisions about participation in a pregnancy registry by pregnant women and health care providers. A comparison between an expert model and models based on the information collected directly from women and health care providers may identify consequential perception, priority, and communication gaps. These critical areas can then be redressed through strategic efforts to foster involvement in pregnancy registries designed by FDA or others.

Using a protocol derived from the research that resulted in the "expert model," trained interviewers will conduct 1-on-1 telephone discussions with a total of 60 individuals (20 individuals per cohort) from the 3 cohorts described here:

(1) Potential Pregnancy Registry Participants: Women older than 18 years who are currently being treated for asthma and are pregnant or have been pregnant within the past 18 months, and who may or may not currently be participating in a pregnancy registry;

(2) Current Pregnancy Registry Participants: Pregnant women older than 18 years who are current participants in any pregnancy registry for a chronic condition; and

(3) Health Care Providers: To include a mix of health care providers (including specialists, obstetrician-gynecologists, and primary care providers) some who have participated in a pregnancy registry and some who have not participated in a pregnancy registry.

In the **Federal Register** of August 25, 2009 (74 FR 42901), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received stating that the stakeholder agreed that the proposed study was valid and could provide information to support development of a clinically useful pregnancy registry. The stakeholder requested information about how physicians would be chosen for study participation and which subspecialties would be represented in the cohort. Noting that diversity would be beneficial, the comment suggested inclusion of physicians practicing in the following areas: Allergy/immunology, pulmonology, obstetrics and gynecology, and primary care.

FDA's response is, the Health Care Providers (HCPs) cohort for this mental models study will include a mix of targeted or known HCPs who have participated in pregnancy registries, a variety of specialists who may or may not have participated in pregnancy registries, and Ob/Gyn and primary care providers who may or may not have participated in pregnancy registries. Various resources may be used to identify a diverse sample of prospective primary care and subspecialty HCPs who practice in a variety of clinical settings. Examples might include physicians with privileges at or who refer/transfer patient care to tertiary care hospitals and HCPs who have contacted the Organization for Teratology Information Specialists regarding drug exposures during pregnancy or about pregnancy registry enrollment. The cohort of 20 HCPs will be interviewed by trained interviewers in 1-on-1 in-depth telephone interviews. The telephone interactions will take approximately 60 minutes and will include approximately 45 minutes of structured interview.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
60	1	60	1.0	60.0
Total				60.0

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The study will involve about 60 respondents and take approximately 1 hour each to complete. These estimates are based on the contractor's extensive experience with mental models research.

Dated: February 22, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3912 Filed 2–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0083]

Agency Information Collection Activities; Proposed Collection; Comment Request; Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed

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 recordkeeping requirements for this collection of information concerning substances prohibited from use in animal food or feed and animal proteins prohibited in ruminant feed.

DATES: Submit written or electronic comments on the collection of information by April 27, 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, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850, 301–827–1472.

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.

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed—21 CFR 589.2000(e)(1)(iv) (OMB Control Number 0910–0339)—Extension

This information collection was established because epidemiological evidence gathered in the United Kingdom suggested that bovine spongiform encephalopathy (BSE), a progressively degenerative central nervous system disease, is spread to ruminant animals by feeding protein derived from ruminants infected with BSE. This regulation places general requirements on persons that manufacture, blend, process, and distribute products that contain or may contain protein derived from mammalian tissue, and feeds made from such products.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Records	Total Hours
589.2000(e)(1)(iv)	400	1	400	14	5,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 22, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3911 Filed 2–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0501]

Agency Information Collection Activities; Submission for Office and Management Budget Review; Comment Request; Third Party Disclosure and Recordkeeping Requirements for Reportable Food

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 29, 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 0910–0643. 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 (P150–400B), Food and Drug Administration, 1350 Piccard Dr., 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.

Third Party Disclosure and Recordkeeping Requirements for Reportable Food—21 U.S.C. 350f (OMB Control Number 0910–0643)—Extension

On September 27, 2007, the President signed into law the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85). Section 1005 of FDAAA amends the Federal Food, Drug, and Cosmetic Act (the act) by creating a new section 417 (21 U.S.C. 350f), among other things. Section 417 of the act requires the Secretary of Health and Human Services (the Secretary) to establish within the Food and Drug Administration (FDA) a Reportable Food Registry (the Registry). The Secretary has delegated to the Commissioner of FDA the responsibility for administering the act, including section 417.

Section 417 of the act defines "reportable food" as an "article of food (other than infant formula) for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals." (section 417(a)(2) of the act). Section 417 of the act requires FDA to establish an electronic portal (the Reportable Food electronic portal) by which instances of reportable food must be submitted to FDA by responsible parties and may be submitted by public health officials. FDA made the decision that the most efficient and cost effective means to implement the requirements of section 417 of the act relating to the Registry was to utilize the business enterprise system currently under development within the agency: The MedWatchPlus Portal. The electronic portal became operational on September 8, 2009. The collection of information associated with the submission of reportable food reports to FDA using the MedWatchPlus electronic portal has been approved under OMB Control No. 0910–0645.

In addition, section 1005(f) of FDAAA required FDA to issue guidance to industry about submitting reports through the electronic portal of instances of reportable food and providing notifications to other persons in the supply chain of such article of food. FDA issued guidance containing questions and answers relating to the requirements under section 417 of the act, including (1) How, when and where to submit reports to FDA; (2) who is required to submit reports to FDA; (3) what is required to be submitted to FDA; and (4) what may be required when providing notifications to other persons in the supply chain of an article of food. The agency announced the availability of the guidance document titled "Questions and Answers Regarding the Reportable Food Registry as Established by the Food and Drug Administration Amendments Act of 2007," on September 9, 2009 (74 FR 46434). The guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in question 28 of the guidance have been approved under OMB Control No. 0910–0249.

Section 417 of the act established third party disclosure and recordkeeping burdens associated with the Reportable Food Registry. Specifically, FDA may require the responsible party to notify the immediate previous source(s) and/or immediate subsequent recipient(s) of the reportable food (sections 417(d)(6)(B)(i) and 417(d)(6)(B)(ii) of the act). Similarly, FDA may also require the responsible party that is notified (i.e., the immediate previous source and/or immediate subsequent recipient) to notify their own immediate previous source(s) and/or immediate subsequent recipient(s) of the reportable food (sections 417(d)(7)(C)(i) and 417(d)(7)(C)(ii) of the act).

Notification to the immediate previous source(s) and immediate subsequent recipient(s) of the article of food may be accomplished by electronic communication methods such as e-mail, fax or text messaging or by telegrams, mailgrams, or first class letters. Notification may also be accomplished by telephone call or other personal contacts, but FDA recommends that such notifications also be confirmed by one of the above methods and/or documented in an appropriate manner. FDA may require that the notification include any or all of the following data elements: (1) The date on which the article of food was determined to be a reportable food; (2) a description of the article of food including the quantity or amount; (3) the extent and nature of the adulteration; (4) the results of any investigation of the cause of the adulteration if it may have originated with the responsible party, if known; (5) the disposition of the article of food, when known; (6) product information typically found on packaging including product codes, use-by dates, and the names of manufacturers, packers, or distributors sufficient to identify the article of food; (7) contact information for the responsible party; (8) contact information for parties directly linked in the supply chain and notified under sections 417(d)(6)(B) or 417(d)(7)(C) of the act, as applicable; (9) the information required by FDA to be included in the notification provided by the responsible party involved under sections 417(d)(6)(B) or 417(d)(7)(C) of the act or required to report under section 417(d)(7)(A) of the act; and (10) the unique number described in section 417(d)(4) of the act. (sections 417(d)(6)(B)(iii)(I), 417(d)(7)(C)(iii)(I), and 417(e) of the act). FDA may also require that the notification provide information about the actions that the

recipient of the notification shall perform and/or any other information FDA may require. (sections 417(d)(6)(B)(iii)(II) and 417(d)(6)(B)(iii)(III), 417(d)(7)(C)(iii)(II), and 417(d)(7)(C)(iii)(III) of the act).

Section 417(g) of the act requires that responsible persons maintain records related to reportable foods reports and notifications under section 417 of the act for a period of 2 years.

The congressionally identified purpose of the Registry is to provide "a reliable mechanism to track patterns of adulteration in food [which] would support efforts by the Food and Drug Administration to target limited inspection resources to protect the public health" (Pubic Law 110–085, section 1005(a)(4)). The third party disclosure and recordkeeping requirements described previously are designed to enable FDA to quickly identify and track an article of food (other than infant formula) for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals. FDA uses the information collected to help ensure that such products are quickly and efficiently removed from the market.

Description of Respondents: Mandatory respondents to this collection of information are the owners, operators, or agents in charge of a domestic or foreign facility engaged in manufacturing, processing, packing, or holding food for consumption in the United States ("responsible parties") who have information on a reportable food. Voluntary respondents to this collection of information are Federal, State, and local public health officials who have information on a reportable food.

In accordance with 5 CFR 1320.8(d), in the **Federal Register** of October 20, 2009 (74 FR 53746), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received two letters in response to the notice before the close of the comment period, each containing one or more comments.

(Comment 1) One comment argued that FDA underestimated the burden of notifying the immediate previous source(s) and the immediate subsequent recipient(s) of the article of food because it underestimated the potential number of such sources and recipients that may require notification. The comment stated that there could be more than 12,500 different sources for the grain portion of a single shipment of finished feed, and more than 80 different immediate previous sources for the other feed ingredients present. Similarly, another comment argued that FDA underestimated the burden of notifying the immediate previous source(s) and the immediate subsequent recipient(s) of the article of food because it assumed only one previous source and one subsequent recipient.

(Response) FDA appreciates the data provided in the comment. However, the agency notes that the comment did not provide any proposed change to the burden hours set forth. Thus, FDA has not changed the burden hour estimate in table 1 of this document. Please note that we expect to be able to obtain relevant data from the electronic reporting system that we can use to better estimate the burden of this reporting. We also note that this burden is imposed by the law itself. The reporting to immediate previous source(s) and immediate subsequent recipient(s) of a reportable food is authorized by sections 417(d)(6)(B)(i), 417(d)(6)(B)(ii), 417(d)(7)(C)(i), and 417(d)(7)(C)(ii) of the act. FDA has no way of knowing how long each supply chain is or how many ingredients will be involved with each reportable event. However, we did attempt to account for this reporting. We estimated burdens assuming two immediate previous sources and two immediate subsequent recipients for each of the 1,200 estimated annual reportable food events.

(Comment 2) One comment argued that FDA underestimated the burden of notifying the immediate previous source(s) and the immediate subsequent recipient(s) of the article of food, arguing that the 0.6 hours estimated by the agency does not adequately allow for recall notification writing, editing, review and approval by the notifying entity and FDA. The comment estimated that it would take a minimum of 4 hours to prepare an FDA-approved Class I recall notification. The comment further argued that recall followup activities and communications between the affected entity(ies) and the FDA will take additional time.

(Response) FDA disagrees and notes that the comment references the Class I recall procedures governed by part 7 of FDA's regulations (21 CFR part 7). We did not estimate a burden for this process because the procedures and the associated burden estimates have already been approved under OMB control number 0910–0249 (FDA Recall Regulations, 21 CFR part 7).

(Comment 3) One comment argued that FDA underestimated the burden of notifying the immediate previous source(s) and the immediate subsequent recipient(s) of the article of food because it assumed that one form of notification, noting that multiple methods of notification are typically necessary: E-mail, facsimile, and postal mail.

(Response) FDA disagrees. With regard to the method of notification for the purposes of this information collection, as described elsewhere in this document, notification may be accomplished by electronic communication methods such as e-mail, fax or text messaging or by telegrams, mailgrams, or first class letters. Notification may also be accomplished by telephone call or other personal contacts, but FDA recommends that notifications also be confirmed or documented in an appropriate manner. Multiple forms of notifications are not required and, therefore, were not included in the burden estimate.

Third Party Disclosure

FDA estimates that approximately 1,200 reportable food events with mandatory reporters will occur annually. FDA received 625 voluntary food complaints leading to adverse events from January 1, 2008, to June 30, 2008, and there were 206 and 182 Class 1 Recalls for human food in Fiscal Years 2006 and 2007, respectively. Based on these experiences, FDA estimates that FDA could receive 200 to 1,200 "reportable" food reports annually from 200 to 1,200 mandatory and voluntary users of the electronic reporting system. FDA will utilize the upper-bound estimate of 1,200 for these calculations (73 FR 63153 at 63157 (October 23, 2008); 74 FR 23721 at 23727 (May 20, 2009)).

FDA estimates that notifying the immediate previous source(s) will take 0.6 hours per reportable food and notifying the immediate subsequent recipient(s) will take 0.6 hours per reportable food. FDA also estimates that it will take 0.6 hours for the immediate previous source and/or the immediate subsequent recipient to also notify their immediate previous source(s) and/or immediate subsequent recipient(s). The agency bases its estimate on its experience with mandatory and voluntary reports recently submitted to FDA that would be considered reportable food reports in the future. (73 FR at 63157).

Although it is not mandatory under FDAAA section 1005 that responsible persons notify the sources and recipients of instances of reportable food, for purposes of the burden estimate we are assuming FDA would exercise its authority and require such notifications in all such instances for mandatory reporters. This notification burden will not affect voluntary reporters of reportable food events. Therefore, FDA estimates that the total

burden of notifying the immediate previous source(s) and immediate subsequent recipient(s) under sections 417(d)(6)(B)(i) and 417(d)(6)(B)(ii) and 417(d)(7)(C)(i) and 417(d)(7)(C)(ii) of the act for 1,200 reportable foods will be 2,880 hours annually (1,200 x 0.6 hours) + (1,200 x 0.6 hours) + (1,200 x 0.6 hours) + (1,200 x 0.6 hours).

FDA estimates the burden of this collection of information as follows:

TABLE 1.— ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN[1]

Activity	No. of Respondents	Annual Frequency of Disclosure	Total Annual Disclosures	Hours per Disclosure	Total Hours
Notifying immediate previous source of the article of food under section 417(d)(6)(B)(i) of the act	1,200	1	1,200	0.6	720
Notifying immediate subsequent recipient of the article of food under section 417(d)(6)(B)(ii) of the act	1,200	1	1,200	0.6	720
Notifying immediate previous source of the article of food under section 417(d)(7)(C)(i) of the act	1,200	1	1,200	0.6	720
Notifying immediate subsequent recipient of the article of food under section 417(d)(7)(C)(ii) of the act	1,200	1	1,200	0.6	720
Total					2,880

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Recordkeeping

As noted previously, section 417(g) of the act requires that responsible persons maintain records related to reportable foods reports and notifications under section 417 of the act for a period of 2 years. We estimate that each mandatory report and its associated notifications will require 30 minutes of recordkeeping for the 2-year period, or 15 minutes per record per year. FDA bases its estimate on its experience with recordkeeping for food and cosmetics derived from cattle materials (71 FR 59653 at 59667; October 11, 2006). The annual recordkeeping burden for mandatory reportable food reports and their associated notifications is thus estimated to be 300 hours (1,200 x 0.25 hours).

We do not expect that records will always be kept in relation to voluntary reportable food reports. Therefore FDA estimates that records will be kept for 600 of the 1,200 voluntary reports we expect to receive annually. The recordkeeping burden associated with voluntary reports is thus estimated to be 150 hours annually (600 x 0.25 hours). The estimated total annual recordkeeping burden is shown in table 2 of this document.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Activity	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records[2]	Hours per Record	Total Hours
Maintenance of reportable food records under section 417(g) of the act—Mandatory reports	1,200	1	1,200	0.25	300
Maintenance of reportable food records under section 417(g) of the act—Voluntary reports	600	1	600	0.25	150
Total					450

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] For purposes of estimating number of records and hours per record, a "record" means all records kept for an individual reportable food by the responsible party or a voluntary reporter.

Dated: February 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–4003 Filed 2–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0088]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic 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 information collection requirements for reporting and recordkeeping, general and specific requirements, and the availability of sample electronic products for manufacturers and distributors of electronic products.

DATES: Submit written or electronic comments on the collection of information by April 27, 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.

Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products (OMB Control Number 0910–0025)—Extension

Under sections 532 through 542 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ii through 360ss), FDA has the responsibility to protect the public from unnecessary exposure of radiation from electronic products. The regulations issued under these authorities are listed in title 21 of the Code of Federal Regulations, chapter I, subpart J, parts 1000 through 1050 (parts 1002 through 1050).

Section 532 of the act directs the Secretary of the Department of Health and Human Services (the Secretary), to establish and carry out an electronic product radiation control program, including the development, issuance, and administration of performance standards to control the emission of electronic product radiation from electronic products. The program is designed to protect the public health and safety from electronic radiation, and the act authorizes the Secretary to procure (by negotiation or otherwise) electronic products for research and testing purposes and to sell or otherwise dispose of such products. Section 534(g) of the act directs the Secretary to review and evaluate industry testing programs on a continuing basis; and section 535(e) and (f) of the act directs the Secretary to immediately notify manufacturers of, and ensure correction of, radiation defects or noncompliances with performance standards. Section 537(b) of the act contains the authority to require manufacturers of electronic products to establish and maintain records (including testing records), make reports, and provide information to determine whether the manufacturer has acted in compliance.

21 CFR parts 1002 through 1010 specify reports to be provided by manufacturers and distributors to FDA and records to be maintained in the event of an investigation of a safety concern or a product recall.

FDA conducts laboratory compliance testing of products covered by regulations for product standards in parts 1020, 1030, 1040, and 1050.

FDA details product-specific performance standards that specify information to be supplied with the product or require specific reports. The information collections are either specifically called for in the act or were developed to aid the agency in performing its obligations under the act. The data reported to FDA and the records maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. This information refers to the identification of, location of, operational characteristics of, quality assurance programs for, and problem identification and correction of electronic products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

FDA uses the following forms to aid respondents in the submission of information for this information collection:

- FDA Form 2579 "Report of Assembly of a Diagnostic X-Ray System"
- FDA Form 2767 "Notice of Availability of Sample Electronic Product"
- FDA Form 2877 "Declaration for Imported Electronic Products Subject To Radiation Control Standards"
- FDA Form 3649 "Accidental Radiation Occurrence (ARO)"

- FDA Form 3626 "A Guide for the Submission of Initial Reports on Diagnostic X-Ray Systems and Their Major Components"
- FDA Form 3627 "Diagnostic X-Ray CT Products Radiation Safety Report"
- FDA Form 3628 "General Annual Report (Includes Medical, Analytical, and Industrial X-Ray Products Annual Report)"
- FDA Form 3629 "Abbreviated Report"
- FDA Form 3630 "Guide for Preparing Product Reports on Sunlamps and Sunlamp Products"
- FDA Form 3631 "Guide for Preparing Annual Reports on Radiation Safety Testing of Sunlamps and Sunlamp Products"
- FDA Form 3632 "Guide for Preparing Product Reports on Lasers and Products Containing Lasers"
- FDA Form 3633 "General Variance Request"
- FDA Form 3634 "Television Products Annual Report"
- FDA Form 3635 "Laser Light Show Notification"
- FDA Form 3636 "Guide for Preparing Annual Reports on Radiation Safety Testing of Laser and Laser Light Show Products"
- FDA Form 3637 "Laser Original Equipment Manufacturer (OEM) Report"
- FDA Form 3638 "Guide for Filing Annual Reports for X-Ray Components and Systems"
- FDA Form 3639 "Guidance for the Submission of Cabinet X-Ray System Reports Pursuant to 21 CFR 1020.40"
- FDA Form 3640 "Reporting Guide for Laser Light Shows and Displays"
- FDA Form 3147 "Application for a Variance From 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device"
- FDA Form 3641 "Cabinet X-Ray Annual Report"
- FDA Form 3642 "General Correspondence"
- FDA Form 3643 "Microwave Oven Products Annual Report"
- FDA Form 3644 "Guide for Preparing Product Reports for Ultrasonic Therapy Products"
- FDA Form 3645 "Guide for Preparing Annual Reports for Ultrasonic Therapy Products"
- FDA Form 3646 "Mercury Vapor Lamp Products Radiation Safety Report"
- FDA Form 3647 "Guide for Preparing Annual Reports on Radiation Safety Testing of Mercury Vapor Lamps"
- FDA Form 3659 "Reporting and Compliance Guide for Television Products"
- FDA Form 3660 "Guidance for Preparing Reports on Radiation Safety of Microwave Ovens"
- FDA Form 3661 "Guide for the Submission of an Abbreviated Report on X-Ray Tables, Cradles, Film Changers or Cassette Holders Intended for Diagnostic Use"
- FDA Form 3662 "Guide for Submission of an Abbreviated Radiation Safety Reports on Cephalometric Devices Intended for Diagnostic Use"
- FDA Form 3663 "Abbreviated Reports on Radiation Safety for Microwave Products (Other than Microwave Ovens)"

The most likely respondents to this information collection will be electronic product and x-ray manufacturers, importers, and assemblers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1002.3	N/A	10	1	10	12	120
1002.10	3626—Diagnostic X-Ray 3627—CT X-Ray 3639—Cabinet X-Ray 3632—Laser 3640—Laser Light Show 3630—Sunlamp 3646—Mercury Vapor Lamp 3644—Ultrasonic Therapy 3659—TV 3660—Microwave Oven	1,000	1.2	1,200	24	28,800
1002.11	N/A	400	0.6	240	0.5	120
1002.12	3629—General Abbreviated Report 3661—X-Ray Tables, etc. 3662—Cephalometric Device	50	1	50	5	250
1002.13	3628—General 3634—TV 3638—Diagnostic X-Ray 3641—Cabinet X-Ray 3643—Microwave Oven 3636—Laser 3631—Sunlamp 3647—Mercury Vapor Lamp 3645—Ultrasonic Therapy 3663—Non-Oven Microwave Product	1,000	1	1,000	18	18,000
1002.13(c)	N/A	100	2.4	240	0.5	120
1002.20	3649—ARO	25	1	25	2	50

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	FDA Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1002.41(a)	N/A	1	1	1	1	1
1002.50(a) and 1002.51	3642—General Correspondence	10	0.5	5	1	5
1005.10	2767—Sample Product	50	1	50	0.1	5
1005.25(b)	N/A	1	1	1	1	1
1005.3	2877—Imports Declaration	600	32	19,200	0.2	3,840
1010.2 and 1010.3	N/A	1	1	1	5	5
1010.4(b)	3633—General Variance Request 3147—Laser Show Variance Request 3635—Laser Show Notification	160	0.3	48	1.2	58
1010.5(c) and (d)	N/A	4	1	4	22	88
1010.13	N/A	1	1	1	10	10
1020.20 (c)(4)	N/A	1	1	1	1	1
1020.30(d), (d)(1), and (d)(2)	2579—Assembler Report	1,150	10.7	12,305	0.30	3,692
1020.30(g)	N/A	200	1.33	266	35	9,310
1020.30(h)(1) through (h)(4) and 1020.32(a)(1) and (g)	N/A	200	1.33	266	35	9,310
1020.30(h)(5) and (h)(6) and 1020.32(j)(4)	N/A	20	5	100	18	1,800
1020.32(g) and 1020.33(c), (d), (g)(4), (j)(1), and (j)(2)	N/A	9	1	9	40	360
1020.40(c)(9)(i) and (c)(9)(ii)	N/A	8	1	8	40	320
1030.10(c)(4)	N/A	41	1.6	66	20	1,320
1030.10(c)(5)(i) through (c)(5)(iv)	N/A	41	1.6	66	20	1,320
1030.10(c)(6)(iii) and (c)(6)(iv)	N/A	1	1	1	1	1
1040.10(a)(3)(i)	3637—OEM Report	40	1	40	3	120
1040.10(h)(1)(i) through (h)(1)(vi)	N/A	805	1	805	8	6,440
1040.10(h)(2)(i) and (h)(2)(ii)	N/A	100	1	100	8	800
1040.11(a)(2)	N/A	50	1	50	10	500
1040.20(d)(1)(ii) through (d)(1)(vi) and (e)(1) and (e)(2)	N/A	110	1	110	10	1,100
1040.30(c)(1)(ii)	N/A	1	1	1	1	1

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	FDA Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1040.30(c)(2)	N/A	7	1	7	1	7
1050.10(d)(1) through (d)(4) and (f)(1) through (f)(2)(iii)	N/A	10	1	10	56	560
Total Annual Reporting Burden						88,435

[1] There are no 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
1002.30 and 1002.31(a)	1,150	1,655.5	1,903,825	0.12	228,459
1002.40 and 1002.41	2,950	49.2	145,140	0.05	7,257
1020.30(g)	22	1	22	0.5	11
1040.10(a)(3)(ii)	40	1	40	1.0	40
Total					235,767

[1] There are no operating and maintenance costs associated with this collection of information.

The burden estimates were derived by consultation with FDA and industry personnel, and are based on actual data collected from industry. An evaluation of the type and scope of information requested was also used to derive some time estimates. For example, disclosure information primarily requires time only to update and maintain existing manuals. Initial development of manuals has been performed except for new firms entering the industry.

The following information collection requirements are not subject to review by OMB because they do not constitute a "collection of information" under the PRA: Sections 1002.31(c); 1003.10(a), (b), and (c); 1003.11(a)(3) and (b); 1003.20(a) through (h); 1003.21(a) through (d); 1003.22(a) and (b); 1003.30(a) and (b); 1003.31(a) and (b); 1004.2(a) through (i); 1004.3(a) through (i); 1004.4(a) through (h); 1005.21(a) through (c), and 1005.22(b). These requirements apply to the collection of information during the conduct of general investigations or audits (5 CFR 1320.4(b)).

The following labeling requirements are also not subject to review under the PRA because they are a public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2)): Sections 1020.10(c)(4), 1030.10(c)(6), 1040.10(g), 1040.30(c)(1), and 1050.10(d)(1).

Dated: February 22, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–4002 Filed 2–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Discretionary Grant Program

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of Noncompetitive Program Extension Supplemental Awards.

SUMMARY: HRSA will be providing extensions with funds ranging from 5 to 10 months to program grantees for the following programs in order to bring these programs into alignment with changes resulting from HRSA's Maternal and Child Health Bureau's developing strategic plan and the Early Learning and Development Initiative of the HHS and Department of Education. The programs are:

- Alliance for Information in Maternal and Child Health (AIM)
  - Improving Understanding of MCH—10 grants
  - Partnerships to Promote MCH—5 grants
- AIM Policy Center—1 grant
- Mental Health and Schools Resource Centers—2 grants
- Public Policy Analysis and Education Center for Early Childhood—1 grant
- National Healthy Child Care America Program
  - National Training Institute for Health Consultants—1 grant
  - Child Care Health Partnership Program—1 grant
  - Resource Center for Childcare Health and Safety—1 grant
- National Sudden and Unexpected Infant/Child Death and Pregnancy Loss Centers—3 grants

SUPPLEMENTARY INFORMATION:

Intended Recipients of the Award

The intended recipients are the incumbent grantees. They are either national membership organizations whose members impact maternal and child health programming or institutions of higher learning. They share a common purpose of providing education and technical assistance to either their individual members or State and community Maternal and Child Health programs.

Authority: Section 501(a) (3) of the Social Security Act, as amended

CFDA Number: 93.110.

Project Period: The period of supplemental support is from the grantee's original project end date

through January 31, 2011. The periods range from 5 to 10 months.

Grantees and Amount of the Awards: See listing below.

HRSA Competition Name and Announcement Number / Organization Name	Grant number	Project period	FY 2009 authorized funding level	Revised project end date	Supplemental funding
Alliance for Information on Maternal and Child Health (AIM) Improving Understanding of Maternal and Child Health and Health Care Issues, HRSA–05–079					
National Conference of State Legislatures.	G96MC04443	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
National Conference of State Legislatures.	G96MC04444	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
Association of State and Territorial Health Officials.	G96MC04445	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
National Institute for Health Care Management.	G96MC04446	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
National Business Group on Health	G96MC04447	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
Grantmakers in Health	G96MC04448	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
National Association of County and City Health Officials.	G96MC04449	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
National Governors Association	G96MC04450	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
American Bar Association	G96MC04451	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
Grantmakers for Children, Youth and Families.	G96MC04452	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
Alliance for Information on Maternal and Child Health (AIM) Partnerships to Promote Maternal and Child Health, HRSA–05–076					
Family Voices, Inc.	G97MC04453	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
Today's Child Communications, Inc.	G97MC04454	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
American Academy of Pediatric Dentistry.	G97MC04455	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
National Healthy Start Association, Inc.	G97MC04488	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
American Academy of Pediatrics	G97MC06336	1–May-05—30–Apr-10	$200,000	31–Jan-11	$150,000
Alliance for Information on Maternal and Child Health (AIM) Child and Adolescent Policy Support Center, HRSA–07–041					
The Regents of the University of California.	U45MC08263	1–Jul-07- 30–Jun-10	$300,000	31–Jan-11	$175,000
School Mental Health Program and Policy Analysis Centers, HRSA–05–034					
University of Maryland, Baltimore	U45MC00174	1–Jul-05—30–Jun-10	$400,000	31–Jan-11	$233,333
The Regents of the University of California.	U45MC00175	1–Jul-05—30–Jun-10	$400,000	31–Jan-11	$233,333
Public Policy Analysis and Education Center for Early Childhood Health Cooperative Agreement, HRSA–05–115					
Columbia University	U05MC05056	1–Jul-05—30–Jun-10	$350,000	31–Jan-11	$204,167
National Healthy Child Care America Cooperative Agreement Program, HRSA–05–058					
University of North Carolina at Chapel Hill.	U46MC00003	1–Oct-97—31–Mar-10	$350,000	31–Jan-11	$291,667
American Academy of Pediatrics	U46MC04436	1–Apr-05—31–Mar-10	$350,000	31–Jan-11	$291,667
University of Colorado Health Sciences Center.	U46MC09810	1–Apr-08—31–Mar-10	$375,000	31–Jan-11	$312,500
Sudden Infant Death Syndrome Cooperative Agreement Program, HRSA–05–100					
Association of SIDS and Infant Mortality Programs.	U48MC05548	1–Sep-05—31–Aug-10	$200,000	31–Jan-11	$83,333
The Sudden Infant Death Syndrome Alliance.	U48MC05549	1–Sep-05—31–Aug-10	$250,000	31–Jan-11	$104,167
National SIDS Infant Death Resource Center, HRSA–07–040					
Georgetown University	U48MC08717	1–Sep-07—31–Aug-10	$350,000	31–Jan-11	$145,833

FOR FURTHER INFORMATION CONTACT: David Heppel, Director, Division for Child, Adolescent and Family Health, Health Resources and Services Administration, Maternal and Child Health Bureau, 5600 Fishers Lane, Room 18A39, Rockville, MD 20857, 301.443.2250; *dheppel@hrsa.gov.*

Justification for the Exception to Competition

The reason for this exception is to allow sufficient time for the HRSA's Maternal and Child Health Bureau (MCHB) to align its fiscal resources and programmatic goals:

- With the developing Maternal and Child Health Strategic Plan and with HRSA and Departmental plans; and,
- With the Early Learning and Development Initiative of the Department of Health and Human Services and the Department of Education; and, to maintain during this transition period MCH programmatic support to the State and community MCH constituencies which currently are receiving technical assistance services from these MCHB grantees.

The activities listed in the previous paragraph will not be completed in time for the FY 2010 grant competition. The MCHB proposes, therefore, to extend into FY 2011 the project periods of those grants scheduled to conclude in FY 2010 in order to have a larger and more current grant competition in FY 2011 reflective of any and all programmatic changes resulting from the above referenced activities and actions. Delaying the competition into FY 2011 also allows the MCHB additional time to consult with and provide information to constituency groups about changes in program direction. Providing an extension with funds to these grantees through January 31, 2011, will ensure the provision of technical assistance to the affected MCH constituencies continues without disruption.

Dated: February 9, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–3886 Filed 2–25–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0090]

Draft Guidance for Industry on Adaptive Design Clinical Trials for Drugs and Biologics; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Adaptive Design Clinical Trials for Drugs and Biologics." The draft guidance provides sponsors and the review staff in FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) with information regarding adaptive design clinical trials when used in drug development programs. The draft guidance gives advice on various topics, such as what aspects of adaptive design clinical trials (i.e., clinical, statistical, regulatory) call for special consideration, when to interact with FDA while planning and conducting adaptive design studies, what information to include in the adaptive design for FDA review, and issues to consider in the evaluation of a completed adaptive design study. The draft guidance is intended to assist sponsors in planning and conducting adaptive design clinical studies, and to facilitate an efficient FDA review.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by June 1, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Robert T. O'Neill, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, rm. 3554, Silver Spring, MD 20993–0002, 301–796–1700; or

Sue-Jane Wang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, rm. 3554, Silver Spring, MD 20993–0002, 301–796–1700; or

Marc Walton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, rm. 4524, Silver Spring, MD 20993–0002, 301–796–2600; or

Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Adaptive Design Clinical Trials for Drugs and Biologics." This guidance provides information regarding adaptive design trials when used in drug development programs.

There is great interest in the possibility that clinical trials can be designed with "adaptive" features (i.e., changes in design or analyses guided by examination of the accumulated data at an interim point in the trial) that can make the studies more efficient (e.g., shorter duration, fewer patients), more likely to demonstrate an effect of the drug if one exists, or more informative (e.g., by providing broader dose-response information). The draft guidance discusses clinical, statistical, and regulatory aspects of a wide range of adaptive design clinical studies that can be proposed as part of a drug development program, including both familiar and less familiar approaches. As more experience is obtained with the less familiar designs, sponsors can improve their understanding of circumstances where these designs are most useful or may pose risks to study integrity and interpretation. The draft guidance describes aspects of adaptive design trials that deserve special consideration and provides advice on the information that should be provided to FDA and how best to interact with FDA to facilitate an efficient review.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on adaptive design clinical trials for drugs and biologics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (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 that 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** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this draft guidance, FDA invites comments on the following topics: (1) Whether the proposed information collected is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimated burden of the proposed information collected, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

A. Develop Written Standard Operating Procedures (SOPs) (Reporting and Recordkeeping Burdens)

In the drug development process, it is particularly important to protect study blinding of an adaptive design study, where the design is modified after examination of unblinded interim data, to avoid the introduction of bias in the study conduct and to maintain confidence in the validity of the study's result. The draft guidance recommends that sponsors include in the adaptive design protocol comprehensive and prospective written SOPs that define who will implement the interim analysis and adaptation plan, and all monitoring and related procedures for accomplishing the implementation, providing for the strict control of access to unblinded data. The draft guidance discusses the information that should be included in the SOPs and other issues that should be addressed: (1) Identification of the personnel who will perform the interim analyses and who will have access to the interim results; (2) how that access will be controlled and how the interim analyses will be performed, including how any potential irregularities in the data (e.g., withdrawals, missing values) will be managed; (3) how adaptation decisions will be made; (4) whether there are any foreseeable impediments to complying with the SOPs; (5) how compliance with the SOPs will be documented and monitored; and (6) what information, under what circumstances, is permitted to be passed from the Data Monitoring Committee (DMC) to the sponsor or investigators. The draft guidance recommends extensively documenting the rules of operation of the DMC (or other involved groups) and including a description of the responsibilities of each entity involved in the process. Based on FDA's data on the number of sponsors that would be covered by the draft guidance, we estimate that approximately 180 SOPs related to adequate design will be sent to FDA each year, and that each SOP will take approximately 6 hours to develop, maintain, and update.

The draft guidance recommends that sponsors document and maintain records of the SOPs. Documenting and maintaining records is considered recordkeeping under the PRA. We estimate that 180 SOPs related to adaptive design will be documented and maintained each year, and that each SOP will take approximately 30 minutes to document and maintain.

B. Perform Simulations and Analyze Data (Reporting Burden)

The draft guidance discusses study simulations that may be useful in evaluating different designs. Because patient safety is a concern in adaptive design dose escalation studies, the draft guidance recommends that sponsors use simulations to explore the features of different study designs with regard to the balance of efficiency (study size) and subject safety. The draft guidance recommends that sponsors include these simulations and their respective analyses with the selected design. We estimate that 90 simulations and their respective analyses will be sent to FDA each year, and that each simulation and its analysis will take approximately 40 hours to prepare and submit.

This draft guidance also refers to previously approved collections of information found in FDA regulations. Sections VII, VIII, IX, XI, and XII of the guidance request that certain information be submitted to FDA and certain recordkeeping be performed by the sponsor. We may request this information under 21 CFR 312.23, 312.30, 314.50, 314.126, and 601.2. The collections of information in 21 CFR parts 312, 314, and 601 have been approved under OMB control numbers 0910–0014, 0910–0001, and 0910–0338, respectively.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED REPORTING BURDEN[1]

	Number of Respondents	Number of Responses per Respondent	Total Responses	Hours per Response	Total Hours
Develop written SOPs	30	6	180	6	1,080
Perform simulations and analyze data	30	3	90	40	3,600
Total					4,680

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

TABLE 2.—ESTIMATED RECORDKEEPING BURDEN[1]

	Number of Recordkeepers	Number of Records per Recordkeeping	Total Records	Hours per Record	Total Hours
Develop written SOPs	30	6	180	0.5	90

TABLE 2.—ESTIMATED RECORDKEEPING BURDEN[1]—Continued

	Number of Recordkeepers	Number of Records per Recordkeeping	Total Records	Hours per Record	Total Hours
Total					90

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*, or *http://www.regulations.gov*.

Dated: February 22, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3980 Filed 2–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0391]

Guidance for Industry on Submission of Documentation in Applications for Parametric Release of Human and Veterinary Drug Products Terminally Sterilized by Moist Heat Processes; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Submission of Documentation in Applications for Parametric Release of Human and Veterinary Drug Products Terminally Sterilized by Moist Heat Processes." This guidance provides recommendations to applicants on information to include in support of parametric release for sterile products terminally sterilized by moist heat when submitting a new drug application (NDA), abbreviated new drug application (ANDA), new animal drug application (NADA), abbreviated new animal drug application (ANADA), or biologics license application (BLA).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; the Communications Staff (HFV–12), Center for Veterinary Medicine, 7519 Standish Pl., Rockville, MD 20855; the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Marla Stevens-Riley, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9310, or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210; or

Mai Huynh, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8273.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Submission of Documentation in Applications for Parametric Release of Human and Veterinary Drug Products Terminally Sterilized by Moist Heat Processes." The guidance addresses the information that should be submitted in an NDA, ANDA, NADA, ANADA, or BLA in support of parametric release for sterile products terminally sterilized by moist heat.

"Parametric release" is defined as a sterility assurance release program where demonstrated control of the sterilization process enables a firm to use defined critical process controls, in lieu of the sterility test, to fulfill the intent of 21 CFR 211.167(a). Under this strategy, market release of terminally sterilized products can be based upon meeting the defined sterilization parameters and not on performing an approved sterility test. Meeting the requirements of the parametric release process can provide greater assurance that a batch meets the sterility requirement than can be achieved with a sterility test of finished units drawn from the batch.

Parametric release allows manufacturers to replace sterility testing of samples drawn from the finished product as a release criterion with acceptance criteria for the control of identified process parameters. Parametric release of the batch is then based on documented evidence of the control of critical parameters, removing the need for testing of samples drawn from the finished product.

An application to FDA is required to obtain approval for parametric release. The approval of parametric release is based on an assessment of the applicant's proposed critical process parameters and how they are controlled. Demonstrated reliability of the production terminal sterilization cycle, microbiological control and monitoring, and control of production cycle parameters within established validated limits is part of this assessment. FDA conducts scientific evaluation of the parametric release program as part of a cooperative effort between FDA product reviewers and the compliance program.

On August 5, 2008 (73 FR 45454), FDA announced the availability of the draft version of this guidance. The public comment period closed on October 6, 2008. A number of comments were received, which the agency considered carefully as it finalized the guidance and made appropriate changes. Most of the changes to the guidance were made to clarify statements in the draft guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the agency's current thinking on inclusion of recommended information to support applications for parametric release of human and veterinary drug products terminally sterilized by moist heat processes. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that 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 collection of information requested in the guidance is covered under FDA regulations at 21 CFR 314.50, 314.70, and 314.81(b)(2) for human drugs; 21 CFR 514.1, 514.8, 514.8(b)(4) and (c) for animal drugs; and 21 CFR 601.2 and 601.12 for biologics. The collection of information is approved under the following OMB control numbers: 0910–0001 for human drugs, 0910–0600 for animal drugs, and 0910–0338 for biologics.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*, or *http://www.regulations.gov*.

Dated: February 22, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–3978 Filed 2–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI K99 Grant Applications.

Date: March 1, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel—Chevy Chase Pavilion Washington, DC 20015.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Officer, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892, 301–451–2020, *kenshalod@nei.nih.gov*.

This Notice is late due to administrative procedures.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 17 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3784 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1514–N]

Medicare Program; Public Meetings in Calendar Year 2010 for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS) Coding and Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the dates, time, and location of the Healthcare Common Procedure Coding System (HCPCS) public meetings to be held in calendar year 2010 to discuss our preliminary coding and payment determinations for all new public requests for revisions to the HCPCS. These meetings provide a forum for interested parties to make oral presentations or to submit written comments in response to preliminary coding and payment determinations. Discussion will be directed toward responses to our specific preliminary recommendations and will include all items on the public meeting agenda.

DATES: *Meeting Dates:* The following are the 2010 HCPCS public meeting dates:

1. Tuesday, May 4, 2010, 9 a.m. to 5 p.m., eastern daylight time (e.d.t.) (Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents).
2. Wednesday, May 5, 2010, 9 a.m. to 5 p.m., e.d.t. (Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents).
3. Tuesday, May 25, 2010, 9 a.m. to 5 p.m., e.d.t. (Supplies and Other).
4. Wednesday, May 26, 2010, 9 a.m. to 5 p.m., e.d.t. (Supplies and Other).
5. Thursday, May 27, 2010, 9 a.m. to 5 p.m, e.d.t. (Orthotics and Prosthetics).
6. Tuesday, June 8, 2010, 9 a.m. to 5 p.m., e.d.t. (Durable Medical Equipment (DME) and Accessories).

Deadlines for Primary Speaker Registration and Presentation Materials: The deadline for registering to be a primary speaker, and submitting materials and writings that will be used in support of an oral presentation are as follows:

- April 20, 2010 for the May 4 and 5, 2010 public meetings.
- May 11, 2010 for the May 25, 26 and 27, 2010 public meetings.
- May 25, 2010 for the June 8, 2010 public meeting.

Deadline for Attendees that are Foreign Nationals (reside outside the

U.S.) Registration: Attendees that are Foreign Nationals (reside outside the U.S.) need to identify themselves as such, and provide the necessary information for security clearance as described in section IV. of this notice to the public meeting coordinator at least 10 business days in advance of the public meeting date in which the individual plans to attend.

Deadlines for all Other Attendees Registration: All individuals must register for each date that they plan on attending. The registration deadlines are different for each meeting. Registration deadlines are as follows:

- April 27, 2010 for the May 4 and 5, 2010 public meeting dates.
- May 18, 2010 for the May 25, 26 and 27, 2010 public meeting dates.
- June 1, 2010 for the June 8, 2010 public meeting date.

Deadlines for Requesting Special Accommodations:

- April 20, 2010 for the May 4 and 5, 2010 public meeting dates.
- May 11, 2010 for the May 25, 26 and 27, 2010 public meeting dates.
- May 25, 2010 for the June 8, 2010 public meeting.

Deadline for Submission of Written Comments: Written comments must be received by the date of meeting at which a request is scheduled for discussion.

ADDRESSES: *Meeting Location:* The public meetings will be held in the main auditorium of the central building of the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Submission of Written Comments: Written comments can be e-mailed to *HCPCS@cms.hhs.gov* or sent via regular mail to Jennifer Carver or Geneva Harkness, HCPCS Public Meeting Coordinator, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5–08–27, Baltimore, MD 21244.

Registration and Special Accommodations: Individuals wishing to participate or who need special accommodations or both must register by completing the on-line registration located at *http://www.cms.hhs.gov/medhcpcsgeninfo* or by contacting one of the following persons: Jennifer Carver at (410) 786–6610 or *Jennifer.Carver@cms.hhs.gov;* or Geneva Harkness at (410) 786–6951 or *Geneva.Harkness@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Carver at (410) 786–6610 or *Jennifer.Carver@cms.hhs.gov;* or Geneva Harkness at (410) 786–6951 or *Geneva.Harkness@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554). Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new durable medical equipment (DME) under Medicare Part B of title XVIII of the Social Security Act (the Act). The procedures and public meetings announced in this notice for new DME are in response to the mandate of section 531(b) of BIPA.

In the November 23, 2001 **Federal Register** (66 FR 58743), we published a notice providing information regarding the establishment of the public meeting process for DME. It is our intent to distribute any materials submitted to CMS to the HCPCS workgroup members for their consideration. CMS and the HCPCS workgroup members require sufficient preparation time to review all relevant materials. Therefore, we are implementing a 10-page submission limit and firm deadlines for receipt of any presentation materials the meeting participant wishes CMS to consider. For this reason, our HCPCS Public Meeting Coordinators will only accept and review presentation materials received by the deadline for each public meeting, as specified in the **DATES** section of this notice.

The public meeting process provides an opportunity for the public to become aware of coding changes under consideration, as well as an opportunity for CMS to gather public input.

II. Meeting Registration

A. Required Information for Registration

The following information must be provided when registering:

- Name.
- Company name and address.
- Direct-dial telephone and fax numbers.
- E-mail address.
- Special needs information.

A CMS staff member will confirm your registration by e-mail.

B. Registration Process

1. Primary Speakers

Individuals must also indicate whether they are the "primary speaker" for an agenda item. Primary speakers must be designated by the entity that submitted the HCPCS coding request. When registering, primary speakers must provide a brief written statement regarding the nature of the information they intend to provide, and advise the HCPCS Public Meeting Coordinator regarding needs for audio/visual support. To avoid disruption of the meeting and ensure compatibility with our systems, tapes and disk files are tested and arranged in speaker sequence well in advance of the meeting. We will accept tapes and disk files that are received by the deadline for submissions for each public meeting as specified in the **DATES** section of this notice. The sum of all materials including the presentation may not exceed 10 pages (each side of a page counts as 1 page). An exception will be made to the 10-page limit for relevant studies published between the application deadline and the public meeting date, in which case, we would like a copy of the complete publication as soon as possible.

These materials may be delivered by regular mail postmark date no later than the deadline date or by e-mail to one of the HCPCS Public Meeting Coordinators as specified in the **ADDRESSES** section of this notice. Individuals will need to provide 35 copies if materials are delivered by mail.

2. 5-Minute Speakers

To afford the same opportunity to all attendees, 5-minute speakers are not required to register as primary speakers. However, 5-minute speakers must still register as attendees by the deadline set forth under "Deadlines for all Other Attendees Registration" in the **DATES** section of this notice. Attendees can sign up only on the day of the meeting to do a 5-minute presentation. Individuals must provide their name, company name and address, contact information as specified on the sign-up sheet, and identify the specific agenda item that they will address.

C. Additional Meeting/Registration Information

Public Meetings are scheduled far in advance of the influx of HCPCS applications each cycle. At the time they are scheduled we can only anticipate the number of applications that we receive in each category. As a result, we may not need the second day of Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents Public Meeting Wednesday, May 5, 2010. We have scheduled this date tentatively. The Public Meeting Agendas published on CMS' HCPCS Web site at *http://www.cms.hhs.gov/medhcpcsgeninfo* will serve as final notification regarding whether a meeting will be held on May 5, 2010.

The product category reported by the applicant may not be the same as that

assigned by CMS. Prior to registering to attend a public meeting, all participants are advised to review the public meeting agendas at *http://www.cms.hhs.gov/medhcpcsgeninfo* which identify our category determinations, and the dates each item will be discussed. Draft agendas, including a summary of each request and CMS' preliminary decision will be posted on our HCPCS Web site at *http://www.cms.hhs.gov/medhcpcsgeninfo* at least 4 weeks before each meeting.

Additional details regarding the public meeting process for all new public requests for revisions to the HCPCS, along with information on how to register and guidelines for an effective presentation, will be posted at least 4 weeks before the first meeting date on the HCPCS Web site at *http://www.cms.hhs.gov/medhcpcsgeninfo.* Individuals who intend to provide a presentation at a public meeting need to familiarize themselves with the HCPCS Web site and the valuable information it provides to prospective registrants. The HCPCS Web site contains a document titled "Healthcare Common Procedure Coding System (HCPCS) Level II Coding Procedures," which is a description of the HCPCS coding process, including a detailed explanation of the procedures used to make coding determinations for all the products, supplies, and services that are coded in the HCPCS.

The HCPCS Web site also contains a document titled "HCPCS Decision Tree & Definitions" which illustrates, in flow diagram format, HCPCS coding standards as described in our Coding Procedures document. A summary of each public meeting will be posted on the HCPCS Web site by the end of August 2010.

III. Presentations and Comment Format

We can only estimate the amount of meeting time that will be needed since it is difficult to anticipate the total number of speakers that will register for each meeting. Meeting participants should arrive early to allow time to clear security and sign-in. Each meeting is expected to begin promptly as scheduled. Meetings may end earlier than the stated ending time.

A. Oral Presentation Procedures

Individuals who are planning to provide an oral presentation must register as provided under the section titled "Meeting Registration." Materials and writings that will be used in support of an oral presentation should be submitted to one of the HCPCS Public Meeting Coordinators.

These materials may be delivered by regular mail (postmark date no later than the deadline date) or by e-mail to one of the HCPCS Public Meeting Coordinators specified in the **ADDRESSES** section. Individuals will need to include 35 copies if materials are delivered by mail.

B. Primary Speaker Presentations

The individual or entity requesting revisions to the HCPCS coding system for a particular agenda item may designate one "primary speaker" to make a presentation for a maximum of 15 minutes. Fifteen minutes is the total time interval for the presentation, and the presentation must incorporate the demonstration, set-up, and distribution of material. In establishing the public meeting agenda, we may group multiple, related requests under the same agenda item. In that case, we will decide whether additional time will be allotted, and may opt to increase the amount of time allotted to the speaker by increments of less than 15 minutes.

We will post "Guidelines for Participation in Public Meetings for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS)" on the official HCPCS Web site at least 4 weeks before the first public meeting in 2010 for all new public requests for revisions to the HCPCS. Individuals designated to be the primary speaker must register to attend the meeting using the registration procedures described under the "Meeting Registration" section of this notice and contact one of the HCPCS Public Meeting Coordinators, specified in the **ADDRESSES** section. Primary speakers must also separately register as primary speakers by the date specified in the **DATES** section of this notice.

C. "5-Minute" Speaker Presentations

Meeting attendees can sign up at the meeting, on a first-come, first-served basis, to make 5-minute presentations on individual agenda items. Based on the number of items on the agenda and the progress of the meeting, a determination will be made at the meeting by the meeting coordinator and the meeting moderator regarding how many 5-minute speakers can be accommodated.

D. Speaker Declaration

On the day of the meeting, before the end of the meeting, all primary speakers and 5-minute speakers must provide a brief written summary of their comments and conclusions to the HCPCS Public Meeting Coordinator.

Each primary speaker and 5-minute speaker must declare in their presentation at the meeting, as well as in their written summary, whether they have any financial involvement with the manufacturers or competitors of any items being discussed; this includes any payment, salary, remuneration, or benefit provided to that speaker by the manufacturer or the manufacturer's representatives.

E. Written Comments From Meeting Attendees

Written comments will be accepted from the general public and meeting registrants anytime up to the date of the public meeting at which a request is discussed. Comments must be sent to the address listed in the **ADDRESSES** section of this notice.

Meeting attendees may also submit their written comments at the meeting.

Due to the close timing of the public meetings, subsequent workgroup reconsiderations, and final decisions, we are able to consider only those comments received in writing by the close of the public meeting at which the request is discussed.

IV. Security, Building, and Parking Guidelines

The meetings are held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants must bring government-issued photo identification and a copy of your written meeting registration confirmation. Persons without proper identification will be denied access.

CMS has had a long standing policy of established Visitor and Foreign National Visitor controls that effectively control access to sensitive facilities and restricted/controlled areas containing CMS information, information systems, and media libraries. Visitors shall be authenticated prior to being granted access to facilities or areas other than areas designated as publicly accessible. Government contractors and others with permanent authorization credentials are not considered visitors.

However, HHS policy requires us to ensure that a government employee, US citizen host/hosting official is assigned to every foreign national visitor visiting an HHS facility. As such, the host/hosting official is required to inform the Security and Emergency Management Group (SEMG) Division of Physical Security, at least 10 business days in advance of any visit by a foreign national visitor.

No visitor is allowed to attach USB cables, thumb drives or any other equipment to any CMS information technology (IT) system or hardware for

any purpose at anytime. Additionally, CMS staff is prohibited from taking such actions on behalf of a visitor or utilizing any removable media provided by a visitor.

Attendees that are Foreign Nationals (reside outside the U.S.) need to identify themselves as such, and provide the following information for security clearance to the public meeting coordinator by the date specified in the **DATES** section of this notice:

- Visitor's full name (as it appears on passport);
- Gender;
- Country of origin and citizenship;
- Biographical data and related information;
- Date of birth;
- Place of birth;
- Passport number;
- Passport issue date;
- Passport expiration date; and
- Dates of visits.

Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes before the convening of the meeting each day.

Security measures will also include inspection of vehicles, inside and outside, at the entrance to the grounds and buildings. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation. Special arrangements and approvals are required in order to bring pieces of equipment or medical devices at least 2 weeks prior to each public meeting. These arrangements need to be made with the public meeting coordinator. It is possible that certain requests made in advance of the public meeting could be denied because of unique safety, security or handling issues related to the equipment. A minimum of 2 weeks is required for approvals and security procedures. Any request not submitted at least 2 weeks in advance of the public meeting will be denied.

Parking permits and instructions are issued upon arrival by the guards at the main entrance.

All visitors must be escorted by agency staff in order to enter areas other than the public areas on the lower and first-floor levels in the Central Building.

Authority: Section 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 42 U.S.C. 1395hh).

Dated: February 18, 2010.

Charlene Frizzera,

Acting Adminstrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–3722 Filed 2–25–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Maternal and Child Health in Poor Countries: Evidence from Randomized Evaluations.

Date: March 18, 2010.

Time: 11 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852.(Telephone Conference Call)

Contact Person: Carla T. Walls, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the closing of the Federal Government the week of February 7, 2010. The Federal Government was closed due to inclement weather conditions.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4081 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Scientific Management Review Board.

The NIH Reform Act of 2006 (Pub. L. 109–482) provides organizational authorities to HHS and NIH officials to: (1) Establish or abolish national research institutes; (2) reorganize the offices within the Office of the Director, NIH including adding, removing, or transferring the functions of such offices or establishing or terminating such offices; and (3) reorganize, divisions, centers, or other administrative units within an NIH national research institute or national center including adding, removing, or transferring the functions of such units, or establishing or terminating such units. The purpose of the Scientific Management Review Board (also referred to as SMRB or Board) is to advise appropriate HHS and NIH officials on the use of these organizational authorities and identify the reasons underlying the recommendations.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Scientific Management Review Board.

Date: March 10, 2010.

Time: 8 a.m. to 4:30 p.m.

Agenda: Presentation and discussion will include updates from SMRB Working Groups; Deliberating Organization Change and Effectiveness; NIH Intramural Research Program; and Substance Use, Abuse, and Addiction. The Board will also discuss perspectives on organizational change. Time will be allotted on the agenda for public comment. Sign up for public comment will begin at approximately 7 a.m. and will be restricted to one sign in per person. In the event that time does not allow for all those interested to present oral comments, anyone may file written comments using the contact person address below.

Place: National Institutes of Health, Building 31, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Lyric Jorgenson, PhD, Office of Science Policy, Office of the Director, National Institutes of Health, Building 1, Room 218, MSC 0166, 9000 Rockville Pike, Bethesda, MD 20892, *smrb@mail.nih.gov,* (301) 496–6837.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts of the Members.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

The meeting will also be webcast. The draft meeting agenda and other information about the SMRB, including information about access to the webcast, will be available at *http://smrb.od.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 22, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4080 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Minority Biomedical Research Support Chemistry Applications.

Date: March 18–19, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda, MD 20814.

Contact Person: John J. Laffan, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health,Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3922 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Consortium of Food Allergy Research (CoFAR) and CoFAR Statistical and Clinical Coordinating Center (CoFAR SACCC) (U19 and U01).

Date: March 11–12, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Wendy F. Davidson, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–402–8399, *davidsonw@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Enterics Research Investigational Network Cooperative Research Centers (ERIN).

Date: March 17–18, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–3684, *bgustafson@niaid.nih.gov.*

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Acquired Immunodeficiency Syndrome Research Review Committee.

Date: March 18–19, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Erica L. Brown, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2639, *ebrown@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, SARS Review.

Date: March 18, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Roberta Binder, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–7966, *rbinder@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3919 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of R13 Application for NIH Support of Conferences and Scientific Meetings.

Date: March 26, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Victor Henriquez, PhD, Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3918 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of Conference Grants.

Date: March 18, 2010.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P. O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Environmental Scientist Award With an Environmental Health Focus.

Date: March 31–April 1, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Imperial Center, One Europa Drive, Chapel Hill, NC 27517.

Contact Person: Teresa Nesbitt, PhD, DVM, Chief, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–7571, *nesbittt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 18, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3916 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.

Date: March 23, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: Provide advice to the Office of Research on Women's Health (ORWH) on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; to meet the mandates of the office; and for discussion of scientific issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, 301/402–1770.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://*

www4.od.nih.gov/orwh/, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 18, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3915 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: March 12, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20852. (Telephone Conference Call)

Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 18, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3914 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: March 12, 2010.

Time: 12:30 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Camilla E. Day, PhD, Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 18, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3913 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Predoctoral Fellowships to Promote Diversity in Health-Related Research (DABP).

Date: March 5, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Mandarin Oriental, 1330 Maryland Avenue, SW., Washington, DC 20024.

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892 301–594–3163, *champoum@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 18, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3910 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Translational Diabetes and Obesity.
Date: March 16–17, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–435–1154, *sheardn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; UKGD Member Conflict SEP.
Date: March 25, 2010.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 18, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3909 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services

Center for Substance Abuse Prevention; Notice of Cancellation of Meeting

Pursuant to Public Law 92–462, notice is hereby given of a cancellation of the February 10, 2010 meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) National Advisory Council.

Public notice was given in the **Federal Register** on January 28, 2010 (Volume 75, Number 18, and Page 4755) that the CSAP National Advisory Council would be meeting on February 10, 2010, at the Gaylord Convention Center in National Harbor, Maryland. The meeting was canceled due to hazardous weather conditions and closure of the Federal government. An alternate date, time and location for the meeting will be announced in the **Federal Register** as soon as arrangements have been made.

Members of the public wishing further information concerning this cancellation notice or any future meetings of the Center for Substance Abuse Prevention National Advisory Council should contact the Designated Federal Official, Tia Haynes, 1 Choke Cherry Road, Room 4–1066, Rockville, MD 20857, Telephone: 240–276–2436, FAX: 240–276–2430, and E-mail: *tia.haynes@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2010–3903 Filed 2–25–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Population Research Infrastructure Program.
Date: March 24, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Carla T. Walls, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3933 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; "Diversity Partnership".
Date: March 15, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Dennis E. Leszczynski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Rm. 5B01, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the closing of the Federal Government the week of February 7, 2010. The Federal Government was closed due to inclement weather conditions.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3931 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of Minority Biomedical Research Support Applications.

Date: March 22, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda, MD 20814.

Contact Person: Rebecca H. Johnson, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892. 301–594–2771. *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3929 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, IDD P30 RFA.

Date: March 21–23, 2010.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Norman Chang, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 496–1485. *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3926 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR08–130: International Research in Infectious Diseases Including AIDS (IRIDA).

Date: March 1, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892. 301–435–0903. *saadisoh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: March 8, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Mandarin Oriental, 1330 Maryland Avenue, SW., Washington, DC 20024.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892. (301) 435–1168. *montalve@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Clinical Studies and Epidemiology Study Section.

Date: March 9–10, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Los Angeles Century City, 2151 Avenue of the Stars, Los Angeles, CA 90067.

Contact Person: Hilary D. Sigmon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892. (301) 594–6377. *sigmonh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomaterials, Delivery Systems, and Nanotechnology.

Date: March 15–16, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Gubin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046B, MSC 7892, Bethesda, MD 20892. 301–408–9655. *gubina@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: HIV Behavior Chartered.

Date: March 25, 2010.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Hilary D. Sigmon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892. (301) 594–6377. *sigmonh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Member Conflict Applications.

Date: March 29, 2010.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892. 301–435–1137. *guerriej@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–3908 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3223–N]

Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee—April 21, 2010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) ("Committee") will be held on Wednesday, April 21, 2010. The Committee generally provides advice and recommendations concerning the adequacy of scientific evidence needed to determine whether certain medical items and services should be covered under the Medicare statute. This meeting will focus on the currently available evidence regarding the risks, benefits, and outcomes of radiation therapy, inclusive of external beam radiotherapy (EBRT) and brachytherapy, for the treatment of localized prostate cancer. This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: *Meeting date:* The public meeting will be held on Wednesday, April 21, 2010 from 7:30 a.m. until 4:30 p.m., eastern daylight time (e.d.t.).

Deadline for Submission of Written Comments: Written comments must be received at the address specified in the **ADDRESSES** section of this notice by 5 p.m., e.d.t. on March 22, 2010. Once submitted all comments are final.

Deadlines for Speaker Registration and Presentation Materials: The deadline to register to be a speaker and to submit Powerpoint presentation materials and writings that will be used in support of an oral presentation, is 5 p.m., e.d.t. on Monday, March 22, 2010. Speakers may register by phone or via e-mail by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the address specified in the **ADDRESSES** section of this notice.

Deadline for All Other Attendees Registration: Individuals may register via e-mail at *MEDCAC_Registration@cms.hhs.gov* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m., e.d.t. on Wednesday, April 14, 2010.

Deadline for Submitting a Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary for MEDCAC as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5 p.m., e.d.t. Friday, April 2, 2010.

ADDRESSES: *Meeting Location:* The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Submission of Presentations and Comments: Presentation materials and written comments that will be presented at the meeting must be submitted via e-mail to *MedCACpresentations@cms.hhs.gov* or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via e-mail at *Maria.Ellis@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), provides advice and recommendations to CMS regarding clinical issues. (For more information on MCAC, see the December 14, 1998 **Federal Register** (63 FR 68780).) This notice announces the April 21, 2010, public meeting of the Committee. During this meeting, the Committee will discuss the currently available evidence regarding the risks, benefits and outcomes of radiation therapy, inclusive of EBRT and brachytherapy, for the treatment of localized prostate cancer. Background information about this topic, including panel materials, is available at *http://www.cms.hhs.gov/coverage*. We encourage the participation of appropriate organizations with expertise in radiation therapy for the treatment of localized prostate cancer.

II. Meeting Format

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee may limit the number and duration of oral presentations to the time available. Your comments should focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following Web site prior to the meeting: *http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcac.* We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

III. Registration Instructions

CMS's Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state-issued driver's license), address, organization, telephone, fax number(s), and e-mail address. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified the seating capacity has been reached.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting. All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 4, 2010.

Barry M. Straube,

Chief Medical Officer and Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–3724 Filed 2–25–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Treatment of Glaucoma by Administration of Adenosine A3 Antagonists

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Provisional Patent Application 60/010,737, entitled "Dihydropyridine, pyridine-, benzopyran one-, and triazoloquinazoline derivatives, their preparation and use as adenosine receptor antagonists," filed January 29, 1996 [HHS Ref. No. E–225–1995/0–US–1], U.S. Provisional Patent Application 60/021,191, entitled "Dihydropyridine, pyridine-, benzopyran one-, and triazoloquinazoline derivatives, their preparation and use as adenosine receptor antagonists," filed July 3, 1996 [HHS Ref. No. E–225–1995/1–US–1], PCT Application PCT/US97/01252, entitled "Dihydropyridine, pyridine-, benzopyran one-, and triazoloquinazoline derivatives, their preparation and use as adenosine receptor antagonists," filed January 29, 1997 [HHS Ref. No. E–225–1995/2–PCT–1], U.S. Patent 6,066,642, entitled "Dihydropyridine, pyridine-, benzopyran one-, and triazoloquinazoline derivatives, their preparation and use as adenosine receptor antagonists," issued May 23, 2000 [HHS Ref. No. E–225–1995/2–US–08], Australian Patent 709190, issued December 9, 1999 [HHS Ref. No. E–225–1995/2–AU–04], European Patent Application No. 97905627.2, filed January 29, 1997 [HHS Ref. No. E–225–1995/2–EP–05], Hong Kong Application No. 99102653.6, filed January 29, 1997 [HHS Ref. No. E–225–1995/2–HK–06], Japanese Patent Application No. 527065/1997, filed January 29, 1997 [HHS Ref. No. E–225–1995/2–JP–07], Australian Patent 755525, issued March 27, 2003 [HHS Ref. No. E–225–1995/2–AU–02], and Canadian Patent 2244774, issued October 17, 2006 [HHS Ref. No. E–225–1995/2–CA–03], U.S. Provisional Patent Application 60/092,292, entitled "A3 Adenosine Receptor Antagonists," filed July 10, 1998 [HHS Ref. No. E–096–1998/0–US–1], PCT Application PCT/US99/15562, entitled"A3 Adenosine Receptor Antagonists," filed July 2, 1999 [HHS Ref. No. E–096–1998/0–PCT–2], U.S. Patent 6,376,521, entitled "A3 Adenosine Receptor Antagonists," issued April 23, 2003, [HHS Ref. No. E–096–1998/0–US–04], and Canadian Patent Application No. 2336967, filed July 2, 1999 [HHS Ref. No. E–096–1998/0–CA–03], U.S. Provisional Patent Application 61/085,588, entitled "Truncated Methanacarba Adenosine Derivatives as A3 Antagonists," filed August 1, 2008 [HHS Ref. No. E–285–2008/0–US–1], PCT Application PCT/US2009/52439, entitled "Truncated Methanacarba Adenosine Derivatives as A3 Antagonists," filed July 31, 2009 [HHS Ref. No. E–285–2008/0–PCT–2], and Korean International Application No. PCT/KR2007/001131, entitled

"Adenosine derivatives, method of synthesis thereof, and the pharmaceutical compositions for the prevention and treatment of the inflammatory diseases containing the same as an active ingredient," filed March 7, 2007, [HHS Ref. No. E–109–2006/0–PCT–01] to Acorn Biomedical, Inc., having an office in at 612 SE. 5th Avenue, Suite #3, Fort Lauderdale, FL 33301 U.S.A. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the use of adenosine A3 antagonists for treatment of glaucoma and intraocular pressure.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before March 29, 2010 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Steven Standley, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4074; Facsimile: (301) 402–0220; E-mail: *sstand@od.nih.gov.*

SUPPLEMENTARY INFORMATION: Adenosine a3 antagonists applied topically to the cornea have been shown to cause a reduction in intraocular pressure, which is a means of treating glaucoma.

The invention relates to several structurally different pharmacophores that have been shown to antagonize adenosine a3 receptors. Molecules are to be tested to optimize for the treatment of glaucoma and intraocular pressure in humans.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 16, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–3907 Filed 2–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3224–N]

Medicare Program; Request for Nominations for Members for the Medicare Evidence Development & Coverage Advisory Committee

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the request for nominations for consideration for membership on the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC). Among other things, the MEDCAC advises the Secretary of the Department of Health and Human Services (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services, as requested by the Secretary, whether medical items and services are "reasonable and necessary" and therefore eligible for coverage under Title XVIII of the Social Security Act.

We are requesting nominations for both voting and nonvoting members to serve on the MEDCAC. Nominees are selected based upon their individual qualifications and not as representatives of professional associations or societies. We have a special interest in ensuring that the interests of both women and men, members of all racial and ethnic groups, and physically challenged individuals are adequately represented on the MEDCAC. Therefore, we encourage nominations of qualified candidates who can represent these interests.

The MEDCAC reviews and evaluates medical literature, reviews technology assessments, and examines data and information on the effectiveness and appropriateness of medical items and services that are covered or eligible for coverage under Medicare.

DATES: Nominations will be considered if postmarked by Monday, March 29, 2010 and mailed to the address specified in the **ADDRESSES** section of this notice.

ADDRESSES: You may mail nominations for membership to the following: Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, *Attention:* Maria Ellis, 7500 Security Boulevard, Mail Stop: C1–09–06, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via e-mail at *Maria.Ellis@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) announcing establishment of the Medicare Coverage Advisory Committee (MCAC). The Secretary signed the initial charter for the Medicare Coverage Advisory Committee on November 24, 1998. On January 26, 2007 the Secretary published a notice in the **Federal Register** (72 FR 3853), changing the Committee's name to the Medicare Evidence Development and Coverage Advisory Committee (MEDCAC). The charter for the committee was renewed by the Secretary and will terminate on November 24, 2010, unless renewed again by the Secretary.

The MEDCAC is governed by provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), which sets forth standards for the formulation and use of advisory committees, and is authorized by section 222 of the Public Health Service Act as amended (42 U.S.C. 217A).

The MEDCAC consists of a pool of 100 appointed members including: 6 patient advocates, who are standard voting members; and 6 representatives of industry interests, who are nonvoting members. Members are selected from among authorities in clinical medicine of all specialties, administrative medicine, public health, biologic and physical sciences, health care data and information management and analysis, patient advocacy, the economics of health care, medical ethics, and other related professions such as epidemiology and biostatistics, and methodology of trial design.

The MEDCAC functions on a committee basis. The committee reviews and evaluates medical literature, reviews technology assessments, and

examines data and information on the effectiveness and appropriateness of medical items and services that are covered or eligible for coverage under Medicare. The Committee works from an agenda provided by the Designated Federal Official that lists specific issues, and develops technical advice to assist us in determining reasonable and necessary applications of medical services and technology when we make national coverage decisions for Medicare. The Committee also advises CMS as part of Medicare's "coverage with evidence development" activities.

II. Provisions of the Notice

As of June 2010, there will be 34 terms of membership expiring, 1 of which is a nonvoting industry representative and 4 are voting patient advocates.

Accordingly, we are requesting nominations for both voting and nonvoting members to serve on the MEDCAC. Nominees are selected based upon their individual qualifications and not as representatives of professional associations or societies. We have a special interest in ensuring that the interests of both women and men, members of all racial and ethnic groups, and physically challenged individuals are adequately represented on the MEDCAC. Therefore, we encourage nominations of qualified candidates from these groups.

All nominations must be accompanied by curricula vitae. Nomination packages must be sent to Maria Ellis at the address listed in the **ADDRESSES** section of this notice. Nominees for voting membership must also have expertise and experience in one or more of the following fields:

- Clinical medicine of all specialties
- Administrative medicine
- Public health
- Patient advocacy
- Biologic and physical sciences
- Health care data and information management and analysis
- The economics of health care
- Medical ethics
- Other related professions such as epidemiology and biostatistics, and methodology of clinical trial design

We are looking for experts in a number of fields. Our most critical needs are for experts in hematology; genomics; end of life care; Bayesian statistics; clinical epidemiology; clinical trial methodology; knee, hip, and other joint replacement surgery; ophthalmology; psychopharmacology; registries; rheumatology; screening and diagnostic testing analysis; and stroke. We also need experts in biostatistics in clinical settings, cardiovascular epidemiology, cost effectiveness analysis, dementia, endocrinology, geriatrics, gynecology, minority health, observational research design, stroke epidemiology, and women's health.

The nomination letter must include a statement that the nominee is willing to serve as a member of the MEDCAC and appears to have no conflict of interest that would preclude membership. We are requesting that all curricula vitae include the following:

- Date of birth
- Place of birth
- Social security number
- Title and current position
- Professional affiliation
- Home and business address
- Telephone and fax numbers
- E-mail address
- List of areas of expertise

In the nomination letter, we are requesting that the nominee specify whether they are applying for a voting patient advocate position, for another voting position, or as a nonvoting industry representative. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

Members are invited to serve for overlapping 2-year terms. A member may serve after the expiration of the member's term until a successor takes office. Any interested person may nominate one or more qualified persons. Self-nominations are also accepted.

The current Secretary's Charter for the MEDCAC is available on the CMS Web site at: *http://www.cms.hhs.gov/FACA/Downloads/medcaccharter.pdf*, or you may obtain a copy of the charter by submitting a request to the contact listed in the **FOR FURTHER INFORMATION** section of this notice.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 23, 2010.

Barry M. Straube,

CMS Chief Medical Officer, Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–4019 Filed 2–25–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5382–N–03]

Notice of Proposed Information Collection for Public Comment: Housing Counseling Outcomes Study

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: *April 27, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Marina L. Myhre, (202) 708–3700, extension 5705 for copies of the proposed forms and other available documents. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Housing Counseling Outcomes Study.

Description of the need for the information and proposed use: This request is for the clearance of survey instruments designed to provide statistically accurate information on the outcomes realized by clients of HUD-approved counseling agencies seeking assistance to either purchase a home (pre-purchase clients) or to resolve or prevent mortgage delinquency (post-purchase clients). Fourteen-hundred and thirty counseling clients have already been recruited to voluntarily participate in the study. In granting their informed consent to participate in the study, these counseling clients agreed to be contacted by telephone 12 months following the receipt of counseling to complete a survey about their counseling experience and their current housing situation. The purpose of this survey is to gather information needed to both document the share of clients realizing different outcomes following counseling and to analyze how these outcomes vary with the characteristics of clients and the services they receive.

OMB Approval Number: Pending.

Agency form numbers: None.

Members of Affected Public: Fourteen-hundred and thirty housing counseling clients.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The average time per client for completing the telephone survey is one-half hour. Of the fourteen-hundred and thirty clients in the study, 978 are expected to complete the survey. Thus, total burden hours are 489 hours for counseling clients.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 21, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–4007 Filed 2–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5384–N–04]

Notice of Proposed Information Collection: Comment Request; Semi-Annual Labor Standards Enforcement Report

AGENCY: Office of Labor Relations, Office of Departmental Operations and Coordination, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: April 27, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Leroy McKinney, Jr., Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410 or *Leroy.McKinneyJr@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Jade Banks, Senior Policy Advisor, Office of Labor Relations, Department of Housing and Urban Development, 451 7th Street, SW., Room 2102, Washington, DC 20410 or *Jade.M.Banks@hud.gov,* telephone (202) 402–5475 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Semi-annual Labor Standards Enforcement Report

OMB Control Number, if applicable: 2501–0019

Description of the need for the information and proposed use: All Federal agencies administering programs subject to Davis-Bacon wage provisions are required by Department of Labor (DOL) regulations (29 CFR Part 5, Section 5.7(b)) to submit a report of all new covered contracts/projects and all enforcement activities each six months. In order for HUD to comply with this requirement, it must collect contract and enforcement information from local and tribal agencies that administer HUD-assisted programs subject to Davis-Bacon requirements. (State agencies that administer HUD-assisted programs may report directly to DOL or may report through HUD, at the discretion of each state.) HUD requests that such agencies complete and submit a Semi-annual Enforcement Report each six months.

HUD and reporting agencies must retain a copy of the Semi-annual Enforcement Report in its files.

Agency form numbers, if applicable: Forms HUD–4710, HUD–4710i.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 10,000; the number of respondents is 5,000; the frequency of response is semi-annually; and the hours per response is 2. Recordkeeping requirements add an additional 2,500 hours for a total of 12,500 hours per year.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 22, 2010.

Waite H. Madison,

Director, Office of Labor Relations.

[FR Doc. 2010–4008 Filed 2–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5384–N–03]

Notice of Proposed Information Collection: Comment Request; Employee Questionnaire and Complaint Intake

AGENCY: Office of Labor Relations, Office of Departmental Operations and Coordination, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: April 27, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Leroy McKinney, Jr., Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410 or *Leroy.McKinneyJr@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Jade Banks, Senior Policy Advisor, Office of Labor Relations, Department of Housing and Urban Development, 451 7th Street, SW., Room 2102, Washington, DC 20410 or *Jade.M.Banks@hud.gov,* telephone (202) 402–5475 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Employee Questionnaire and Complaint Intake.

OMB Control Number, if applicable: 2501–0018.

Description of the need for the information and proposed use: HUD and state, local and tribal agencies administering HUD-assisted programs must enforce Federal wage and reporting requirements on covered HUD-assisted construction and maintenance work. Enforcement activities include contacting laborers and mechanics and requesting information about their employment on covered projects. In addition, HUD and these agencies may be contacted by the workers or by others who wish to file a complaint of labor standards violation(s). HUD has instituted two forms for these collections: an employee questionnaire (in English, Spanish, and electronic versions) and a complaint intake form. The questionnaire may be mailed to employees or may be otherwise provided to them to complete and return to HUD or the agency. The questionnaire is also available on-line through HUD's web site. This version can be completed on-screen for electronic submission or it can be printed for hard-copy submission. Complaint intake forms will be used by HUD and agency personnel to record information provided by complainants about the nature of the alleged violation(s). Both forms may be supplemented with additional pages, as needed. Responses and the provision of supplemental information are voluntary on the part of questionnaire respondents. Questionnaire responses and complaint intake forms must be retained by the HUD and agencies to document the sufficiency of enforcement efforts.

Agency form numbers, if applicable: Forms HUD–4730, HUD–4370E, HUD–4370SP; and HUD–4731.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Item	Number of respondents	Amount of time required (hours)	Total time required (in hrs.)/ annum
HUD–4730 (including 4730E and 4730SP)	2,000	.25–.5	500–1,000
HUD–4731	500	.25–.5	125–250
Recordkeeping	2,500	1	2,500
Total Annual Burden			3,125–3,750

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 22, 2010.

Waite H. Madison,

Director, Office of Labor Relations.

[FR Doc. 2010–4009 Filed 2–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–07]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: February 26, 2010.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or

call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: February 18, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–3606 Filed 2–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO3200000–L19900000.PP0000; OMB Control Number 1004–0114]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day Notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year renewal of OMB Control Number 1004–0114 under the Paperwork Reduction Act. This control number covers paperwork requirements in 43 CFR parts 3832 through 3838, which pertain to mining claims, mill sites, and tunnel sites.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before March 29, 2010.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0114), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240. You may also send a copy of your comments by electronic mail to *jean_sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: You may contact Sonia Santillan, Mineral Leasing Specialist, Bureau of Land Management, Division of Solid Minerals, (202) 452–0398 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, to contact Ms. Santillan.

SUPPLEMENTARY INFORMATION:

Title: Recordation of Location Notices and Mining Claims; Payment of Fees (43 CFR parts 3832–3838).

OMB Control Number: 1004–0114.

Abstract: This notice pertains to information collections that are necessary for the recordation of mining claims, mill sites, and tunnel sites; the annual maintenance of such claims and sites; location and maintenance fee waivers; and the adjudication of mineral rights. The information collections covered by this notice are found at 43 CFR parts 3832 through 3838, and in the following forms:

- Form 3830–2, Maintenance Fee Waiver Certification; and
- Form 3830–3, Notice of Intent to Locate a Lode or Placer Mining Claim(s) and/or a Tunnel Site(s) on Lands Patented under the Stock Raising Homestead Act of 1916, as Amended by the Act of April 16, 1993.

60-Day Notice: As required in 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on July 31, 2009 (74 FR 38215), soliciting comments from the public and other interested parties. The comment period closed on September 29, 2009. The BLM did not receive any comments from the public in response to this notice or unsolicited comments from respondents covered under these regulations.

Type of Review: Revision of a currently approved information collection.

Affected Public: Individuals, associations, and corporations seeking to obtain or maintain interests under the General Mining Law and other mining statutes.

Obligation To Respond: Required to obtain or retain benefits.

Annual Responses: 197,154.

Completion Time per Response: Varies from 20 to 30 minutes.

Annual Burden Hours: 97,658.

Annual Non-hour Burden Cost: $1,629,025 for document processing fees associated with some of these information collection requirements.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0114 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. 2010–3937 Filed 2–25–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Supplemental Environmental Impact Statement for the Proposed Campo Regional Landfill Project on the Campo Indian Reservation, San Diego County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability for public comment of a Draft Supplemental Environmental Impact Statement (DSEIS) for an amended lease and sublease for the proposed Campo Regional Landfill Project (proposed action) on the Campo Indian Reservation in San Diego County, California. A Final Environmental Impact Statement (FEIS) for the proposed action was issued in November 1992 and a Record of Decision (ROD) was executed in April 1993. This notice also announces the dates, times and locations of the public

hearings to receive comments on the DSEIS. The DSEIS was prepared by the Bureau of Indian Affairs (BIA) as lead agency, in cooperation with the Campo Band of Mission Indians (Campo Band), Campo Environmental Protection Agency (CEPA) and the U.S. Environmental Protection Agency (EPA).

DATES: The DSEIS will be available for public comment beginning February 26, 2010. Written comments on this notice must arrive by May 12, 2010, at the address provided below. Two public hearings have been scheduled to receive oral and written comments on the DSEIS:

- Tuesday, April 13, 2010, 6–9 p.m., Campo Indian Reservation, California.
- Wednesday, April 14, 2010, 6–9 p.m., Buckman Springs, California.

ADDRESSES: You may mail or hand carry written comments to Dale Risling, Acting Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. The public hearings will be held at the following locations:

- Campo Tribal Center, 36190 Church Road, Campo, CA.
- Mountain Empire High School, 3305 Buckman Springs Road, Buckman Springs, CA.

See **SUPPLEMENTARY INFORMATION** for locations where the DEIS/EIR will be available for review and instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6051.

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to address the socio-economic needs of the Campo Band of Mission Indians through the development and diversification of the tribal economy. A brief description and history of the proposed action, alternatives, location, and areas of environmental concern are provided below. This notice provides a 75-day public comment period and thereby grants an automatic 30-day extension to the normal 45-day public comment period.

Background

The Campo Indian Reservation consists of approximately 16,000 acres in southeastern San Diego County, just north of the United States/Mexico border, approximately 45 miles inland from the Pacific Ocean. The proposed action is to approve an amended lease and amended sublease to allow a 1,150-acre portion of the Campo Indian Reservation to be used for the purpose of constructing and operating a solid waste disposal facility. The solid waste disposal facility would consist of a landfill waste disposal area, a well field area, an access road and other support facilities. The proposed Class III (non-hazardous) solid waste landfill would occupy approximately 400 acres of the 1,150 acre lease area. An additional approximately 200 acres would be developed to support the landfill. Supporting developments include the site entrance facilities, screening berms, utilities, surface recharge basins, and leachate storage lagoons. The remaining 550 acres of the lease area that surround the proposed solid waste landfill facility would serve as an undeveloped buffer area.

In the 1980s, the Campo Band entered into a lease agreement with Muht-Hei, Inc. (MHI), the Band's economic development corporation, pursuant to which MHI would lease a portion of the Campo Indian Reservation for the purpose of constructing and operating a solid waste landfill, recycling facility, and composting facility. In 1989, the Campo Band authorized MHI to enter into a sublease with Mid-American Waste Systems, Inc. (MAWS) for the development of that project. The Campo Band requested that the BIA approve the lease and sublease for the proposed project. An Environmental Impact Statement was prepared by BIA in accordance with the requirements of the National Environmental Policy Act (NEPA) to evaluate the environmental impacts of the proposed project prior to determining whether the proposed leases should be approved. An FEIS was released on November 24, 1992. The U.S. Department of the Interior issued a ROD on April 27, 1993, approving the lease between the Campo Band and MHI and sublease between MHI and MAWS for the proposed solid waste facility. On April 5, 1994, CEPA issued a Final Authority to Construct Permit (ATC) to MHI and MAWS to construct the proposed solid waste landfill subject to the conditions of the ROD and the ATC. Subsequently, MAWS failed to proceed with construction of the project and MHI found MAWS in default of the sublease terms. In early 2003, MHI began negotiations with BLT Enterprises, Inc. (BLT), of Oxnard, CA, on the terms of a sublease to develop the solid waste landfill described in the FEIS. Those negotiations were successfully concluded and the Campo Band authorized MHI to enter into a sublease with BLT on December 12, 2004.

The Campo Band requested the BIA approve the amended lease between the Band and MHI and the amended sublease between MHI and BLT for the proposed action. The BIA, in consultation with the Campo Band, prepared this DSEIS to address changes in the proposed action, relevant information that has become available, and circumstances that have changed in the years since the FEIS was issued. The FEIS included five alternatives to the proposed action as follows: (1) Alternative site 1; (2) Alternative site 2; (3) Reduced waste stream at the proposed site; (4) Reduced area of disturbance at the proposed site; and (5) the No-action alternative. For each of the alternatives, the FEIS addressed land resources, water resources, air quality, living resources, cultural resources, socioeconomics, transportation, land use, resource use patterns, noise and other values. The DSEIS discusses aspects of the proposed action, relevant information that has subsequently become available, and circumstances that have changed since the FEIS was released in 1992 and any change in environmental impacts associated with those changes.

The proposed project would be required to comply with 40 CFR part 258 (Criteria for Municipal Solid Waste Landfills). Because the project proposes to use alternative landfill design and cover, it requires a site-specific flexibility determination to ensure that alternative designs and cover meet the requirements of 40 CFR part 258. For municipal solid waste landfills in Indian Country, the EPA must makes site-specific flexibility determinations. EPA will hold a separate public hearing on its proposed site-specific flexibility determination after it receives and reviews a complete application.

Directions for Submitting Public Comments

Please include your name, return address, and the caption "DSEIS, Campo Solid Waste Management Project," on the first page of your written comments. You may also submit comments at the public hearings.

Public Availability of the DEIS

The DSEIS will be available for review at the Alpine Public Library, 2130 Arnold Way, Alpine, CA 91901 and the Pine Valley Public Library, 28804 Old Highway 80, Pine Valley, CA 91962. General information for the Alpine Public Library can be obtained by calling (619) 445–4221 and for the Pine Valley Public Library by calling (619) 473–8022. An electronic version of the DSEIS can be viewed at *http://www.CampoDSEIS.com.*

To obtain a compact disk copy of the DSEIS, please write John Rydzik, Chief of the Division of Environmental, Cultural Resource Management and Safety, Pacific Region, Bureau of Indian

Affairs, 2800 Cottage Way, Room W–2820, Sacramento, CA 95825, or call Mr. Rydzik at (916) 978–6051. Individual paper copies of the DSEIS can be provided upon payment of the applicable printing cost for the number of paper copies requested.

Public Availability of Comments

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with sections 1502.9, 1503.1 and 1506.6 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.l.

Dated February 1, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2010–4113 Filed 2–25–10; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Environmental Impact Statements; Availability

AGENCY: National Park Service.

ACTION: Notice of availability for the Record of Decision on the Final Environmental Impact Statement, disposition of Bureau of Mines property, Twin Cities Research Center Main Campus, Hennepin County, Minnesota.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the final Environmental Impact Statement (EIS) for the disposition of the Bureau of Mines property, Twin Cities Research Center Main Campus (Center), Hennepin County, Minnesota. On January 15, 2010, the Midwest Regional Director approved the ROD for the project. As soon as practicable, the NPS will begin to implement the preferred alternative contained in the final EIS.

The Department of the Interior (Department) selected Alternative D (Modification of Land, Structures, or Other Improvements by the Federal Government Prior to Conveyance or Retention of the Center), the preferred alternative, as described in the final EIS for the disposition of the Center issued in December 2009.

Under Alternative D, the Federal Government will manage and bear the cost of modification for all or part of the land, structures, or other improvements prior to conveyance or retention of the Center. Following completion of the modifications, the Federal Government will dispose of the Center property through a transfer to a university or nonfederal government entity without conditions, or a transfer to a university or nonfederal government entity with conditions, or will retain the property. The Department also selected the open space/park land use scenario that will convert the Center property to open space and natural areas where the focus will be on restoration and use of the natural environment. This will be accomplished by removing some or all buildings, structures, and roadways. Nonnative plant species will be identified and removed. Native vegetation will be planted and the site naturalized to recreate the historic characteristics of an open oak savanna, prairie-type setting typical to this vicinity.

The Department—after consideration of the findings of the EIS, the review of responses received on the request for proposals for future use of the Center property, and the fact that the Center property is located within the Mississippi National River and Recreation Area (MNRRA) boundary—determined that future management authority will be transferred to the NPS.

The ROD includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, and an overview of public involvement in the decisionmaking process.

FOR FURTHER INFORMATION CONTACT: Superintendent Paul Labovitz, MNRRA, Suite 105, 111 Kellogg Boulevard, East St. Paul, Minnesota 55101; telephone 651–290–4160. You may also view the document via the Internet through the NPS Planning, Environment, and Public Comment Web site (*http://parkplanning.nps.gov*); simply click on the link to the MNRRA.

Dated: January 15, 2010.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 2010–4030 Filed 2–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement; Yosemite Institute Environmental Education Campus; Yosemite National Park; Mariposa and Tuolumne Counties, CA; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the Department of the Interior, National Park Service, has prepared a Final Environmental Impact Statement (Final EIS) identifying and evaluating three alternatives for redeveloping the Yosemite Institute Environmental Education Campus in Yosemite National Park, California. Yosemite Institute (YI) is a non-profit park partner which has provided environmental education in Yosemite since 1971, and since 1973 has been based at the former Civilian Conservation Corps (CCC) camp at Crane Flat. The Final EIS for the proposed new campus identifies and analyzes two "action" alternatives and a "no-action" alternative. The full spectrums of foreseeable environmental consequences are assessed and suitable mitigation strategies are considered; an "environmentally preferred" course of action is also identified. Concurrently, completion of the EIS process will fulfill public review requirements of § 106 of the National Historic Preservation Act.

Range of Alternatives: Under Alternative 1 (No Action), there would be no change in the environmental education program, location, or conditions at the Crane Flat campus. Necessary maintenance and repairs would continue, but no major improvements, rehabilitation of facilities, or construction of new buildings would occur. There would be no change in the number of overnight accommodations at Crane Flat (76 student bunks and 8 staff beds). The overall number of students in the park

per session would remain the same (approximately 360), with the majority of students (approximately 285) in commercial lodging in Yosemite Valley.

Under both "action" alternatives, energy-efficient, sustainable facilities would be constructed to accommodate more students in a campus conducive to learning to better meet educational purposes, and designed to blend into the historic park setting. These improvements would provide a safe, supervised campus environment, extending more opportunities for young children from diverse backgrounds to experience and enjoy their national park. New facilities would achieve modem standards for fire, health, safety, and accessibility.

Under Alternative 2, the Crane Flat campus would be redeveloped, doubling its capacity (to 154 students, 14 staff), and reducing reliance upon commercial lodging in Yosemite Valley (by approximately 80 beds). The new campus would be reconstructed largely in its existing location (shifted away from the meadow). Most existing buildings would be removed and replaced (two historic Civilian Conservation Corps (CCC) structures would be retained). Utilities would be upgraded to conserve water and meet additional capacity. New facilities would achieve modem standards for fire, health, safety, and accessibility.

A third alternative, to create a new campus in a different location, was developed in response to public input and new data illuminating unique and highly sensitive environmental resources at Crane Flat. Under Alternative 3, (environmentally and agency-preferred) a new campus would be created at Henness Ridge, a previously-disturbed forested upland site within the park. In turn, the Crane Flat site would be restored to natural forest conditions (one of four historic CCC structures would be repaired and retained; the others documented and removed). Newly constructed park facilities at Henness would be universally accessible and accommodate up to 224 students and 14 campus staff during the school year (reducing students in Yosemite Valley commercial lodging by approximately 100). During summer, the park facility would be available for other educationally focused non-commercial programming, at half occupancy (112, based on environmental limitations). Energy produced on-site (derived from solar sources and ground-source heat pumps) would allow the campus to operate with "zero-net" annual energy consumption. An NPS fire house would be constructed on-site for wildland and structural fire equipment and staff to improve area emergency response capabilities. Under Alternative 3, in a related utilities upgrade project, a new water treatment system would be developed to provide potable water for park visitors and the campus, at Chinquapin (inside a historic garage). Chinquapin rest area serves thousands of park visitors annually, yet currently does not provide potable water, due to an antiquated system that draws surface water from Indian Creek, between Chinquapin and Henness Ridge. Removing this outdated utility system and restoring the site would enable conversion of a 64-acre tract of land at Indian Creek to wilderness status. The existing roadbed (historic route of Glacier Point Road) would be converted to a wilderness trail, thus providing further protection of the corridor as habitat for sensitive plant and wildlife species.

SUPPLEMENTARY INFORMATION: Public scoping began in 2002. Availability of the Draft EIS was noticed in the **Federal Register** on June 3, 2009. During the public review of the Draft EIS (May 15–July 15, 2009), the NPS held public meetings in Mariposa, Yosemite Valley, and San Francisco; and hosted public site visits at Crane Flat campus and Henness Ridge. The park received 47 public comment letters. These comments have been carefully reviewed and given full consideration in preparation of the Final EIS; all comments received are maintained in the administrative record.

Copies of the Final EIS are being distributed to the general public, sent directly to those who submitted comments, as well as to State and local elected officials, congressional delegations, Tribes, organizations, local businesses, public libraries, Federal agencies, and the media. The Final EIS will be available electronically on the Yosemite National Park Web page at *http://www.nps.gov/yose/parkmgmt/eecampus.htm* and printed copies may be requested via e-mail request to *Yose_Planning@nps.gov* (type "YI EEC" in the subject line); by phone (209) 379–1365 (provide name, address with zip code); or by mail, to the Superintendent, Yosemite National Park, Attn: YI EEC, P.O. Box 577, Yosemite, California 95389.

Decision Process: A minimum 30-day no-action period begins with this announcement of the publication and availability of the Final EIS, after which a Record of Decision may be prepared. Notice of approval will be similarly announced in the **Federal Register.** As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation of any approved project would be the Superintendent, Yosemite National Park.

Dated: December 16, 2009.

Rory D. Westberg,

Acting Regional Director, Pacific West Region.

[FR Doc. 2010–4033 Filed 2–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2010–N034; 91100–3740–GRNT 7C]

Meeting Announcements: North American Wetlands Conservation Council; Neotropical Migratory Bird Conservation Advisory Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). This meeting is open to the public. The Advisory Group for the Neotropical Migratory Bird Conservation Act (NMBCA) grants program (Advisory Group) will also meet. This meeting is also open to the public, and interested persons may present oral or written statements.

DATES: *Council:* Meeting is March 17, 2010, 1–4 p.m. If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than March 8, 2010.

Advisory Group: Meeting is March 16, 2010, 9 a.m. through 3 p.m. If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than March 8, 2010.

ADDRESSES: The Council meeting will be held at The Marsh Club, 2772 Old Hwy. 90, Vinton, LA 70668.

The Advisory Group meeting will be held at L'Auberge du Lac Hotel, 777 Avenue L'Auberge, Lake Charles, LA 70601.

FOR FURTHER INFORMATION CONTACT: Michael J. Johnson, Council Coordinator, by phone at (703) 358–1784; by e-mail at *dbhc@fws.gov;* or by U.S. mail at U.S. Fish and Wildlife

Service, 4401 N. Fairfax Drive, Mail Stop MBSP 4075, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Project proposal due dates, application instructions, and eligibility requirements are available on the NAWCA Web site at *http://www.fws.gov/birdhabitat/Grants/NAWCA/Standard/US/Overview.shtm.* Proposals require a minimum of 50 percent non-Federal matching funds. The Council will consider Canadian and U.S. small grant proposals at the meeting. The Commission will consider the Council's recommendation at its meeting tentatively scheduled for June 9, 2010.

The Advisory Group, named by the Secretary of the Interior under NMBCA (Pub. L. 106–247, 114 Stat. 593, July 20, 2000), will hold its meeting to advise the Director, Fish and Wildlife Service, on the strategic direction and management of the NMBCA program. Proposal due dates, application instructions, and eligibility requirements are available on the NMBCA Web site at *http://www.fws.gov/birdhabitat/Grants/NMBCA/index.shtm.*If you are interested in presenting information at either of these public meetings, contact the Council Coordinator no later than the date under **DATES**.

Dated: February 19, 2010.

Paul R. Schmidt,

Assistant Director, Migratory Birds.

[FR Doc. 2010–4012 Filed 2–25–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON03400 L1711 AL]

Notice of Public Meeting, Northwest Colorado Resource Advisory Council Subgroup for McInnis Canyons National Conservation Area

AGENCY: Bureau of Land Management.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Colorado Resource Advisory Council (RAC) McInnis Canyons National Conservation Area (MCNCA) Subgroup will meet in March 2010.

DATES: A MCNCA Subgroup meeting will be held March 4, 2010.

ADDRESSES: The Northwest Colorado RAC McInnis Canyons National Conservation Area Subgroup meeting will be held March 4, 2010, at the Bureau of Land Management Grand Junction Field Office at 2815 H Road, Grand Junction, CO 81506.

The meeting will begin at 5 p.m. and adjourn at approximately 7 p.m. A public comment period regarding matters on the agenda will be at 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Katie Stevens, McInnis Canyons National Conservation Area Manager, 2815 H Road, Grand Junction, CO; telephone 970–244–3049; or Erin Curtis, Public Affairs Specialist, 2815 H Road, Grand Junction, CO, telephone 970–244–3097.

SUPPLEMENTARY INFORMATION: The Subgroup provides counsel and advice to the full Northwest Resource Advisory Council, who in turn provides counsel and advice to the Secretary of the Interior, through the BLM, concerning implementation of a management plan developed in accordance with FLPMA, for public lands within the MCNCA. Agenda items will include an update on river permit/fee options and an update on Front Country trail planning.

The meeting is open to the public and includes a time set aside for public comment. Interested persons may make oral statements at the meeting or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Subgroup meetings will be maintained at the Grand Junction Field Office. They are available for public inspection and reproduction during regular business hours within thirty (30) days of the meeting. In addition, minutes and other information concerning the Subgroup can be obtained from the MCNCA planning Web site at: *http://www.blm.gov/co/st/en/nca/mcnca/mcncaplan/cocanplan_adv.html* which will be updated following each Subgroup meeting.

Helen M. Hankins,

Colorado State Director.

[FR Doc. 2010–4026 Filed 2–25–10; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN06000–14300000–ET; CACA 51096]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Land and Minerals Management proposes to withdraw 702.25 acres of public lands from location and entry under the United States mining laws for a period of 20 years, on behalf of the Bureau of Land Management (BLM) to protect the unique natural, scenic, cultural, and recreational values along the Sacramento River between Shasta Dam and the City of Redding. This notice temporarily segregates the lands for up to 2 years from location and entry under the United States mining laws while various studies and analyses are made to support a final decision on the withdrawal application. The lands will remain open to the mineral leasing, geothermal leasing, mineral materials, and public land laws.

DATES: Comments should be received on or before May 27, 2010.

ADDRESSES: Comments should be sent to Steve Anderson, Field Manager, Redding Field Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Suzie Rodriguez, Supervisory Realty Specialist, Redding Field Office, BLM, 530–224–2142.

SUPPLEMENTARY INFORMATION: The applicant is the BLM at the address stated above. The petition/application requests the Assistant Secretary for Land and Minerals Management to withdraw, for a period of 20 years and subject to valid existing rights, the following described public lands from location and entry under the United States mining laws (30 U.S.C. 22 *et seq.*), but not the mineral leasing, geothermal leasing, mineral materials laws, or the public land laws:

Mount Diablo Meridian

T. 32 N., R. 5 W.,
- Sec. 4, lot 29;
- Sec. 5, lot 6;
- Sec. 6, lots 14 to 17, inclusive, lots 19, and 21;
- Sec. 8, lots 13 and 15;
- Sec. 9, lots 4, 7, and 10;
- Sec. 20, lots 10 and 14.

T. 33 N., R. 5 W.,

Sec. 21, lots 2, 3, and 4;
Sec. 22, NW¼NW¼;
Sec. 32, lots 13, 14, 16, and 21.

The areas described aggregate 702.25 acres in Shasta County.

The BLM's petition has been approved by the Assistant Secretary for Land and Minerals Management. Therefore, it constitutes a withdrawal proposal of the Assistant Secretary (43 CFR 2310.1–3(e)).

The purpose of the proposed withdrawal would be to protect the unique natural, scenic, cultural, and recreational values along the Sacramento River between Shasta Dam and the City of Redding.

The use of a right-of-way, interagency agreement, cooperative agreement or surface management under 43 CFR part 3809 regulations would not adequately constrain nondiscretionary uses that could irrevocably affect the use of the lands for recreational purposes.

No water rights would be needed to fulfill the purpose of the requested withdrawal.

A preliminary identification of mineral resources in the subject area indicates low to moderate potential for mineral development. Placer and lode gold are the only locatable minerals of interest in the area, which may have low to moderate potential for occurrence. There are no known active producing mines within the area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Field Manager, Redding Field Office, BLM, 355 Hemsted Drive, Redding, California 96002. Comments, including names and street addresses for respondents, will be available for public review at the BLM's Redding Field Office, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be 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. All submissions from organization or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Field Manager, Redding Office, BLM, 355 Hemsted Drive, Redding, California 96002, within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from February 26, 2010, the public lands will be segregated from location and entry under the United States mining laws (30 U.S.C. 22 *et seq.*) as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Licenses, permits, cooperative agreement, or discretionary land use authorizations of a temporary nature which will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of the authorized officer of BLM during the segregative period.

Authority: 43 CFR 2310.3–1(a).

Dated: February 22, 2010.

Karla D. Norris

Associate Deputy State Director, Natural Resources (CA–930).

[FR Doc. 2010–3997 Filed 2–25–10; 8:45 am]

BILLING CODE 4310–40–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend through May 31, 2013, the current PRA clearance for information collection requirements contained its Antitrust Improvements Act Rules ("HSR Rules") and corresponding Notification and Report Form for Certain Mergers and Acquisitions ("Notification and Report Form"). That clearance expires on May 31, 2010.

DATES: Comments must be filed by April 27, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/hsrpra*) (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, N.W., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Sheila Clark-Coleman, Compliance Specialist, 600 Pennsylvania Ave., N.W., Room 301, Washington, D.C. 20580. Telephone: (202) 326-3100.

SUPPLEMENTARY INFORMATION:

Request for Comments:

Interested parties are invited to submit written comments. Comments should refer to "HSR Rules: FTC File No. P989316" 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 any 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 "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission

Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter 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).[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 using the following weblink (*https://public.commentworks.com/ftc/hsrpra*) (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/hsrpra*). If this Notice appears at (*www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws that 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 FTC 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*).

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the HSR Rules and the corresponding Notification and Report Form, 16 CFR. Parts 801-803.

The FTC invites comments on: (1) 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; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before April 27, 2010.

Background Information:

Section 7A of the Clayton Act ("Act"), 15 U.S.C. 18a, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390, requires all persons contemplating certain mergers or acquisitions to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require "that the notification . . . be in such form and contain such documentary material and information . . . as is necessary and appropriate" to enable the agencies "to determine whether such acquisitions may, if consummated, violate the antitrust laws." 15 U.S.C. 18a(d). Congress similarly granted rulemaking authority to, *inter alia*, "prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section." *Id.*

Pursuant to that section, the Commission, with the concurrence of the Assistant Attorney General, developed the HSR Rules and the corresponding Notification and Report Form. The following discussion presents the FTC's PRA burden analysis regarding completion of the Notification and Report Form.

Burden statement:

Estimated total annual hours burden: 33,298 hours

The following burden estimates are primarily based on FTC data concerning the number of HSR filings and staff's informal consultations with leading HSR counsel.

In the FTC's 2007 PRA submission to OMB regarding the HSR Rules and the Notification and Report Form, FTC staff estimated that there were 32 "index filings" under Clayton Act Sections 7A(c)(6) and 7A(c)(8)[2] that required 2 hours per filing, and 3,966 non-index filings that required, on average, approximately 39 hours per filing.[3] Moreover, staff estimated that approximately 91 non-index transactions would require an additional 40 hours of burden due to the need for a more precise valuation of transactions that are near a filing fee threshold.[4]

In fiscal year 2009 there were 1,411 non-index filings and 24 index filings. Based on an average decrease of 40.4% in fiscal year 2007 - fiscal year 2009 in the number of non-index filings, staff projects a total of 841 non-index filings for fiscal year 2010. Likewise, based on an average decrease of 18.4% in index filings over the same time period, staff projects a total of 20 index filings for fiscal year 2010. Retaining the FTC's prior assumptions, staff estimates that non-index filings require approximately 39 burden hours per filing and index filings require an average of 2 hours per filing. Moreover, staff estimates that for fiscal year 2010 approximately 22 non-index transactions will require an additional 40 hours of burden due to the need for more precise valuation of transactions that are near a filing fee threshold.[5] Thus, the total estimated

[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).

[2] Clayton Act Sections 7A(c)(6) and (c)(8) exempt from the requirements of the premerger notification program certain transactions that are subject to the approval of other agencies (the so-called "index filings"), but only if copies of the information submitted to these other agencies are also submitted to the FTC and the Assistant Attorney General. Thus, parties must submit copies of these filings, which are included in the totals shown, but completing the task requires significantly less time than non-exempt transactions.

[3] These are long-standing estimates that have been repeatedly vetted through the PRA comment process. *See, e.g.*, 59 FR 30588 (June 14, 1994); 69 FR 7225, 7226 (Feb. 13, 2004); 72 FR 18251, 18252 (Apr. 11, 2007).

[4] *See* 72 FR 18252.

[5] This number is based on the volume of fiscal year 2009 non-index transactions, 716, reduced by transactions involving an acquisition of 50% or more of an entity's assets or voting securities. The rationale for this exclusion is that the remainder, 38 transactions, reflects incremental acquisitions that fell between notification and filing fee thresholds and thus would likely need more precise valuation to determine which side of a threshold the

hours burden before adjustments is 33,719 hours [(841 non-index filings x 39 hours) + (20 index filings x 2 hours) + (22 acquiring person non-index filings requiring more precise valuation[6] x 40 hours)].

As in the past, however, staff further estimates that half of those submitting non-index filings will incorporate Item 4(a) and Item 4(b) documents by reference to an Internet link, and that doing so will reduce individual burden by one hour. Accordingly, the cumulative reduction to the above total would be 421 hours (841 non-index filings x ½ =421, multiplied by 1 hour), resulting in net estimated burden for fiscal year 2010 of 33,298 hours.

This estimate is conservative. In estimating PRA burden, staff considered "the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency." 5 CFR 1320.3(b)(1). This includes "developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information." 5 CFR 1320.3(b)(1)(iv). Although not expressly stated in the OMB definitions regulation implementing the PRA, the definition of burden arguably includes upgrading and maintaining computer and other systems used to comply with a rule's requirements. Conversely, to the extent that these systems are customarily used in the ordinary course of business independent of the Rule, their associated upkeep would fall outside the realm of PRA "burden." *See* 5 CFR 1320.3(b)(2).

Industry has been subject to the basic provisions of the HSR Rules since 1978. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Accordingly, most companies now maintain records and provide updated order information of the kind required by the HSR Rules in their ordinary course of business. Nevertheless, staff conservatively assumes that the time devoted to compliance with the Rule by existing and new companies remains unchanged from its preceding estimate.

Estimated labor costs: $15,317,080

Using the burden hours estimated above and applying an estimated average of $460/hour for executive and attorney wages,[7] staff estimates that the total labor cost associated with the HSR Rules and the Notification and Report Form is approximately $15,317,080 (33,298 hours x $460/hour).

Estimated annual non-labor cost burden: $0 or minimal

The applicable requirements impose minimal start-up costs, as businesses subject to the HSR Rules generally have or obtain necessary equipment for other business purposes. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the HSR Rules and the corresponding Notification and Report Form.

David C. Shonka

Principal Deputy General Counsel

[FR Doc. 2010–3957 Filed 2–25–10; 12:36 pm]

BILLING CODE 6750–01–S

transaction falls upon. The resulting fiscal year 2009 total, 38, is then used to project the fiscal year 2010 volume of such transactions. To do this, we first calculated the proportion this net figure represents in relation to the total fiscal year 2009 non-index transactions: 38 ÷ 716 = 5.3%.

This percentage is then applied to the projected number of fiscal year 2010 non-index transactions in order to estimate the proportion of them that will require more precise valuation. Assuming that half the projected number of fiscal year 2010 non-index *filings* will constitute the number of associated *transactions*, that would result in approximately 421 non-index transactions (841 ÷ 2). To this we then carry over and apply the above 5.3% apportionment to arrive at an estimate of 22 non-index transactions in fiscal year 2010 that will require more precise measurement.

[6] Only the acquiring person is subject to a filing fee; thus, this specific focus.

[7] The FTC's previous estimate of $425 per hour has been increased by the Social Security COLA percentage for fiscal years 2007 - fiscal year 2009 (fiscal year 2007(2.3%), fiscal year 2008 (5.8%)), fiscal year 2009 (0%)).

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OMB Number 1121–0269]

Agency Information Collection Activities: Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired; Comments Requested

ACTION: 60-day notice of information collection under review: 2009 Census of Publicly Funded Forensic Crime Laboratories.

The Department of Justice (DOJ), Bureau of Justice Statistics (BJS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 27, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christine Eith, Bureau of Justice Statistics, 810 7th Street, NW., Washington, DC 20531 (phone: 202–305–4559).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* 2009 Census of Publicly Funded Forensic Crime Laboratories.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is CFCL–09, Bureau of Justice Statistics, Office of Justice Programs, U. S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will represent Federal, State, and local governments. This information collection is a census of public crime laboratories that perform forensic analyses on criminal evidence.

The information will provide statistics on laboratories' capacity to analyze forensic crime evidence, the number, types, and sources of evidence received per year, and the number, types, and cost of analyses completed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 400 respondents will complete each form within approximately 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,200 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 23, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–4048 Filed 2–25–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Certification of the Attorney General; Williamson County, TX

In accordance with Section 8 of the Voting Rights Act, 42 U.S.C. 1973f, I hereby certify that in my judgment the appointment of Federal observers is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Williamson County, Texas. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made under Section 4(b) of the Voting Rights Act, 42 U.S.C. 1973b(b), and published in the **Federal Register** on September 23, 1975 (40 FR 43,746).

Dated: February 23, 2010.

Eric H. Holder Jr.,

Attorney General of the United States.

[FR Doc. 2010–3998 Filed 2–25–10; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that on February 16, 2010, a proposed Consent Decree in *United States* v. *Belson Steel Center Scrap, Inc.,* Civil Action No. 10 C 581, was lodged with the United States District Court for the Northern District of Illinois.

In a civil action filed simultaneously with the Consent Decree, the United States seeks a civil penalty against Belson Steel Center Scrap, Inc. ("Belson"), pursuant to section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b), for alleged environmental violations of 40 CFR 82.156. These violations are alleged to have occurred at Belson's facility located at 1685 N. Route 50, Bourbonnais, Illinois.

Under the proposed settlement, Belson will be required to (1) Acquire chloral floral carbon ("CFC") removal equipment, (2) have properly trained operators evacuate CFCs from scrap appliances containing refrigerant, (3) maintain a log documenting CFC removal activities, (4) collect verification statements conforming to regulations in cases where Belson accepts appliances that already had CFCs removed, (5) provide periodic reports to EPA regarding its implementation of its oblgations under the decree, and (6) pay a civil penalty of $54,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Belson Steel Center Scrap, Inc.,* D.J. Ref. 90–5–2–1–09506.

The Consent Decree may be examined at the Office of the United States Attorney, Attn. Kurt N. Lindland, Assistant United States Attorney, 219 S. Dearborn Street, 5th Flr., Chicago, Illinois, and at U.S. EPA Region 5, 77 West Jackson Blvd., 14th Flr., Chicago, Illinois. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.25 payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. 2010–3905 Filed 2–25–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–NEW]

Agency Information Collection Activities: New Collection, Comments Requested

ACTION: 30-day Notice of Information Collection Under Review: New collection; Cargo Theft Incident Report.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on November 25, 2009, Volume 74, Number 226, Pages 61708, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 29, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS), Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Cargo Theft Incident Report.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number:* None; *Sponsor:* Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* City, county, state, federal, and tribal law enforcement agencies. *Brief Abstract:* This collection is needed to collect information on cargo theft incidents committed throughout the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,799 law enforcement agency respondents that submit monthly for a total of 213,588 responses with an estimated response time of 5 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 17,799 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 23, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–4043 Filed 2–25–10; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–NEW]

Agency Information Collection Activities: New Collection, Comments Requested

ACTION: 30-day Notice of Information Collection Under Review: New collection; InfraGard Knowledge/Skills/Abilities Profile Questionnaire.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on January 8, 2010, Volume 75, Number 5, Pages 1084, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 29, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Douglas Dvorak, Supervisory Special Agent, Federal Bureau of Investigation, Cyber Division, 935 Pennsylvania Avenue, NW., Washington, DC 20535, (202) 651–3269.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* InfraGard Knowledge/Skills/Abilities Profile Questionnaire.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number:* None; *Sponsor:* Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Public and private professionals self-identified as having information technology expertise. *Brief Abstract:* InfraGard is a public/private alliance as mandated in Presidential Decision Directive 63. This form is used to classify members according to their expertise.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 28,000 InfraGard members, for a total of 28,000 responses with an estimated response time of two minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 917 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 23, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–4050 Filed 2–25–10; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 23, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection

requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King at 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Occupational Code Assignment (OCA).

OMB Control Number: 1205–0137.

Agency Form Number: ETA–741.

Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Respondents: 23.

Total Estimated Annual Burden Hours: 12.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: The Form ETA 741, the Occupational Code Assignment (OCA), is provided as a public service for the states as well as for others who use occupational information. The OCA process is designed to help users relate an occupational specialty or a job title or to an occupational code within the framework of the O*NET–SOC (Occupational Information Network-Standard Occupational Classification) system. For additional information, see related notice published in the **Federal Register** on November 11, 2009 (74 Fed. Reg. 62602).

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Worker Profiling and Reemployment Services Activities and Worker Profiling and Reemployment Outcomes.

OMB Control Number: 1205–0353.

Agency Form Numbers: ETA–9048 and ETA–9049.

Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 106.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: The Secretary has interpreted applicable sections of Federal law to require States to identify claimants who are most likely to exhaust their Unemployment Insurance benefits and to provide reemployment services to expedite their return to suitable work. The ETA 9048 report provides a count of the claimants who were referred to Worker Profiling and Reemployment Services (WPRS) and a count of those who completed the services. A second report (ETA 9049) provides the subsequent collection of wage records which is a useful management tool for monitoring the success of the WPRS program in the State. For additional information, see related notice published in the **Federal Register** on December 16, 2009 (74 FR 66679).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–4016 Filed 2–25–10; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–023)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Brenda Maxwell, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brenda Maxwell, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1824, *Brenda.Maxwell@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The new NASA Explorer Schools (NES) model will focus implementing a "best of" collection of NASA content and curricular support resources. Eight to ten core products or opportunities will be available, representing all NASA Mission Directorates and current NASA missions in Earth and Space Science, mathematics, chemistry, and physics.

II. Method of Collection

The data collection uses web-based surveys, telephone interviews and in person focus groups.

III. Data

Title: NASA Explorer Schools (NES)

OMB Number: 2700-xxxx.

Type of review: New Collection.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 720.

Responses Per Respondent: 1.

Annual Responses: 720.

Hours Per Request: 0.25–1 hour.

Annual Burden Hours: 1935.

Frequency of Report: Annually.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Brenda Maxwell,

NASA PRA Officer.

[FR Doc. 2010–3895 Filed 2–25–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–021)]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Tuesday, March 16, 2010, 8:30 a.m. to 4:30 p.m., and Wednesday, March 17, 8:30 a.m. to 1:30 p.m. EST.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 8R40 (March 16, 2010) and Room 3H46 (March 17, 2010), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Earth Science Division Budget Update

—Science Mission Directorate Science Plan Update

—Climate Initiative Plan

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: February 17, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–3899 Filed 2–25–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–022)]

National Environmental Policy Act; Wallops Flight Facility Shoreline Restoration and Infrastructure Protection Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the Draft Programmatic Environmental Impact Statement (PEIS) for the Wallops Flight Facility (WFF) Shoreline Restoration and Infrastructure Protection Program (SRIPP).

SUMMARY: Pursuant to the National Environmental Policy Act, as amended, (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA's NEPA policy and procedures (14 CFR part 1216, subpart 1216.3), NASA has prepared and issued the Draft PEIS for the proposed SRIPP at WFF. The U.S. Department of the Interior, Minerals Management Service (MMS), and the U.S. Army Corps of Engineers have served as Cooperating Agencies in preparing the Draft PEIS.

NASA is proposing to implement a fifty-year design life storm damage reduction project at its WFF on Wallops Island, Virginia. The project would be implemented to reduce the potential for storm-induced physical damage to the over $1 billion in Federal and State assets on Wallops Island. The Draft PEIS examines in detail three project alternatives, each expected to provide substantial damage reduction from storms with intensities ranging up to approximately the 100-year return interval storm. Although some reduction in flooding can be expected under each alternative, the primary purpose of the proposal is not flood protection, rather it is moving destructive wave energy further away from the Wallops Island shoreline and the infrastructure behind it.

Alternative One, NASA's preferred alternative, would include extending the existing Wallops Island seawall up to a maximum of 1,400 meters (m) (4,600 feet [ft]) south and placing an estimated 2.5 million cubic meters (MCM) (3.2 million cubic yards [MCY]) of sand along the shoreline. Alternative Two would include the same seawall extension as Alternative One; however the sand placed along the shoreline would be less, at approximately 2.2 MCM (2.9 MCY). Under this alternative, NASA would also construct a groin perpendicular to the shoreline at the south end of the project site to limit the volume of nearshore sand being transported from the restored Wallops Island beach to the south. Alternative Three would entail the same seawall extension as in Alternatives One and Two; however, sand placement would be the least of the Alternatives at approximately 2.1 MCM (2.8 MCY). NASA would construct a single detached breakwater parallel to the shoreline at the south end of the project site to retain sand under Alternative Three. Under all three project alternatives, NASA would obtain the sand required for its initial beach nourishment from an unnamed shoal (referred to as Shoal A) located in Federal waters approximately 23 kilometers (km) (14 miles [mi]) east of

Wallops Island. Sand for an expected nine future renourishment cycles could come from either Shoal A or a second offshore shoal in Federal waters referred to as Shoal B, approximately 31 km (19 mi) east of the project site. Additionally, NASA is considering transporting sand that accumulates on north Wallops Island to supplement its future renourishment needs (commonly known as "backpassing"). It is estimated that up to half of the required renourishment volumes could be obtained from "backpassing." The No Action Alternative is to not implement the WFF SRIPP, but to continue making emergency repairs to the Wallops Island shoreline, as necessary.

NASA will hold a public comment meeting as part of the review of the Draft PEIS. The public meeting location and date as currently scheduled are provided under **SUPPLEMENTARY INFORMATION** below.

DATES: Interested parties are invited to submit comments on environmental issues and concerns, preferably in writing, on or before April 15, 2010, or 45 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's Notice of Availability of the Draft SRIPP PEIS, whichever is later.

ADDRESSES: Comments submitted by mail should be addressed to 250/NEPA Manager, WFF Shoreline Restoration and Infrastructure Protection Program, NASA Goddard Space Flight Center's Wallops Flight Facility, Wallops Island, Virginia 23337. Comments may be submitted via e-mail to *wff_shoreline_eis@majordomo.gsfc.nasa.gov.*

The Draft PEIS may be reviewed at the following locations:

(a) Chincoteague Island Library, 4077 Main Street, Chincoteague, Virginia 23336 (757–336–3460).

(b) Eastern Shore Public Library, 23610 Front Street, Accomac, Virginia 23301 (757–787–3400).

(c) Northampton Free Library, 7401 Railroad Avenue, Nassawadox, Virginia 23413 (757–442–2839).

(d) NASA Wallops Flight Facility Technical Library, Building E–105, Wallops Island, Virginia 23337 (757–824–1065).

(e) NASA Headquarters Library, Room 1J20, 300 E Street, SW., Washington, DC 20546–0001 (202–358–0168).

A limited number of hard copies of the Draft PEIS are available, on a first request basis, by contacting 250/NEPA Manager, NASA WFF, Environmental Office, Code 250.W, Wallops Island, Virginia 23337; or electronic mail at *wff_shoreline_eis@majordomo.gsfc.nasa.gov.* The Draft SRIPP PEIS is available on the Internet in Adobe® portable document format at *http://sites.wff.nasa.gov/code250/shoreline_eis.html.* The Notice of Intent to prepare the Draft SRIPP PEIS, issued on March 24, 2009, is also available on the Internet at the same Web site address.

FOR FURTHER INFORMATION CONTACT: Additional information on the WFF SRIPP can be obtained by addressing an e-mail to *wff_shoreline_eis@majordomo.gsfc.nasa.gov* or by mailing to 250/NEPA Manager, WFF Shoreline Restoration and Infrastructure Protection Program, NASA Goddard Space Flight Center's Wallops Flight Facility, Wallops Island, Virginia 23337. Additional information about the WFF SRIPP and NASA's NEPA process may be found on the Internet at *http://sites.wff.nasa.gov/code250/shoreline_eis.html.*

SUPPLEMENTARY INFORMATION: The Draft PEIS addresses the environmental impacts associated with NASA's proposed implementation of a 50-year design life storm damage reduction program along the shoreline of Wallops Island. The environmental impacts of principal concern are those that could result from dredging sand from offshore shoals and from the construction of a sand retention structure at the south end of the project site.

The three action alternatives considered in the Draft PEIS would all provide the facilities on Wallops Island equal levels of storm damage reduction for the duration of the program. Each alternative would involve the establishment of an approximately 34 m (110 ft) wide dry beach along approximately 6,000 m (19,700 ft) of the Wallops Island shoreline to serve as a primary line of defense from destructive storm waves. In addition to the beach, a sand dune would be created to cover the ocean side of the existing and proposed seawall. The remaining portion of the fill would be placed underwater and would gradually slope to the east. It is expected that the fill alone would provide considerable damage reduction from a 30-year return interval storm. With the fill combined with the rock seawall, the project would provide substantial infrastructure damage reduction from up to an approximately 100-year return interval storm. A rock sand retention structure (a groin or breakwater) is included under Alternatives Two and Three, respectively, to slow the transport of sand from the project site and potentially reduce the amount of beach fill needed both initially and throughout the lifecycle of the project.

All three alternatives would involve an initial construction phase and future follow-on maintenance cycles. The initial construction phase would likely include three distinct elements spanning approximately three fiscal years:

Year 1 Activities—The existing rock seawall would be extended a minimum of 460 m (1,500 ft) up to a maximum of 1,400 m (4,600 ft) south. The actual length of seawall extension constructed in Year 1 would be based upon available funding; however, additional lengthening (up to the 1,400 m [4,600 ft] total length) would be accomplished in future years as funding becomes available.

Year 2 Activities—Approximately one-third of the sand necessary for beach nourishment would be placed along the central areas of the Wallops Island shoreline that are currently reinforced by the rock seawall. The objective for this first fill cycle would be to restore the deficit of sand caused by the continual erosion at the base of the seawall. Sand placement would likely involve removing sand from the shoal by hopper dredges and pumping the material onto the beach.

Year 3 Activities—The remaining sand needed to complete the beach nourishment would be placed along the Wallops Island shoreline. Additionally, under Alternatives Two and Three, the sand retention structure would be constructed.

Subsequent beach renourishment cycles would vary throughout the lifecycle of the proposed project. Factors dictating the frequency and magnitude of such actions would include project performance as revealed through ongoing monitoring, storm severity and frequency, and availability of funding. Given the dynamic nature of the ocean environment, and that exact locations and magnitude of renourishment cycles may fluctuate, additional NEPA documentation for renourishment actions may be prepared in the future, as appropriate. For each of the action alternatives considered in the PEIS, the renourishment cycle is anticipated to be every five years, totaling nine cycles over the fifty-year design life of the project.

In addition to the construction activities outlined for each of the three action alternatives, NASA would implement a rigorous monitoring program that would begin with construction in Year 1 and continue throughout the project. The intent of the monitoring program is to measure the performance of the project, and through adaptive management, make informed decisions regarding the need for

renourishment, sand retention structures, and future storm damage reduction measures.

NASA plans to hold a public meeting to discuss the project and to solicit comments on the Draft SRIPP PEIS. The public meeting is currently scheduled for:

Tuesday, March 16, 2010, at the WFF Visitor Information Center, Route 175, Wallops Island, Virginia, 6 p.m.–9 p.m.

Written public input on environmental issues and concerns associated with the WFF SRIPP are hereby requested.

Olga M. Dominguez,

Assistant Administrator for Infrastructure.

[FR Doc. 2010–3896 Filed 2–25–10; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation invites the general public and other Federal agencies to take this opportunity to comment on this information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 74 FR 68637 and one comment was received regarding the materials provided. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

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.

SUPPLEMENTARY INFORMATION:

Comment: On December 28, 2009, we published in the **Federal Register** (74 FR 68637) a 60-day notice of our intent to request reinstatement of this information collection authority from OMB. One comment came from Jean Public of Florham Park, NJ, via e-mail on January 1, 2010. The commenter requested a list of the surveys described in the notice.

Response: NSF responded that this information is publicly available via two sources: *http://www.nsf.gov/statistics/* and *http://www.nsf.gov/statistics/seind10/*. NSF believes that because the comment does not contain suggestions for altering the collection of information for which NSF is seeking OMB approval, NSF is proceeding with the clearance request.

Title: Generic Clearance of the Science Resources Statistics Survey Improvement Projects.

OMB Approval Number: 3145–0174.

Abstract. Generic Clearance of the Science Resources Statistics Survey Improvement Projects. The National Science Foundation's Division of Science Resources Statistics (NSF/SRS) needs to collect timely data on constant changes in the science and technology sector and to provide the most complete and accurate information possible to policy makers in Congress and throughout government and academia. NSF/SRS conducts many surveys to obtain the data for these purposes. The Generic Clearance will be used to ensure that the highest quality data are obtained from these surveys. State-of-the-art methodology will be used to develop, evaluate, and test questionnaires and survey concepts as well as to improve survey methodology. This may include field or pilot tests of questions for future large-scale surveys, as needed.

Expected Respondents. The respondents will be from industry, academia, nonprofit organizations, members of the public, and State, local, and federal governments. Respondents will be either individuals or institutions, depending upon the survey under investigation. Qualitative procedures will generally be conducted in person or over the phone, but quantitative procedures may be conducted using mail, Web, e-mail, or phone modes, depending on the topic under investigation. Up to 19,150 respondents will be contacted across all survey improvement projects. No respondent will be contacted more than twice in one year under this generic clearance. Every effort will be made to use technology to limit the burden on respondents from small entities.

Both qualitative and quantitative methods will be used to improve NSF's current data collection instruments and processes and to reduce respondent burden, as well as to develop new surveys. Qualitative methods include, but are not limited to, expert review; exploratory, cognitive, and usability interviews; focus groups; and respondent debriefings. Cognitive and usability interviews may include the use of scenarios, paraphrasing, card sorts, vignette classifications, and rating tasks. Quantitative methods include, but are not limited to, telephone surveys, behavior coding, split panel tests, and field tests.

Information being collected is not considered sensitive. In general, assurances of data confidentiality will not be provided to respondents in the pretests. Instead, respondents have the option of requesting that any and all data they provide be kept confidential.

Use of the Information. The purpose of these studies is to use the latest and most appropriate methodology to improve NSF surveys. The data will be used internally to improve NSF surveys. Methodological findings may be presented externally in technical papers at conferences, published in the proceedings of conferences, or in journals. Improved NSF surveys will help policy makers in decisions on research and development funding, graduate education, scientific and technical workforce, regulations, and reporting guidelines, as well as contributing to reduced survey costs.

Burden on the Public. NSF estimates that a total reporting and recordkeeping burden of 14,280 hours will result from activities to improve its surveys. The calculation is:

Potential survey name	Number of respondents [1]	Hours
Graduate Student Survey	[2] 1,500	2,500
SESTAT Surveys	10,000	5,000
Postdoc Project	2,000	2,500
New and Redesigned R&D Surveys:		
Higher Education R&D	400	1,200
Government R&D	60	180
Nonprofit R&D	100	300
Business R&D	50	150
Microbusiness R&D	150	450
Survey of Scientific & Engineering Facilities	300	300
Public Understanding of S&E Surveys	200	50
Survey of Earned Doctorates	700	450
Additional surveys not specified	1,200	1,200
Total	16,660	14,280

[1] Number of respondents listed for any individual survey may represent several methodological improvement projects.
[2] This number refers to the science, engineering, and health-related departments within the academic institutions of the United States (not the academic institutions themselves).

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 23, 2010.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–3977 Filed 2–25–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation Proposal/Award Information—Grant Proposal Guide

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by April 27, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: "National Sciences Foundation Proposal/Award Information-Grant Proposal Guide".

OMB Approval Number: 3145–0058.

Expiration Date of Approval: August 31, 2004.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81–507) set forth NSF's mission and purpose:

> "To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. * * *"

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

Over the years, NSF's statutory authority has been modified in a number of significant ways. In 1968, authority to support applied research was added to the Organic Act. In 1980, The Science and Engineering Equal Opportunities Act gave NSF standing authority to support activities to improve the participation of women and minorities in science and engineering.

Another major change occurred in 1986, when engineering was accorded

equal status with science in the Organic Act. NSF has always dedicated itself to providing the leadership and vision needed to keep the words and ideas embedded in its mission statement fresh and up-to-date. Even in today's rapidly changing environment, NSF's core purpose resonates clearly in everything it does: Promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last four decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 40,000 proposals annually for new projects, and makes approximately 10,500 new awards. Support is made primarily through grants, contracts, and other agreements awarded to more than 2,000 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on evaluations of proposal merit submitted to the Foundation (proposal review is cleared under OMB Control No. 3145–0060).

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 40,000 proposals are expected during the course of one year for a total of 4,800,000 public burden hours annually.

Dated: February 23, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–4000 Filed 2–25–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Dates: March 18, 2010, 8:30 a.m.–5 p.m. March 19, 2010, 8:30 a.m.–1 p.m.

Place: Stafford I, Room 375, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Melissa Lane, National Science Foundation, Suite 705, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda

March 18, 2010

- Update on recent NSF environmental activities.
- Discussion of Approaches to Managing Interdisciplinary Research at NSF.
- Meeting with the Director.

March 19, 2010

- Discussion on Expanding NSF Research Portfolio for Science, Engineering and Education for Sustainability (SEES).
- Discussion of NSF FY 2010 Climate Research Solicitations.

Dated: February 23, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–3972 Filed 2–25–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; 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: Site visit review of the Materials Research Science and Engineering Center (MRSEC) at Colorado School of Mines by NSF Division of Materials Research (DMR) #1203.

Dates and Times: Thursday, April 22, 2010; 8:30 a.m.– 4 p.m.

Place: Colorado School of Mines, Golden, CO.

Type of Meeting: Part-open.

Contact Person: Dr. Charles Ying, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–8428.

Purpose of Meeting: To provide advice and recommendations concerning progress of the MRSEC at the Colorado School of Mines.

Agenda: Thursday, April 22, 2010

8:30 a.m.–2 p.m. Open—Review of the Colorado School of Mines MRSEC.

2 p.m.–4 p.m. Closed—Executive Session.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 23, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–3976 Filed 2–25–10; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

Submission for OMB Review; Comment Request for Review of a Collection of Information; Application for Relocation Benefits Under the Navajo and Hopi Indian Settlement Act (as Amended)

AGENCY: Office of Navajo and Hopi Indian Relocation ("ONHIR").

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)), ONHIR has submitted the following collection of information to the Office of Management and Budget for review and clearance: Application for Relocation Benefits under the Navajo and Hopi Indian Settlement Act (as amended).

DATES: Written comments must be submitted within 30 days of the publication date of this notice.

ADDRESS FOR COMMENTS: Direct all comments in writing to Nathan Frey, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, or at *OIRA_Submission@OMB.EOP.GOV.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to ONHIR's Paralegal Specialist Karen Glanz, at 928–779–2721 x 152, or at *eligibility@onhir.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Submitting an Application for Relocation Benefits ("Application") ONHIR Form MM#1110.9 (for Navajo individuals) or ONHIR Form MM#1110.10 (for Hopi individuals) to ONHIR is required for all persons seeking such benefits under the Navajo-Hopi Settlement Act, as amended, Pub. L. 93–531 *et al.,* 25 U.S.C. 640d et seq. ("the Act") .The eligibility requirements are detailed in 25 CFR part 700 and summarized in ONHIR Policy Memorandum No. 14 (7/27/2009 Revision), a copy of which may be requested from ONHIR or found on the ONHIR Web site (*http://onhir.gov,* "ONHIR Eligibility" tab.) The information is used to determine whether an applicant is eligible for Relocation Benefits.

II. Method of Collection:

Navajo individuals interested in applying for relocation benefits must submit a completed, signed form MM#1110.9, Application for Relocation Benefits (Navajo), to the Office of Navajo and Hopi Indian Relocation. Hopi individuals interested in applying for relocation benefits must submit a completed, signed form MM#1110.10, Application for Relocation Benefits (Hopi), to the Office of Navajo and Hopi Indian Relocation. Documents (Applications) must be signed and executed subject to the penalties for perjury. Signed documents may be hand delivered, mailed (USPS or private delivery service [FedEx, UPS]); faxed or scanned and then e-mailed.

III. Data

Application for Relocation Benefits

Form Numbers: MM # 1110.9 and MM1110.10.

Type of Review: Regular submission.

Affected Public: Enrolled members of the Navajo Nation or Hopi Tribe contemplating filing Applications for Relocation Benefits and members of their families.

Estimated Number of Respondents: 500.

Proposed Frequency of Responses: One-time only.

The time needed to complete and file an Application for Relocation Benefits will vary depending on individual circumstances. As provided in 5 CFR 1320.3(b)(2), the information sought on the Application is information that Applicants can be assumed to have gathered and maintained in the normal course of their lives such as their age, marital status, children and employment and residence history. Consequently it is the Agency's position that the burden involved in completion of an Application would be limited to the time needed to read the Application; fill in the Application form itself and then transmit it to the Agency. The estimated average time is thirty minutes.

(1) Reviewing instructions—10 minutes.

(2) Acquiring, installing, and utilizing technology and systems—0.

(3) Adjusting the existing ways to comply with any previously applicable instructions and requirements—0.

(4) Searching data sources—5 minutes.

(5) Completing and reviewing the collection of information (form)—10 minutes.

(6) Transmitting, or otherwise disclosing the information—5 minutes.

Dated: February 1, 2010.

Lawrence A. Ruzow,

Alternate Certifying Officer-Attorney, ONHIR.

[FR Doc. 2010–3979 Filed 2–25–10; 8:45 am]

BILLING CODE 7560–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0072]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–3040, "Design, Construction, and Inspection of Embankment Retention Systems at Fuel Cycle Facilities."

FOR FURTHER INFORMATION CONTACT: Tyrone Naquin, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 492–3187 or e-mail *Tyrone.Naquin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG) is temporarily identified by its task number, DG–3040, which should be mentioned in all related correspondence. DG–3040 is proposed Revision 1 of Regulatory Guide 3.13, dated October 1973.

This guide describes some engineering practices and methods generally considered by the NRC to be satisfactory for the design, construction, and inspection of embankment retention systems used for retaining solid and liquid effluent from nuclear fuel cycle facility operations other than mining and milling. These practices and methods are the result of NRC review and action on a number of specific cases, and they reflect the latest general engineering approaches that are acceptable to the NRC staff. If future information results in alternative methods, the NRC staff will review such methods to determine their acceptability.

II. Further Information

The NRC staff is soliciting comments on DG–3040. Comments may be accompanied by relevant information or supporting data and should mention DG–3040 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0072 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

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

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search

for documents filed under Docket ID NRC–2010–0072. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

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

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

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* DG–3040 is available electronically under ADAMS Accession Number ML092320052. In addition, electronic copies of DG–3040 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.*

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0072.

Comments would be most helpful if received by April 30, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 18th day of February, 2010.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–3971 Filed 2–25–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SPECIAL COUNSEL

Agency Information Collection Activities; Request for Comment

AGENCY: Office of Special Counsel.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and implementing regulations at 5 CFR part 1320, the U.S. Office of Special Counsel (OSC), plans to request approval from the Office of Management and Budget (OMB) for use of a previously approved information collection consisting of a customer survey form.

OSC is required by law to conduct an annual survey of those who seek its assistance. The information collection is used to carry out that mandate. The current OMB approval for this collection of information expired on March 31, 2009. Current and former Federal employees, employee representatives, other Federal agencies, state and local government employees, and the general public are invited to comment on this information collection for the second time.

Comments are invited on:

(a) whether the proposed collection of information is necessary for the proper performance of OSC functions, including whether the information will have practical utility;

(b) the accuracy of OSC's estimate of the burden of the proposed collections of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments should be received by March 22, 2010.

ADDRESSES: Roderick Anderson, CFO, U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 218, Washington, DC 20036–4505.

FOR FURTHER INFORMATION CONTACT: Roderick Anderson, Chief Financial Officer, at the address shown above; by facsimile at (202) 254-3715. The survey form for the collection of information is available for review by calling OSC, or on OSC's Web site, at http://www.osc.gov/readingroom.htm.

SUPPLEMENTARY INFORMATION: OSC is an independent agency responsible for, among other things, (1) investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b), protection of whistleblowers, and certain other illegal employment practices under titles 5 and 38 of the U.S. Code, affecting current or former Federal employees or applicants for employment, and covered state and local government employees; and (2) the interpretation and enforcement of Hatch Act provisions on political activity in chapters 15 and 73 of title 5 of the U.S. Code. OSC is required to conduct an annual survey of individuals who seek its assistance. Section 13 of Public Law 103-424 (1994), codified at 5 U.S.C. 1212 note, states, in part: "[T]he survey shall--(1) determine if the individual seeking assistance was fully apprised of their rights; (2) determine whether the individual was successful either at the Office of Special Counsel or the Merit Systems Protection Board; and (3) determine if the individual, whether successful or not, was satisfied with the treatment received from the Office of Special Counsel." The same section also provides that survey results are to be published in OSC's annual report to Congress. Copies of prior years' annual reports are available on OSC's Web site, at http://www.osc.gov/RR_AnnualReportsToCongress.htm or by calling OSC at (202) 254-3600.

OSC has enhanced the effectiveness of this survey by having revised the questions asked, and continues to use the online survey, due to its effectiveness in reducing response time.

Title of Collection: OSC Survey--

Prohibited Personnel Practice or Other Prohibited Activity (Agency Form Number OSC-48a; OMB Control Number 3255-0003)

Type of Information Collection Request: Approval of a previously approved collection of information that expired on March 31, 2009, with revisions.

Affected public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives, and the general public.Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 250.

Frequency: Annual.

Estimated Average Amount of Time for a Person to Respond: 12 minutes.

Estimated Annual Burden: 109 hours.

Abstract: This form is used to survey current and former Federal employees and applicants for Federal employment who have submitted allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, and whose matter has been closed or otherwise resolved during the prior fiscal year, on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at the OSC or at the Merit Systems Protection Board; and (3) satisfied with the treatment received at the OSC.

Dated: February 19, 2010.

William E. Reukauf,

Associate Special Counsel.

[FR Doc. 2010–3987 Filed 2–25–10; 8:45 am]

BILLING CODE 7405–01–S

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Board of Directors Meeting

TIME AND DATE: Wednesday, March 31, 2010, 9:30 a.m. (OPEN Portion); 9:45 a.m. (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting OPEN to the Public from 9:30 a.m. to 9:45 a.m. Closed portion will commence at 9:45 a.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of November 19, 2009 Minutes (Open Session).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 9:45 a.m.)

1. Finance Project—Turkey.
2. Finance Project—Ghana.
3. Finance Project—Panama.
4. Finance Project—Russia.
5. Finance Project—Jordan.
6. Finance Project—Afghanistan.
7. Finance Project—Afghanistan.
8. Finance Project—Iraq.
9. Finance Project—OPIC-eligible countries in Africa, Europe, and Newly Independent States.
10. Finance Project—Africa.
11. Finance Project—India and other OPIC-eligible Asian countries.
12. Finance Project—Nigeria, Ghana, Kenya, Angola, South Africa, Ivory Coast, Tanzania and Uganda.
13. Finance Project—OPIC-eligible countries in Asia.
14. Approval of November 19, 2009 Minutes (Closed Session).
15. Pending Major Projects.
16. Reports.

Written summaries of the projects to be presented will be posted on OPIC's Web site on or about February 24, 2010.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

February 24, 2010.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 2010–4103 Filed 2–24–10; 11:15 am]

BILLING CODE 3210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Notice of Meeting

TIME AND DATE: 3 p.m., Wednesday, March 17, 2010.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing open to the Public at 3 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES:

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Wednesday, March 10, 2010. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Wednesday, March 10, 2010. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the March 31, 2010 Board meeting will be posted on OPIC's web site on or about Wednesday, February 24, 2010.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *connie.downs@opic.gov*.

Dated: February 24, 2010.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2010–4106 Filed 2–24–10; 11:15 am]

BILLING CODE 3210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Notice of Meeting

TIME AND DATE: March 17, 2010, 2 p.m.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing OPEN to the Public at 2 p.m.

PURPOSE: Annual Public Hearing to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Wednesday, March 10, 2010. The notice must include the individual's name, organization, address and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to speak an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Wednesday, March 10, 2010. Such statements must be typewritten, double-spaced and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and will be made

available, upon written request, to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via e-mail at *connie.downs@opic.gov,* or via facsimile at (202) 408–0136.

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency that provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for environmentally sound projects that confer positive developmental benefits upon the project country while creating employment in the U.S. OPIC is required by section 231A(c) of the Foreign Assistance Act of 1961, as amended (the "Act") to hold at least one public hearing each year.

Dated: February 24, 2010.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2010–4105 Filed 2–24–10; 11:15 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2010-25; Order No. 411]

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 (GEPS 2) contract to the Competitive Product List. This notice addresses procedural steps associated with this filing.

DATES: Comments are due: March 2, 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: *Regulatory History,* 74 FR 49823 (Sept. 29, 2009).

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On February 19, 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 materials under seal along with an application for non-public treatment as Attachment 1, and attached a redacted copy of the contract and a certified statement required by 39 CFR 3015.5(c)(2) to the Notice as Attachments 3 and 4, respectively. *Id.* at 1-2. The term of the contract is one 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 3-7.

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 6.

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.* at 7.

II. Notice of Filing

The Commission establishes Docket No. CP2010-25 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 March 2, 2010. The public portions of these filings can be accessed via the Commission's Web site (http://www.prc.gov).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2010-25 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than March 2, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. 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. 2010–3906 Filed 2–25–10; 8:45 am]

BILLING CODE 7710–FW–S

[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 19, 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).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12049 and #12050]

Maryland Disaster #MD–00011

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major

disaster for Public Assistance Only for the State of Maryland (FEMA–1875–DR), dated 02/19/2010.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 12/18/2009 through 12/20/2009.

DATES: *Effective Date:* 02/19/2010.

Physical Loan Application Deadline Date: 04/20/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 11/19/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/19/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Baltimore, Caroline, Cecil, Harford, Howard, Kent, Montgomery, Queen Anne's.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12049B and for economic injury is 12050B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cynthia G. Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–3955 Filed 2–25–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12040 and #12041]

Virginia Disaster #VA–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA–1874–DR), dated 02/16/2010.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 12/18/2009 through 12/20/2009.

Effective Date: 02/16/2010.

Physical Loan Application Deadline Date: 04/19/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 11/16/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/16/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Albemarle, Alexandria City, Alleghany, Amherst, Arlington, Augusta, Bath, Bedford, Botetourt, Buchanan, Caroline, Charlottesville City, Culpeper, Dickenson, Fairfax, Fairfax City, Falls Church City, Grayson, Greene, Hanover, Highland, Lee, Louisa, Madison, Manassas City, Manassas Park City, Montgomery, Nelson, Norton City, Orange, Page, Prince William, Rockbridge, Russell, Scott, Spotsylvania, Stafford, Staunton City, Waynesboro City, Wise.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12040B and for economic injury is 12041B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–3956 Filed 2–25–10; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology; Notice of Meeting: Partially Closed Meeting of the President's Council of Advisors on Science and Technology

ACTION: Public notice.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App.

DATES: March 12, 2010.

ADDRESSES: The meeting will be held at the National Academy of Sciences building, 2100 C Street, NW., Lecture Room, Washington, DC.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on March 12, 2010 from 10 a.m.–3 p.m. with a lunch break from 12 p.m.–2 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear presentations from several speakers who will address the issues of agriculture research and food security. PCAST members will also discuss a report they are developing that reviews the National Nanotechnology Initiative. Additional information and the agenda will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately 1 hour with the President on March 12, 2010, which must take place in the White House for the President's scheduling convenience and

to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1). The precise date and time of this potential meeting has not yet been determined.

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on March 12, 2010 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast*. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the March meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast*, no later than 5 p.m. Eastern Time on Friday, March 5, 2010. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted until the date of the meeting, written comments should be submitted to PCAST at least two weeks prior to each meeting date so that the comments may be made available to the PCAST members prior to the meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled "Connect with PCAST."

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast*. A live video webcast and an archive of the webcast after the event will be available at *http://whitehouse.gov/ostp/pcast*. The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Deborah D. Stine, PCAST Executive Director, at *dstine@ostp.eop.gov*, (202) 456–6006. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology is an advisory group of the nation's leading scientists and engineers who directly advise the President and the Executive Office of the President. *See* Executive Order 13226. PCAST makes policy recommendations in the many areas where understanding of science, technology, and innovation is key to strengthening our economy and forming policy that works for the American people. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; Dr. Harold E. Varmus, President, Memorial Sloan-Kettering Cancer Center; and Dr. Eric S. Lander, President and Director, Broad Institute of MIT and Harvard.

Meeting Accomodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Stine at least ten business days prior to the meeting so that appropriate arrangements can be made.

M. David Hodge,

Operations Manager.

[FR Doc. 2010–3607 Filed 2–25–10; 8:45 am]

BILLING CODE P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Science and Technology Council, Committee on Technology Capstone Workshop Risk Management Methods & Ethical, Legal, and Societal Implications of Nanotechnology: Public Meeting

ACTION: Notice of public meeting.

SUMMARY: The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC), will hold a workshop on March 30–31, 2010, to provide an open forum to discuss the state-of-the-art of the science related to environmental, health, and safety aspects of nanomaterials in two areas: Risk Management Methods and Ethical, Legal, and Societal Implications (ELSI) of Nanotechnology. Risk Management Methods is one of the five environmental, health, and safety research categories identified in the NSET Subcommittee document *Strategy for Nanotechnology-Related Environmental, Health, and Safety Research* (*http://www.nano.gov/NNI_EHS_Research_Strategy.pdf*), which was released February 14, 2008.

DATES: The public meeting will be held on Tuesday, March 30, 2010 from 8 a.m. until 5 p.m. and on Wednesday, March 31, 2010 from 8 a.m. until 4 p.m.

ADDRESSES: The public meeting will be held at the Holiday Inn Rosslyn-Key Bridge, 1900 N. Fort Myer Drive, Arlington, VA 22209 (Metro stop: Rosslyn on the Orange and Blue lines). For directions, please see *http://www.holidayinn.com*.

Registration: Due to space limitations, pre-registration for the workshop is required. People interested in attending the workshop should register online at *http://www.nano.gov/html/meetings/capstone/register.html*. Written notices of participation by e-mail should be sent to *capstone@nnco.nano.gov.*

Written notices may be mailed to the Capstone Workshop, c/o NNCO, 4201 Wilson Blvd., Stafford II, Suite 405, Arlington, VA 22230. Registration is on a first-come, first-served basis until the location space limits are reached. Otherwise registration will close on March 25, 2010 at 4 p.m. EDT.

Those interested in presenting 3–5 minutes of public comments at the meeting should also register at *http://www.nano.gov/html/meetings/capstone/register.html*. Written or electronic comments should be submitted by e-mail to *capstone@nnco.nano.gov* until April 30, 2010.

Information about the meeting, including the agenda, is posted at *http://www.nano.gov*.

The main sessions will be Webcast. Please see *http://www.nano.gov* for more information.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Diana Petreski, telephone (703) 292–8626 or Liesl Heeter, telephone (703) 292–4533, National

Nanotechnology Coordination Office. E-mail: *capstone@nnco.nano.gov*.

M. David Hodge,

Operations Manager.

[FR Doc. 2010–4037 Filed 2–25–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61550; File No. SR–CBOE–2010–017]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule To Increase the Maker Rebate for Transactions in Securities Priced Less Than $1 to 0.25% of the Dollar Value of the Transaction

February 19, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule for the CBOE Stock Exchange ("CBSX") to increase the Maker rebate for transactions in securities priced less than $1 to 0.25% of the dollar value of the transaction. 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, at the Commission's Web site (*http://www.sec.gov*), and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to amend its Fees Schedule to increase the Maker rebate for transactions in securities priced less than $1 to 0.25% of the dollar value of the transaction. This increase would serve to attract trading activity to CBSX and match the rebate offered by other stock exchanges, including NASDAQ OMX BX.[3]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")[4] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, increasing the Maker rebate encourages investment and trading activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] 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–2010–017 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–2010–017. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NASDAQ OMX BX Price List—Trading & Connectivity.

[4] 15 U.S.C. 78s(b)(1).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

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 Number SR–CBOE–2010–017 and should be submitted on or before March 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3945 Filed 2–25–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61549; File No. SR–NYSE–2010–09]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Time Allowed To Temporarily Suspend Certain NYSE Requirements Relating to the Closing of Securities on the Exchange Which Currently Operates as a Pilot Pursuant to Former NYSE Rule 123C(8)(a)(1) Currently NYSE Rule 123C(9)(a)(1)

February 19, 2010.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 12, 2010,[4] New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the time allowed to temporarily suspend certain NYSE requirements relating to the closing of securities on the Exchange which currently operates as a pilot pursuant to former NYSE Rule 123C(8)(a)(1) currently NYSE Rule 123C(9)(a)(1). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 123C(9)(a)(1), formerly NYSE Rule 123C(8)(a)(1), allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The rule has operated on a pilot basis since April 2009 ("Extreme Order Imbalance Pilot" or Pilot).[5] Through this filing, [sic] proposes to temporarily extend the time allowed to temporarily suspend certain NYSE requirements relating to the closing of securities on the Exchange which currently operates as a pilot pursuant to 123C(9)(a)(1).

Background

Pursuant to NYSE Rule 123C(9)(a)(1), the Exchange may suspend NYSE Rules 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.[6]

The provisions of NYSE Rule 123C(9)(a)(1) operate as the Extreme Order Imbalance Pilot. The Exchange invokes NYSE Rule 123C(9)(a)(1) to attract offsetting interest in those rare circumstances where there exists such a large imbalance at the close that a DMM is unable to close the security without significantly dislocating the price. Further, pursuant to NYSE Rule 123C(9)(ii) the time to receive such off-setting interest must not be later than 4:30 p.m. (or 30 minutes after the scheduled close in the case of an earlier close).

Proposal To Extend the Time To Receive Off-Setting Interest in Berkshire Hathaway A Security on February 12, 2010

On February 12, 2009, significant corporate actions in Berkshire Hathaway Class A and B securities significantly increased the trading volume in those securities. It was determined based on the fact that there is a relation between the price of the two securities and the fact that there was significantly greater liquidity in the Class B shares than the Class A shares that the most efficient manner to effect the close of trading in those securities was to effect the closing transaction in Berkshire Hathaway Class B securities first.

The significant volume resulted in [sic] Class B security closing transaction be [sic] completed at 4:19 p.m. Thereafter the DMM immediately assessed the shares eligible to be executed in the closing transaction for the Class A securities. At 4:27 p.m. when the imbalance was determined the Exchange sought off-setting interest; however, the remaining 3 minutes was not a sufficient amount of time to receive and effect the closing transaction in the Class A security.

As to effect a fair and orderly close, the closing transaction for the Class A security occurred after 4:30 p.m.[7]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange attempted to file this proposed rule change prior to the close of business on February 12, 2010, but experienced delays with the electronic filing system which caused this filing to be received after the close of business and to be assigned a filing date of February 16, 2010, the next business day. Because the delay was caused by technical issues, the Commission deems the official filing date of this proposed rule change to be February 12, 2010.

[5] *See* Securities Exchange Act Release No. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR–NYSE–2009–15).

[6] *See* NYSE Rule 123C(9)(a)(1).

[7] Specifically, the order acceptance cut-off time period designated by the Exchange was 4:35 p.m. Thereafter, once such offsetting interest from both on-Floor and off-Floor participants was received, the closing transaction for the Class A security was completed at approximately 4:41 p.m. *See* E-mail from Deanna G. W. Logan, Managing Director, NYSE Regulation, to David Liu, Assistant Director, *et al.,* Division of Trading and Markets, Commission, dated February 16, 2010.

(the "Act"),[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposal facilitates the fair and orderly execution of the closing transactions in an unusual market situation and thus ultimately served to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2010–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–09. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–09 and should be submitted on or before March 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3946 Filed 2–25–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61558; File No. SR–Phlx–2010–16]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Modification of Fees

February 22, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to: (i) Amend its Monthly Cap on equity options transaction fees; (ii) amend the calculation of the Monthly Cap; and (iii) amend the fee schedule to reflect current appeal fees and make other technical modifications.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after February 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* on the Commission's Web site at *http://www.sec.gov,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to decrease the current Monthly Cap on equity options transactions from $900,000 to $750,000. The Monthly Cap is currently applicable to ROTs [3] and specialists.[4] The Exchange believes that by reducing the Monthly Cap, a greater number of members may benefit from the Monthly Cap and the Exchange will attract additional order flow.

Additionally, the Exchange proposes to amend the calculation of the Monthly Cap by aggregating the trading activity of separate ROTs and specialist member organizations if there is at least 75% common ownership between the member organizations as reflected on each member organizations' Form BD, Schedule A. The Exchange believes that this aggregation will create an additional incentive for members to transact more business on the Exchange.

The Exchange also proposes to memorialize certain appeal fees on its Fee Schedule. Currently the Exchange assesses a forum fee of $100 pursuant to Exchange Rule 60, Commentary (a).06.[5] This forum fee is assessed when a member contests a citation imposed pursuant to Rule 60 and the citation is upheld by the reviewing body. Additionally, the Exchange assesses a $250 fee on members seeking a review of an Options Exchange Official ruling pursuant to Exchange Rule 124.[6] Specifically, a member or member organization seeking the Referee's review of a Floor Official ruling concerning the nullification or adjustment of a trade would be assessed a fee of $250 for each Floor Official ruling they seek to have reviewed if the Referee upholds the Floor Official decision. No fee would be assessed to the member or member organization seeking a review if the Floor Official decision is overturned or modified. These fees do not currently appear on the Exchange's Fee Schedule. The Exchange proposes to list these fees, which are currently in effect, on the Fee Schedule in order to provide additional notice to members of these fees, which exist in the Exchange Rules.

The Exchange also proposes to make a technical modification to the Fee Schedule by moving the location of the Options Regulatory Fee on the Fee Schedule and creating a separate text box for that fee for purposes of clarity. The proposed changes to the Fee Schedule will be effective for transactions settling on or after February 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(4) of the Act [8] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that members will benefit from the reduced Monthly Cap and the proposed amendment to the calculation of the monthly cap in that a greater number of members will be able to qualify for the Monthly Cap and this would decrease fees to members. Also, the addition of the appeal fees should provide additional notice to members of these fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and paragraph (f)(2) of Rule 19b–4 [10] 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–Phlx–2010–16 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–Phlx–2010–16. 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

[3] A ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account.

[4] This monthly cap is not applicable to electronic trading in Standard and Poor's Depositary Receipts/SPDRs ("SPY"), PowerShares QQQ Trust ("QQQQ")®; Ishares Russell 2000 ("IWM") and Citigroup Inc. ("C").

[5] *See* Securities Exchange Act Release No. 61207 (December 18, 2009), 74 FR 69185 (December 30, 2009) (SR–Phlx–2009–84).

[6] *See* Securities Exchange Act Release No. 53548 (March 24, 2006), 71 FR 16389 (March 31, 2006) (SR–Phlx–2005–42).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

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 Number SR–Phlx–2010–16 and should be submitted on or before March 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3947 Filed 2–25–10; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0052]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE)—Match #1306

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that is scheduled to expire on March 19, 2010.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with OCSE.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 965–0201 or writing to the Deputy Commissioner for Budget, Finance and Management, 800 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Deputy Commissioner for Budget, Finance and Management as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register;**

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: February 18, 2010.

Michael G. Gallagher,

Deputy Commissioner for Budget, Finance and Management.

Notice of Computer Matching Program, SSA with HHS/ACF/OCSE

A. Participating Agencies

SSA and HHS/ACF/OCSE.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the terms, conditions, and safeguards under which OCSE will provide us with quarterly wage (QW) and unemployment insurance (UI) information from the National Directory of New Hires (NDNH) to allow us to determine eligibility of applicants for Low-Income subsidy assistance under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173). Under this agreement, we will use the QW and UI information to determine the eligibility of applicants for Low-Income subsidy assistance and existing Low-Income subsidy beneficiaries whose eligibility is being redetermined during periodic screening and routine reviews.

C. Authority for Conducting the Matching Program

The legal authority for this agreement is as follows:

1. Section 453(j)(4) of the Social Security Act (Act) (42 U.S.C. 653(j)(4)) provides authority for OCSE to provide us with information from NDNH;

2. Section 1631(f) of the Act (42 U.S.C. 1383) provides authority for Federal agencies to provide information to us, allowing us to determine "eligibility for or amount of benefits, or verifying other information with respect thereto;" and

3. Section 1860D–14(a)(3) of the Act (42 U.S.C. 1395w-114) provides authority for us to determine whether Part D eligible persons are eligible for prescription drug subsidy assistance under Section 1860D–14 of the Act.

D. Categories of Records and Persons Covered by the Matching Program

1. Specified Data Elements Used in the Match:

On the basis of certain identifying information extracted from our Medicare Database, SSA and OCSE will conduct a computerized comparison of the QW payment and UI benefit information in the NDNH maintained by OCSE in its Location and Collection (LCS) system of records.

2. Systems of Records:

OCSE will provide us with electronic files containing QW and UI data from its system of records, the LCS (ACF/OCSE,

09–90–0074). Pursuant to 5 U.S.C. 552a(b)(3), OCSE has established routine use to disclose the subject information.

We will match the OCSE information with electronic files from its system of records, Medicare Database (MDB, 60–0321)

E. Inclusive Dates of the Matching Program

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register,** whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2010–3901 Filed 2–25–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 6907; OMB Control Number 1405–0150]

30-Day Notice of Proposed Information Collection: DS 3072, Emergency Loan Application and Evacuation Documentation

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Emergency Loan Application and Evacuation Documentation.
- *OMB Control Number:* OMB Control Number 1405–0150.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS 3072.
- *Respondents:* U.S. Citizens applying for emergency loan assistance or evacuation processing.
- *Estimated Number of Respondents:* 1,176.
- *Estimated Number of Responses:* 1,176.
- *Average Hours per Response:* 10 minutes.
- *Total Estimated Burden:* 196 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from February 26, 2010.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Derek A Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520, who may be reached on (202) 736–9082 or at *ASKPRI@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions;
- Evaluate the accuracy of our estimate of the burden of the proposed collection; including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

The purpose of the DS–3072 is to process emergency loans for destitute citizens and to document the safe and efficient evacuation of private U.S. citizens, dependents and third country nationals from abroad. The information will be used to process the emergency loan, facilitate reception and resettlement assistance in the United States and for debt collection. Respondents are private U.S. citizens and their dependents abroad who are destitute and in need of repatriation to the United States; private U.S. citizens and their dependents abroad who are in need of emergency medical and dietary assistance who are unable to obtain such services otherwise; and private U.S. citizens abroad and their dependents and third country nationals who are in need of evacuation when their lives are endangered by war, civil unrest, or natural disaster.

Methodology

The Bureau of Consular Affairs will be posting this form on Department of State Web sites to give respondents the opportunity to fill the form out online or print out the form and fill it out manually and submit the form in person or by fax or mail.

Dated: January 29, 2009.

Mary Ellen Hickey,

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–4022 Filed 2–25–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6908]

Culturally Significant Objects Imported for Exhibition Determinations: "Vienna Circa 1780: An Imperial Silver Service Rediscovered"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Vienna Circa 1780: An Imperial Silver Service Rediscovered," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about April 13, 2010, until on or about November 7, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 23, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–4153 Filed 2–25–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2010 0015]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before April 27, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas M.P. Christensen, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5909 or E-Mail: *Thomas.christensen@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Voluntary Tanker Agreement.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0505.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The collection consists of a request from the Maritime Administration (MARAD) that each participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered or contracted for by the participant, their size and flags of registry and other pertinent information. There is a recommended format for this information included as part of the application.

Need and Use of the Information: The collection of information is necessary to evaluate tanker capability and make plans for use of this capability to meet national emergency requirements. This information will be used by both MARAD and Department of Defense to establish overall contingency plans.

Description of Respondents: Tanker companies that operate in international trade and who have agreed to participate in this agreement.

Annual Responses: 15 responses.

Annual Burden: 15 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp*.

Authority: 49 CFR 1.66.

Dated: February 2, 2010.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–3954 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Draft Environmental Assessment for a Proposed Airport Traffic Control Tower and Base Building, Kalamazoo/Battle Creek International Airport, Portage City, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Draft Environmental Assessment for a Proposed Airport Traffic Control Tower and Base Building, Kalamazoo/Battle Creek International Airport, Portage City, Michigan.

SUMMARY: The Federal Aviation Administration (FAA) proposes to fund, construct, and operate a new Airport Traffic Control Tower (ATCT) and Base Building at the Kalamazoo/Battle Creek International Airport (AZO), Portage City, Michigan. The FAA's preferred alternative is to construct the ATCT at a location on the northeast portion of AZO. The purpose and need of the proposed project is to improve visibility of airport surfaces, have the capability to meet future operational and administrative expansion requirements, and increase the efficient functionality of the facility because the current ATCT and collocated Terminal Radar Approach Control facility are outdated and outmoded.

The FAA has prepared a Draft Environmental Assessment (DEA) in conformance with the requirements of the National Environmental Policy Act of 1969 (NEPA) and FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures.* The DEA analyzes the potential environmental impacts that may result from construction and operation of the proposed new ATCT and Base Building at the proposed site, as well as the no action alternative (*i.e.,* not constructing and operating the ATCT). As part of the proposed project, the DEA also analyzes the potential environmental impacts that may result from construction and operation of an ATCT access road and consequent relocation of a portion of the existing airport perimeter road. The DEA is available for public review during a 30-day public comment period at the following libraries:

Kalamazoo Public Library, Washington Square Branch, 1244 Portage Street, Kalamazoo, MI 49001.

Kalamazoo Public Library, Central Library, 315 S. Rose St., Kalamazoo, MI 49007.

Portage District Library, 300 Library Lane, Portage, MI 49002.

ADDRESSES: The FAA will accept written comments on the DEA until close of business on March 31, 2010. Comments on the DEA may be sent to: Ms. Virginia Marcks, FAA, AJW–C14D, 2300 East Devon Ave., Des Plaines, IL 60018, fax 847–294–7698, e-mail *virginia.marcks@faa.gov.* Copies of the Draft EA on compact disk may be obtained by contacting Ms. Virginia Marcks. Comments received on the DEA during the public comment period will be addressed in a Final Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. *Telephone number:* 847–294–7494. *E-mail: virginia.marcks@faa.gov.*

Issued in Des Plaines, Illinois, February 19, 2010.

Virginia Marcks,

Manager, Infrastructure Engineering Center, Chicago, AJW–C14D,

Central Service Area.

[FR Doc. 2010–3936 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cook County, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Cook County, Illinois.

FOR FURTHER INFORMATION CONTACT: Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, *Phone:* (217) 492–4600. Diane O'Keefe, P.E., Deputy Director of Highways, Region One Engineer, District 1, Illinois Department of Transportation, 201 W. Center Court, Schaumburg, IL 60196–1096, *Phone:* (847) 705–4110.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve Interstate 290 (I–290) located in the Illinois county of Cook. The proposed improvement would involve the reconstruction of the existing 7.5 mile roadway facility from US 12/20/45 (Mannheim Road) to east of IL 50 (Cicero Avenue). Improvements to the corridor are considered necessary due to safety concerns, operational issues, traffic congestion, and age of facility. Alternatives that may be considered include (1) taking no action; (2) a full range of multi-modal build alternatives that involve the reconstruction of I–290.

Improvements to I–290 have the potential to affect environmental features in the project area. The corridor is located in a highly developed mature urban setting with limited biological and natural resources. The built environment has the potential to be affected. Some resources within the proposed area include: cemeteries, parks, special waste sites, nearby historic districts, possible residential and commercial displacements, air quality, sensitive noise receptors, the Des Plaines River, and related indirect and cumulative impact considerations.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. As part of the EIS process a scoping meeting for obtaining input from Resource Agencies was held on September 9, 2009.

The Illinois Department of Transportation's Context Sensitive Solutions (CSS) process will be used for public involvement. A Stakeholder Involvement Plan (SIP) has been developed to ensure that the full range of issues related to this proposed project are identified and addressed. The SIP provides meaningful opportunities for all stakeholders to participate in defining transportation issues and solutions for the study area. One public meeting will be held in Cook County at each project milestone. In addition to the public meetings, a public hearing and comment period will be held following the release of the Draft EIS. Public notice will be given for the time and place of the public meetings and hearing. A project website has been established (*http://www.eisenhowerexpressway.com*) as one element of the project public involvement process.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(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.)

Issued on: February 17, 2010.

Norman R. Stoner,

Division Administrator, Springfield, Illinois.

[FR Doc. 2010–3783 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environmental Assessment (Final EA) and a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for the New Airport Traffic Control Tower and Base Building at Cherry Capital Airport, Traverse City, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Final Environmental Assessment (Final EA) and a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for the New Airport Traffic Control Tower and Base Building at Cherry Capital Airport, Traverse City, Michigan.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the FAA has prepared, and approved on February 8, 2010, a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) based on the Final Environmental Assessment (Final EA) for a New Airport Traffic Control Tower (ATCT) and Base Building at Cherry Capital Airport (TVC) in Traverse City, Michigan. The FAA prepared the Final EA in accordance with the National Environmental Policy Act and the FAA's regulations and guidelines for environmental documents. It was accepted on November 2, 2009 by the FAA's Responsible Federal Official.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, AJW–C14D, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. *Telephone number:* (847) 294–7494.

SUPPLEMENTARY INFORMATION: The Final EA evaluated the construction and operation of a new ATCT at TVC. The replacement ATCT will be a Low Activity Level facility with a 395 square foot cab accommodating two operational positions and two support positions. The ATCT will be constructed on 1.64 acres of land owned by the airport, 520 feet northeast of the existing ATCT and will have a cab floor height of 752 feet above mean sea level, located within the footprint of Airport Access Road. The

existing ATCT would be decommissioned after the ATCT is operational. The increased square footage of the ATCT will provide the capability to meet future expansion requirements. The Base Building design will conform to the guidelines of the Terminal Facilities Design Standards for Base Building and Environmental Support Buildings with a modified slab-on-grade 7,000 SF floor plan. A new link building will connect the two structures, and paved surface parking will be constructed next to the Base Building. A 10-foot security fence will be constructed around the complex. The project will incorporate energy conservation, recycled materials, and green technologies where practicable. In addition, the Runway 28 localizer antenna and shelter will be shifted slightly to maintain optimal operational characteristics. The existing antenna and shelter will be removed once the new equipment is operational.

The new ATCT will accommodate current and future modernization of the NAS, improve visibility of airport surfaces, provide adequate space to improve operational and administrative efficiency, accommodate future air traffic growth and overall, and increase the efficient functionality of the facility.

The Final EA has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures." In addition, FAA Order 5050.4B, "National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions" has been used as guidance in the preparation of the environmental analysis.

Issued in Des Plaines, Illinois, on February 19, 2010.

Virginia Marcks,

Manager, Infrastructure Engineering Center, Chicago, AJW–C14D, Federal Aviation Administration.

[FR Doc. 2010–3924 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifty-Fifth Meeting, RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held March 17–19, 2010, starting at 9 a.m.

ADDRESSES: The meeting will be held at Honeywell International Inc., Deer Valley Facilities, 21111 N. 19th Ave., Phoenix, AZ.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment meeting. The agenda will include:

October 28–30

- Opening Session (Welcome, Chairman's Opening Remarks, Introductions)
- Approval of Summary from the Fifty-Fourth Meeting.
- RTCA Paper No. 006–10/SC135–676
- Status and Review of Revision of AC
- Report from Section 16, 20, 21, & 26 Working Groups
- Review List of Change Proposals for DO–160G/ED–14G
- Status of User Guide Material
- Review Schedule for DO–160G
- New/Unfinished Business
- Establish Date for Next SC–135 Meeting
- Closing

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the "**FOR FURTHER INFORMATION CONTACT**" section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 19, 2010.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–3939 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifth Meeting: RTCA Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 221 meeting: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures.

DATES: The meeting will be held March 16–17, 2010. March 16th from 12 a.m. to 5 p.m., March 17th from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Colson Board Room, 1828 L Street, NW., Suite 805, Washington, DC 20036.

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.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures meeting. The agenda will include:

- Welcome/Introductions/Administrative Remarks.
- Approval of Summary of the Fourth Meeting held September 15th–16th, 2009, RTCA Paper No. 012–10/SC221–015.
- Leadership Comments.
- Review of Threat Work Group—Status Report.
- Review of Alternative Methods Work Group—Status Report.
- Review of Installed Physical Secondary Barrier (IPSB) Work Group—Status Report.
- Presentation/Discussion of SC–221 tentative conclusions, discussion of framework and content for final report.
- Discussion of Working Group reports: Re-allocation of groups, capture learning points, discuss additional or follow-on goals.
- Approval and Tasking of Existing/Proposed Working Groups.
- Other Business—Including Proposed Agenda, Date and Place for Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–4027 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held March 17, 2010 from 8:30 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Program Management Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions).
- Review/Approve Summary of December 2, 2009 PMC meeting, RTCA Paper No. 009–10/PMC–772.
- Publication Consideration/Approval.
- Final Draft, New Document, *Safety, Performance and Interoperability Requirements Document for Enhanced Traffic Situational Awareness During Flight Operations (ATSA–AIRB)*, RTCA Paper No. 018–10/PMC–773, prepared by SC–186.
- Integration and Coordination Committee (ICC)—Report.
- SC–213 Coordination with other Special Committees—Recommendation
- SC–186/214 Coordination—Interval Management—Recommendation.
- Special Committee Interface Matrix—Review.
- Action Item Review.
- SC–147—Standards for Air Traffic Data Communications Services—Discussion—Review/Approve Revised Terms of Reference.
- SC–203—Unmanned Aircraft Systems (UAS)—Discussion—Review Status.
- SC–214—Standards for Air Traffic Data Communications Services—Discussion—Review/Approve Revised Terms of Reference.
- SC–218—Future ADS–B/TCAS Relationships—Discussion—Review Status.
- Discussion.
- SC–186—Automatic Dependent Surveillance—Broadcast—Discussion—Review/Approve Revised Terms of Reference.
- SC–213—Enhanced Flight Vision Systems/Synthetic Vision Systems, (EFVS/SVS)—Discussion—Review/Approve Revised Terms of Reference.
- Web Workplace—Discussion.
- ICAO—Discussion.
- Special Committees—Chairmen's Reports.
- Closing Plenary (Other Business, Document Production and PMC Meeting Schedule Meeting, Adjourned).

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

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

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–4024 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Orders Limiting Scheduled Operations at John F. Kennedy International Airport, LaGuardia Airport and Newark Liberty International Airport; High Density Rule at Reagan National Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of limited waiver of the slot usage requirement.

SUMMARY: This action announces a limited waiver of the requirements to use slots at Washington's Reagan National Airport (DCA) and Operating Authorizations (slots) at John F. Kennedy International Airport (JFK), LaGuardia Airport (LGA), and Newark Liberty International Airport (EWR). This policy is effective from February 5, 2010 through February 15, 2010.

DATES: Effective upon publication.

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenues, SW., Washington, DC 20591; telephone: (202) 267–7143; e-mail: *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Multiple snowstorms in the northeastern and mid-Atlantic United States beginning February 5, 2010, severely disrupted aviation and other modes of transportation. Substantial amounts of snow from these storms resulted in numerous airport closures. Airports' capacity was also significantly reduced due to weather, snow removal operations, and aircraft deicing programs. Air carriers responded by cancelling flights and combining operations, and the FAA used traffic management programs as needed to manage traffic with available airspace and airport capacity. Carriers instituted network operational recovery plans during this time to position aircraft and crews needed to resume scheduled operations.

The degree of disruption and cancellations varied by airport and by day, but DCA, JFK, LGA, and EWR all were affected by the storms. However, the flight disruptions were not limited to the slot-controlled airports. Operations at other airports in the Washington, DC, area and throughout the eastern United States were likewise impacted. Recovery of normal operations took several days after the initial storms and was exacerbated by subsequent adverse weather conditions. Operations at all airports appeared to return to normal by February 16.

Under the FAA's High Density Rule and orders limiting scheduled operations at the airports, slots must be used at least 80 percent of the time. Slots not meeting the minimum usage rules will be withdrawn or not receive historic precedence for the following scheduling season, depending on the

airport.[1] The FAA may grant a waiver from the minimum usage requirements in highly unusual and unpredictable conditions that are beyond the control of the carrier and affect carrier operations for a period of five consecutive days or more.

Statement of Policy

The FAA has determined these unusual circumstances meet the criteria for a limited waiver of the minimum slot usage. Accordingly, the FAA will treat as used any slot or Operating Authorization held by a carrier from February 5 through 15, 2010.

The FAA does not intend to routinely grant general waivers to the usage requirements. Rules allow for up to 20 percent nonuse, including planned and unplanned cancellations. These rules are expected to accommodate routine weather and other cancellations under all but the most unusual circumstances.

Issued in Washington, DC on February 19th, 2010.

James W. Whitlow,

Acting Chief Counsel.

[FR Doc. 2010–3958 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–13–P

[1] 14 CFR § 93.227 (DCA); 74 FR 51648 (Oct. 7, 2009) (EWR); 74 FR 51650 (Oct. 7, 2009) (JFK); 74 FR 51653 (Oct. 7, 2009) (LGA).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Genesis Worldwide Logistics

[Waiver Petition Docket Number FRA–2010–0008]

The Genesis Worldwide Logistics (GWWL) has petitioned FRA for a waiver of compliance from the requirements of 49 CFR 223.11, "Safety Glazing Standards for Locomotives," and 49 CFR 231.30, "Locomotives used in Switching Service." GWWL is in the business of providing in-plant switching services for a warehousing and packaging distribution business located in Houston, Texas. The efficiency and safety of their in-plant operation is dependent on their use of the "Stewart-Stevenson SS–4650 RailKing." GWWL reports that this is a most technologically up-to-date self-propelled vehicle designed for the movement of rail cars. The switching and interchange operations of GWWL are limited to movement on tracks at speeds of less than 10 mph on "other-than-main-track" and on their own leased track from the Union Pacific. The approval of this request would allow for "compliant use" of the SS4650 RailKing for these operations.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2010–0008) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

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

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–3949 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2010–0034]

Pipeline Safety: Random Drug Testing Rate

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Minimum Annual Percentage Rate for Random Drug Testing.

SUMMARY: PHMSA has determined that the minimum random drug testing rate for covered employees will remain at 25 percent during calendar year 2010.

DATES: Effective January 1, 2010 through December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Stanley Kastanas, Program Manager, Substance Abuse Prevention Program, PHMSA, U.S. Department of Transportation, telephone 202–550–0629 or e-mail *stanley.kastanas@dot.gov.*

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must select and test a percentage of covered employees for random drug testing. Pursuant to 49 CFR 199.105(c)(2), (3), and (4), the PHMSA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the pipeline industry. The data considered by the Administrator comes from operators' annual submissions of Management Information System (MIS) reports required by 49 CFR 199.119(a). If the reported random drug test positive rate is less than one percent, the Administrator may continue the minimum random drug testing rate at 25 percent. In 2008, the random drug test positive rate was less than one percent. Therefore, the minimum random drug testing rate will remain at 25 percent for calendar year 2010.

On January 19, 2010, PHMSA published an Advisory Bulletin (75 FR 2926) implementing the annual collection of contractor MIS drug and alcohol testing data. All applicable § 199.119 (drug testing) and § 199.229 (alcohol testing) MIS reporting operators are responsible for the submission of all contractor MIS reports to PHMSA, as well as their own, by March 15, 2010. Contractors with employees in safety-sensitive positions who performed, as defined in § 199.3 of 49 CFR Part 199, covered functions, must submit these reports only through the auspices of each operator for whom these covered employees performed those covered functions (*i.e.,* maintenance, operations or emergency-response).

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on February 19, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–3966 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0014; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2009 AL Spaw EMA Mobile Stage Trailers Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2009 AL Spaw EMA Mobile Stage trailers are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2009 AL Spaw EMA Mobile Stage trailers that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is March 29, 2010.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

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

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS, and has no substantially similar U.S.-certified counterpart, shall be refused admission into the United States unless NHTSA has decided that the motor vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Red Top Auto Sales (Red Top) of Fort Myers, Florida (Registered Importer 08–354) has petitioned NHTSA to decide whether 2009 AL Spaw EMA Mobile Stage trailers that were not originally manufactured to conform to all applicable FMVSS are eligible for importation into the United States. Red Top contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS. Red Top submitted information with its petition intended to demonstrate that 2009 AL Spaw EMA Mobile Stage trailers are capable of being modified to comply with all applicable standards.

Specifically, the petitioner claims that 2009 AL Spaw EMA Mobile Stage trailers are capable of being altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of conforming rear reflex reflectors, license plate lamps, rear side marker lamps, front side marker lamps, intermediate side markers lamps, rear side reflex reflectors, front side reflex reflectors, intermediate side reflex reflectors, rear identification lamps and rear clearance lamps, to achieve compliance with the standard.

Standard No. 109 *New Pneumatic Tires for Vehicles Other than Passenger Cars:* Inspection of all vehicles and replacement of any non conforming tires with ones that meet the standard.

Standard No. 110 *Tire Selection and Rims for Motor Vehicles Other than*

Passenger Cars: installation of conforming rims and a tire information placard to achieve compliance with the standard.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 22, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–3967 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0016]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GYPSY SOUL.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0016 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before March 29, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0016. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GYPSY SOUL is:

Intended Commercial Use of Vessel: "Daily and weekly Captained Charters."

Geographic Region: "Maryland in the summertime and Florida in the wintertime".

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: February 18, 2010.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–3953 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0017]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AMICUS.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0017 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 29, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0017. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version

of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AMICUS is:

Intended Commercial Use of Vessel: "Primarily day trips from 2–8 hours for 6 passengers or less operating out of Knife River, MN on Lake Superior. Will also do some overnight trips with 3–5 passengers."

Geographic Region: "Primarily MN but may also be in waters off WI and MI on the Lake Superior."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: February 18, 2010.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–3952 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0014]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SMOOTH SAILING.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0014 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 29, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0014. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SMOOTH SAILING is:

Intended Commercial Use of Vessel: "Passenger charters and sail training."

Geographic Region: "Oregon, Washington, California and Hawaii".

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: February 18, 2010.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–3951 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0013]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JUSTINE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0013 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 29, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0013. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JUSTINE is:

Intended Commercial Use of Vessel: "We intend to offset annual overhead costs by occasionally chartering the boat as a crewed luxury vacation vessel."

Geographic Region: "ME, NH, MA, RI, CT, NJ, NY, DE, MD, VA, NC, SC, GA, FL, AL, MS, LA, TX".

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: February 18, 2010.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–3950 Filed 2–25–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 19, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before March 29, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0002.

Type of Review: Extension of a currently approved collection.

Title: Employee Representative's Quarterly Railroad Tax Return.

Form: CT–2.

Description: Employee representatives file Form CT–2 quarterly to report compensation on which railroad retirement taxes are due. IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT–2 also transmits the tax payment.

Respondents: Individuals or Households.

Estimated total burden hours: 127 hours.

OMB Number: 1545–0794.

Type of Review: Extension of a currently approved collection.

Title: LR–311–81, Final (TD 7925) Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time for Filing Information Returns of Owners, Officers and Directors of Foreign Corporations.

Description: Section 6046 requires information returns with respect to certain foreign corporations and the regulations provide the date by which these returns must be filed.

Respondents: Businesses or other for-profits, Not-for-profit institutions.

Estimated total burden hours: 1 hour.

OMB Number: 1545–0946.

Type of Review: Extension of a currently approved collection.

Title: Application for Renewal of Enrollment To Practice before the Internal Revenue Service Form: 8854; 8554–EP.

Description: This information relates to the approval of continuing professional education programs and the renewal of the enrollment status for those individuals admitted (enrolled) by the Internal Revenue Service.

Respondents: Individuals or Households.

Estimated total burden hours: 48,000 hours.

OMB Number: 1545–1697.

Type of Review: Extension of a currently approved collection.

Title: Revenue Procedure 2000–35 Section 1445 Withholding Certificates.

Description: Revenue Procedure 2000–35 provides guidance concerning applications for withholding certificates under Code section 1445.

Respondents: Businesses or other for-profits.

Estimated total burden hours: 60,000 hours.

OMB Number: 1545–1573.

Type of Review: Extension of a currently approved collection.

Title: REG–130477–00; REG–130481–00 (Final), Required Distributions from Retirement Plans.

Description: The regulation permits a taxpayer to name a trust as the beneficiary of the employee's benefit under a retirement plan and use the life expectancies of the beneficiaries of the trust to determine the required minimum distribution, if certain conditions are satisfied.

Respondents: Individuals or Households.

Estimated total burden hours: 333 hours.

OMB Number: 1545–1550.

Type of Review: Extension of a currently approved collection.

Title: Notice 97–45, Highly Compensated Employee Definition.

Description: This notice provides guidance on the definition of a highly compensated employee within the meaning of section 414(q) of the Internal Revenue Code as simplified by section 1431 of the Small Business Job Protection Act of 1996, including an employer's option to make a top-paid group election under section 414(q)(1)(B)(ii).

Respondents: Businesses or other for-profits.

Estimated total burden hours: 65,605 hours.

OMB Number: 1545–1096.

Type of Review: Extension of a currently approved collection.

Title: Excise Tax Program Order Blank for Forms and Publications.

Form: 9117.

Description: Form 9117 allows taxpayers who must file Form 720 returns a systemic way to order additional tax forms and informational publications.

Respondents: Businesses or other for-profits.

Estimated total burden hours: 500 hours.

OMB Number: 1545–1701.

Type of Review: Extension of a currently approved collection.

Title: Revenue Procedure 2000–37 Reverse Like-kind Exchanges.

Description: The revenue procedure provides a safe harbor for reverse like-kind exchanges under which a transaction using a "qualified exchange accommodation arrangement" will qualify for non-recognition treatment under Sec. 1031 of the Internal Revenue Code.

Respondents: Businesses or other for-profits.

Estimated total burden hours: 3,200 hours.

OMB Number: 1545–1851.

Type of Review: Extension of a currently approved collection.

Title: REG–124312–02 (Final) Golden Parachute Payments.

Description: These regulations deny a deduction for excess parachute payments. A parachute payment is a payment in the nature of compensation to a disqualified individual that is contingent on a change in ownership or control of a corporation. Certain payments, including payments from a small corporation, are exempt from the definition of parachute payment if certain requirements are met (such as shareholder approval and disclosure requirements).

Respondents: Businesses or other for-profits.

Estimated total burden hours: 12,000 hours.

OMB Number: 1545–2023.

Type of Review: Extension of a currently approved collection.

Title: Modernized e-File—Non-compliance with Mandate for Large Corporations to file electronically.

Description: Service will contact those taxpayers who file paper income tax returns to determine if these taxpayers should have filed electronic returns under the Mandate, Treasury Regulation Section 301.6011–5T.

Respondents: Businesses or other for-profits.

Estimated total burden hours: 2,080 hours.

OMB Number: 1545–1711.

Type of Review: Extension of a currently approved collection.

Title: REG–116050–99 (final) Stock Transfer Rules: Carryover of Earnings and Taxes.

Description: This document contains final regulations addressing the carryover of certain attributes, such as earnings and profits and foreign income tax accounts, when two corporations combine in a corporate reorganization or liquidation that is described in both section 367(b) and section 381 of the Internal Revenue Code.

Respondents: Businesses or other for-profits.

Estimated total burden hours: 1,800 hours.

OMB Number: 1545–1034.

Type of Review: Extension of a currently approved collection.

Title: Passive Activity Credit Limitations.

Form: 8582–CR.

Description: Under section 469, credits from passive activities, to the extent they do not exceed the tax attributable to net passive income, are not allowed. Form 8582–CR is used to figure the passive activity credit allowed and the amount of credit to be reported on the tax return.

Respondents: Individuals or Households.

Estimated total burden hours: 2,370,600 hours.

OMB Number: 1545–2027.

Type of Review: Extension of a currently approved collection.

Title: ADA Accommodations Request Packet.

Description: It is necessary to collect this information so that ADA applicant may receive reasonable accommodation, as needed, to take the Special Enrollment Examination. We are utilizing the vendor's survey which complies with the ADA and the Rehabilitation Act of 1978.

Respondents: Individuals or Households.

Estimated total burden hours: 500 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–3948 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5471 (and Related Schedules)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5471 (and related schedules), Information Return of U.S. Persons With Respect To Certain Foreign Corporations.

DATES: Written comments should be received on or before April 27, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3933, or through the Internet at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return of U.S. Persons With Respect To Certain Foreign Corporations.

OMB Number: 1545–0704.

Form Number: 5471 (and related schedules).

Abstract: Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of Internal Revenue Code sections 6035, 6038 and 6046 and the regulations thereunder pertaining to the involvement of U.S. persons with certain foreign corporations.

Current Actions: Form 5471 was changed to include six new lines and one new code reference. Schedule M (Form 5471) was changed to include thirty new lines and two new code references. These changes resulted in an increase of 234,790 burden hours for a total of 4,280,133 burden hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and Individuals or households.

Estimated Number of Respondents: 28,380.

Estimated Time per Respondent: 155 hours, 3 minutes.

Estimated Total Annual Burden Hours: 4,280,133.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–3923 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–213–76]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–213–76 (TD 8095), Estate and Gift Taxes; Qualified Disclaimers of Property (Section 25.2518–2(b)).

DATES: Written comments should be received on or before April 27, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joe Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Estate and Gift Taxes; Qualified Disclaimers of Property.

OMB Number: 1545–0959. *Regulation Project Number:* LR–213–76.

Abstract: Internal Revenue Code section 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the disclaimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 2010.

R. Joe Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–3925 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–46–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–46–89 (T.D. 8641), Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions (§§ 1.597–2 and 1.597–4, 1.597–6 and 1.597–7).

DATES: Written comments should be received on or before April 27, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joe Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Elaine H. Christophe at (202) 622–3179, or *Elaine.H.Christophe@irs.gov,* or Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.

OMB Number: 1545–1300. *Regulation Project Number:* FI–46–89.

Abstract: Recipients of Federal financial assistance (FFA) must maintain an account of FFA that is deferred from inclusion in gross income and subsequently recaptured. This information is used to determine the recipient's tax liability. Also, tax not subject to collection must be reported and information must be provided if certain elections are made.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and the Federal Government.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 4 hours, 24 minutes.

Estimated Total Annual Burden Hours: 2,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 2010.

R. Joe Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–3928 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8703

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8703, Annual Certification of a Residential Rental Project.

DATES: Written comments should be received on or before April 27, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joe Durbala, Internal Revenue Service, Room 6129 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Elaine.H.Christophe@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Annual Certification of a Residential Rental Project.

OMB Number: 1545–1038.

Form Number: 8703.

Abstract: Form 8703 is used by the operator of a residential rental project to provide annual information that the IRS will use to determine whether a project continues to be a qualified residential rental project under Internal Revenue Code section 142(d). If so, and certain other requirements are met, bonds issued in connection with the project are considered "exempt facility bonds" and the interest paid on them is not taxable to the recipient.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 6,000.

Estimated Time per Respondent: 6 hours, 32 minutes.

Estimated Total Annual Burden Hours: 39,180.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 2010.

R. Joe Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–3930 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8038–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8038–T, Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

DATES: Written comments should be received on or before April 27, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joe Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

OMB Number: 1545–1219.

Form Number: 8038–T.

Abstract: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. The issuers include state and local governments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 2,500.

Estimated Time per Response: 22 hours, 11 minutes.

Estimated Total Annual Burden Hours: 55,475.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 2010.

R. Joe Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–3932 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209682–94]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning final regulation, REG–209682–94 (TD 8847), Adjustments Following Sales of Partnership Interests, (§§ 1.732–1 and 1.743–1).

DATES: Written comments should be received on or before April 27, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Dawn Bidne, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3933, or through the Internet at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Adjustments Following Sales of Partnership Interests.

OMB Number: 1545–1588.

Regulation Project Number: REG–209682–94.

Abstract: Partnerships, with a section 754 election in effect, are required to adjust the basis of partnership property following certain transfers of partnership interests. This regulation relates to the optional adjustments to the basis of partnership property following certain transfers of partnership interests under section 743, the calculation of gain or loss under section 751(a) following the sale or exchange of a partnership interest, the allocation of basis adjustments among partnership assets under section 755, the allocation of a partner's basis in its partnership interest to properties distributed to the partner by the partnership under section 732(c), and the computation of a partner's proportionate share of the adjusted basis of depreciable property (or depreciable real property) under section 1017.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 226,000.

Estimated Time per Respondent/Recordkeeper: 4 hrs.

Estimated Total Annual Burden Hours: 904,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 1, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–3934 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–105885–99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG–105885–99 (T.D. 9075) Compensation Deferred Under Eligible deferred Compensation Plans (§ 1.457–8).

DATES: Written comments should be received on or before April 27, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joe Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Elaine.H.Christophe@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Compensation Deferred Under Eligible Deferred Compensation Plans.

OMB Number: 1545–1580.

Regulation Project Number: REG–105885–99.

Abstract: The Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997 made changes to rules under Internal Revenue Code section 457 regarding eligible deferred compensation plans offered by state and local governments. REG–105885–99 requires state and local governments to establish a written trust, custodial account, or annuity contract to hold the assets and income in trust for the exclusive benefit of its participants and beneficiaries. Also, new non-bank custodians must submit applications to the IRS to be approved to serve as custodians of section 457 plan assets.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,260.

Estimated Time Per Respondent: 1 hour 2 minutes.

Estimate Total Annual Burden Hours: 10,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 2010.

R. Joe Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–3942 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–189–80]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–189–80 (T.D. 7927), Amortization of Reforestation Expenditures (§§ 1.194–2 and 1.194–4).

DATES: Written comments should be received on or before April 27, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joe Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be

directed to Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Amortization of Reforestation Expenditures.

OMB Number: 1545–0735.

Regulation Project Number: LR–189–80.

Abstract: Internal Revenue Code section 194 allows taxpayers to elect to amortize certain reforestation expenditures over a 7-year period if the expenditures meet certain requirements. The regulations implement this election provision and allow the IRS to determine if the election is proper and allowable.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 12,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 6,001.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 2010.

R. Joe Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–3941 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Recruitment Notice for the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: Notice of Open Season for Recruitment of IRS Taxpayer Advocacy Panel (TAP) Members.

DATES: March 15, 2010 through April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Shawn Collins at 202–622–1245.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of the Treasury and the Internal Revenue Service (IRS) are inviting individuals to help improve the nation's tax agency by applying to be members of the Taxpayer Advocacy Panel (TAP). The mission of the TAP is to listen to taxpayers, identify issues that affect taxpayers, and make suggestions for improving IRS service and customer satisfaction. The TAP serves as an advisory body to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the National Taxpayer Advocate. TAP members will participate in subcommittees that channel their feedback to the IRS through the Panel's parent committee.

The IRS is seeking applicants who have an interest in good government, a personal commitment to volunteer approximately 300 to 500 hours a year, and a desire to help improve IRS customer service. To the extent possible, the TAP Director will ensure that TAP membership is balanced and represents a cross-section of the taxpaying public with at least one member from each state, the District of Columbia, and Puerto Rico. Potential candidates must be U.S. citizens and must pass an IRS tax compliance check and a Federal Bureau of Investigation (FBI) background investigation. Federally-registered lobbyists cannot be members of the TAP.

TAP members are a diverse group of citizens who represent the interests of taxpayers from their respective geographic locations by providing input from a taxpayer's perspective on ways to improve IRS customer service and administration of the Federal tax system, and by identifying grassroots taxpayer issues. Members should have good communications skills and be able to speak to taxpayers about the TAP and TAP activities, while clearly distinguishing between TAP positions and their personal viewpoints.

Interested applicants should visit the TAP Web site at *http://www.improveirs.org* to complete the on-line application or call the TAP toll free number, 1–888–912–1227, if they have questions about TAP membership. The opening date for submitting applications is March 15, 2010, and the deadline for submitting applications is April 30, 2010. Interviews may be held. The Department of the Treasury will review the recommended candidates and make final selections. New TAP members will serve a three-year term starting in December 2010. (Note: highly-ranked applicants not selected as members may be placed on a roster of alternates who will be eligible to fill future vacancies that may occur on the Panel.)

Questions regarding the selection of TAP members may be directed to Shawn Collins, Acting Director, Taxpayer Advocacy Panel, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 1314, Washington, DC 20224, or 202–622–1245.

Dated: *February 22, 2010.*

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–3920 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing their United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending December 31, 2009.

Last name	First name	Middle name/ initials
ABA	CHRIS-TOPHER	WILLIAM
ABRAM	JOHNATHAN	JASON
ABRAM	RONALD	
ADAMS	STONE	
AHLQUIST	MAGNUS	
AHN	HYUN	KYUNG
AHN	KEUN	WHI
AKINS	ANTHONY	JEWELL
ALABISO	CAROLINA	UTA
ALAN	COOPER	THOMAS
ALLEN	CHRIS-TOPHER	DAVID
ALY-STAVRIN-OU	KATHERINE	LILLIAN
ANDERSEN	PAUL	EINAR
ANWAR	MELISSA	M. S.
ARM-STRONG	ERIK	BENTUNG
ARTZ	CHARLES	EDWARD
ASHER	HANNIBAL	DAVID
AU	ALICE	MIU HING
AU-YEUNG	BONNIE	PUI GEE
BAKER	KURT	ALEXANDER
BALDWIN	MARIA	D
BALFOUR	ALEXANDER	DAVID
BANERJEE	SOUMYA	
BAUMBERG-ER	YVES	
BELL	CHARLES	HENRY
BERKES	ROBERT	A
BERLIN	LOUISE	
BHATTAL	JASJIT	SINGH
BIEHLER	SANDRA	ANN
BINAL	MEHMET	
BINAL	YADIGAR	
BLACKBURN	JANICE	JOY
BLACK-WOOD	GREGORY	DAVID
BLYSTAD	ANETTE	KRISTINE
BOH	CONNIE	
BOUKER	SLIM	
BOWLES	JANEANNE	
BRAND-JEN-SEN	KIMBERLY	
BRANDT	KATHLEEN	CAREY
BREM	ANDREW	P
BRENNINK-MEYER	JOHANNES	AMADEO RAYMOND
BRIGGS	CURTIS	HANS
BRIND'AMO-UR	LAWRENCE	GLENN
BRUNING	MARK	
BUCHER	CHRISTIAN	FREDERIK ALEX-ANDER
BUCKLEY	ARLENE	
CAMPBELL	VIRGINIA	ELLEN
CARR	RODERICK	JAMES
CHAN	CHARLES	TSUN-YAN
CHAN	CLARA	KIT YEE
CHAN	JOYCE	YUEN WAH
CHAN	KIN	HO
CHAN	MATTHEW	ANDREW
CHANG	LEWIS	HUNG YEN
CHANG	MING	CHE
CHANG	SARAH	
CHANG	SHENG	EN
CHEN	HENG-CHANG	
CHEN	JOHNSON	
CHEN	PATRICK	
CHENG	WEISHUN	
CHEUK	ALTHENA	
CHI	CHENG	
CHO	KYU	HO
CHO	WOL	YE
CHOI	JUNG	EUN
CHOI	SOO	KYUNG
CHOLAT	ROMAIN	JEAN-PIERRE
CHOU	KUANG-TAO	
CHRISTEN	JEROME	ROLAND FREDERIC
CHU	JASON	
CHU	NICHOLAS	YUK-UYI
CHU	SIMON	KWOK KWAN
CHUA	WILLIAM	YUAN-WEN
CHUANG	DAVID	
CHUE	RANDY	S
CHUN	RICHARD	KILWHAN
CHUNG	GEOFFREY	EUH-TAG
CHUNG	SUHNI	
CLEMENTS	YOKO	MORI
CO	DANIEL	GLENN
COHEN	DANIEL	
COHEN	SHARONNA	
COLLINS	THOMAS	MICHAEL
COOK	RICHARD	S
CORDANI	VIRGINIA	
CORNING	PATRICIA	MARY
CORTESE	MAURIZIO	
COSTELET-OS	MARINOS	
COUCH	CAROLA	G
CURETON-LANE	ROSEMARY	ANNE
DA ROZA	ANDRE	MANUEL
DAGAN	NILY	
DAGAN	YACOV	
DAVID	CARY	RICHARD
DAVIDSON	FREDRICK	EICHI
DAVIS	WESLEY	THOMPSON
DE LETTENH-OVE	GUY	KERVYN
DE RIS	THERON	
DE ROSEN	MICHEL	
DE ST MARS MANIERE	CHANTAL	DE POILLOUE
DEDEN	ANTHONY	
DEFARIA, JR	LYCIO	
DEGLERIS	MICHAEL	ANTONIOS
DEL CAMPO	LILIA	CASTELLAN-OS MAR-TIN
DEMORAGA-S	JORGE	RAGUE
DENG	BEVERLY	GUO
DEY	ANITA	
DHALL	PRITI	
DI MONTER-EALE	GIORGIO	ALLIATA
DISS	OLIVER	
DO NASCIME-NTO	OSWALDO	L
DOCTER	CORNELIS	
DOERENBE-RG	FRANK	
DONG	JACQUELINE	MINGJIE
DOUGLAS	BRIAN	R.
D'SOUZA	SUSANNE	MARIE
DU	STERLING	SHYUN-DII
EACOTT	IRENA	
EACOTT	JOHN	GRAHAM
ENG	JENNIE	YU
ENNS	KIMBERLEY	D
ENNS	PETER	C
ERSKINE	DOUGLAS	GRAHAM
EU	KELVIN	HAN
FAGG	THOMAS	EARL
FARRELL	DOUGLAS	
FERGUSON	ANNA	YIP
FERLAINO	FRANK	RALPH
FERRARO	GARY	A.
FLOERSHEI-M	ALEXANDER	
FOWLER	CLIVE	
FOWLER	LINDA	A.
FOX	GILLIAN	KAYE
FRENKEL	MARITZA	IVONNE
FUKUCHI	TORU	
FULLER	RUSSELL	
GADWAL	VIJAYALAX-MI	
GAGNON	JAMES	ERNEST
GAPE	DEREK	GREGORY
GARDNER	GREGORY	JOHN
GARRIDO	LILIA	GUADALUPE
GAVIN	ROHAN	
GAVIRIA-KERVYN	GLORIA	
GEE	ANDREW	N
GEORG	JANET	DENISE
GERBER	PETER	
GERTENBA-CH	JACOBUS	
GERTENBA-CH	RIKA	
GHATALIA	DEVAN	S.
GIBBS	CHERYL	P.
GIBBS	FRANK	H.
GIORDANO	PASQUALE	
GOES	RODRIGO	S.
GONZALEZ-CARVAJAL	CAROLINA	
GOWEY	MICHELE	A
GRANT	LINDSAY	FITZ-PAT-RICK
GRAVES	STEWART	M.
GREINER, JR	FRED	LORANTON
GRIFFITH	JEFFREY	STEWART
GRIGGERS	JAMES	ELDON
GUERLAIN	CLAIRE	ARIANE
GUERLAIN	MARIE	
GUPTA	PRADEEP	
GURD	DAVID	
GURD	PAMELA	
HABERT	OIVIND KEN-NETH	LORENTZ
HAFNER	SUSAN	EMILY
HAIIM	HAIIM	
HALDANE	JONATHAN	
HALEEN	OLGA	ILIANA
HALEEN	PHILIP	BACHVAROV
HAN	CHIA-YAU	
HANSEN	MARC	CHRISTIAN
HARRISON, JR	JAMES	QUIGLEY
HART PAHR-IVERSEN	KAREN-HEL-ENA	SABRINA
HASSAN	ABDELMON-EM	
HAYDAY	ADRIAN	C

Last name	First name	Middle name/ initials
HAYDAY	SANDRA	ANN
HELBIG	INGO	M.
HELD	BETTINA	LENA
HENEGHAN	SHANE	BRIAN
HENFREY	ANTHONY	WILLIAM
HENTSCH	VIVIANNE	
HERY	ALAIN	
HERY	NADINE	
HILSAMER	LOUISE	BERTHA
HO	CHAN	KIN
HO	SARA	JANE
HONG	CAROL	
HONG	MIRAN	
HONG	SOON	BAE
HOROVITZ	ARTHUR	H
HOROVITZ	JUDITH	
HSU	TINA	MICHELLE
HU	RONG	
HUANG	BRAD	
HUANG	DAVIS	
HUANG	WEI	FEI-CHIN
HUBBARD	NORMAN	SQUIRES
HUFNAGEL	ILKA	
HUGENHOL-TZ	PAUL	GABRIEL
HUNNISETT	ELEANOR	YOUNG
HUNTER	JOHN	W.
HUNTER	KARYNKA	
HUR	SAEHONG	
HUTCHINGS	GEORGE	FORD
IKEDA	MAKOTO	
ISSEN	RONALD	NATHANIEL
IU	LAWRENCE	PUI LEUNG
JANZEN	JUDITH	FAYE SCHULTZ
JEFFERS-QUAILEY	ALEXIS	
JEKER	VIRGINIA	LA TORRE
JENNY	ISABELLE	
JENNY	PHILLIPPE	D
JHANGIANI	DINA	
JHANGIANI	NARENDRA	KUMAR
JOHNSON	KENNETH	
JOHNSTON	PETER	BENJAMIN
JONES	DENIS	JAMES
JUN	KENNETH	SUNG HO
JUNG	DIANNE	
KAECH	ARIANNE	
KAMER	CIHAN	
KANG	JUCHAN	
KANG	JUNG	SOOK
KAPADIA	SALMA	I
KARCH	ROBERT	B
KATZSCHM-ANN	WILHELMINA	
KAVITA	YOGESH	
KEIR	GRANT	G.
KELJIK	JAMES	STEPHEN CHARLES
KEMP	SARAH	
KIDO	TAKEHIRO	
KIELHORN	DAISY	SIOK BEE
KIELHORN	JOHN	GRAHAM
KIM	EARNEST	UENSHIK
KIM	JUNE	SEOB MIKE
KIM	JUNG	SOOK
KIM	KENNETH	CHUNGSHIK
KIM	LEE	JUNG SOOK
KIM	YI	BI
KIM	YOUNG	SIK
KIRSCH	GORM	DAVID
KLESCH	JONATHAN	WILLIAM
KLESZCZ	JERSY	
KLURFAN	LILIANA	RUTH
KNASTER	ALEXANDER	
KO	STELLA	SEOHEE
KOHNO	KAZUNARI	
KUANG	DUANE	ZIPING
KURZ	ROLAND	P.
KWAK	SONYA	SONA
KWAN	KITTY	
KWOK	SIU KEI	A
LANE	TIMOTHY	DAVID
LANGHAUS-ER	GAVRIELE	
LANGHAUS-ER	MARC	
LANGHAUS-ER	UWE	
LAROSE	JOSEE	M. C.
LATORRE	EDUARDO	J
LAU	JENNIFER	PUI KAY
LAW	TIFFANY	CHEN-MEN
LAW-GREENE	NGAN	CHING
LEATHERM-AN	SANDRA	LEA
LEE	CHING	AN
LEE	CHUL CHU	
LEE	CHYUARN	JIAUH
LEE	DOROTHY	LOIS
LEE	HAN-WOONG	
LEE	JENNIFER	
LEE	JULIET	
LEE	YOUNG	KON
LEE	YOUNG	SUN
LEUNG	LEWIS	K
LEVINE-COHEN	CHAYIM	JOSEPH
LI	LIN	
LIM	BAEK	IL ALAN
LIM	SIMON	WEI QUAN
LINDAUER	MILAN	
LINTON	ALEXANDER	JONATHAN
LIU	GUO	RUI
LIU	LISA	
LIU	WILLIAM	
LOUIS	MARIAS	SANJIV
LOVASICH	ROBERT	MICHAEL
LUEBKE	GUILLAUME	ROBERT
LUNG	JUSTIN	CHI YUEN
LUNTZ	DAVID	JOHN
MA	PING	YIU
MA	THEODORE	HENG
MAC DON-ALD	PYONG	SUN
MACHABA	ROBI	
MADERA	FRANCISCO	JAVIER
MAGOSHI	CHIKA	
MAGOSHI	HIDETAKA	
MAKOWSKY RAS-MUSSEN	WRAY	CHERYL
MALEK	KATARZYNA	
MANGALJI	FEREED	
MANI	SYLVIE	
MARTIN	JULIA	
MARTINE	VAN	DER WIELEN
MATSUMAE	TOSHIAKI	
MC ALISTER, JR	WALTER	ROBERT
MC BAIN	LISA	JANE
MC MASTER	RALPH	EDWARD
MCCARRON	TIMOTHY	JAMES
MCCONIGL-EY	JOHN	
MEDRANO	MARCO	
MERCER	RANDALL	WAYNE
MEYER	MICHAEL	RAYMOND
MICHAELS	PATRICK	
MICZAIKA	CHRISTIAN	ANTON
MLADEK	ROBERT	
MOL	BITIA	
MORALES	LEONARDO	R
MOSCPNA	GABRIEL	
MOSER	URS	
MOSES	DIANE	M.
MOSES	NICHOLAS	H.
MOSS	DANIEL	M
MOUSSARIE	GERAUD	
MUELLER	CHRISTIAN	ROLAND
MUELLER-PIEFKOW-SKI	ANDREA	ELIZABETH
MULFORD	IRENE	F
MUNTIANOY	IGOR	
MURDOCK JR	JOHN	THOMAS
NAHAWI	RASHA	SAYED A HAMID
NGUYEN	TRUONG	X.
NGUYEN-HOANG	ANH	TUYET
NIBLETT	ROBIN	C
NIEDERMAY-ER	ROBIN	W
NIMMONS	IAN	
NISHIMURA	KINKO	
NISHIMURA	TAKAO	
NOBLE	ROHINTON	A.
NORTHCOT-E-GREEN	JAMES	EDWARD DOUGLAS
OCONNELL	ANN	LOUISE
OH	YOUNG	EUNG
OJJEH	AKRAM	KARIM
O'MARD	SYLVIA	NIAMATH
OU	CHEN	CHING
PACKER	TAMAR	
PAHLSSON	REX	HENRIK
PAHR-IVERSEN	KAREN-HEL-ENA	SABRINA HART
PAK	CHIN	YONG
PAK	SUN	YUL
PAK	YONG	MAE
PARK	JANE	HYUN
PARK	JOON-KYU	
PARK	JUNG	HAE
PARK	YOUNG	SOON
PARONI	EZIO	
PASUMARTY	DEEPA	
PEPITO	GREGORIA	D
PEREIRE	AVDE	PHILIPPINE AMELIE
PEREON	YVES-MARIE	
PERNU	ESA	
PERRINE	JOHN	PAUL
PILAWSKII	ERIK	ALEXANDE-ROVICH
PILAWSKII	ERIK	ALEXANDE-ROVICH
PLANT	SHARON	
PORTNOW	LOREN	
POWERS	KELLY	KATE
PRICE	LENNOX	O'BRIEN
QU	JIAYI	
QUINZER	KAI	OTTO
QUINZER	SYLVIA	ANNA

Last name	First name	Middle name/ initials
RADEL	BENGT	A
RAMOCAN	SETH	GEORGE
RAY	BJORG	PATRICK
RENKEWITZ	JOHANNGE-ORG	
RENNERT	INES	
RENNERT	JENS	
RENNERT	LUTZ	
RICE	ANDREW	GLYNN
RICHARDS	SHAWN	KENNETH
RIEDL	WALTER	
RILEY	PATRICIA	CAROL
RINGDAL	REBBECA	MARIA
RITTER	ANNELIES	JOHANNA
ROBERTSEN	ERIC	C
ROCHLITZ	CAROLINE	
ROCHLITZ	MATAN	
RODRIGUEZ	CECILIA	TAMARA
ROH	HUI	HWA
ROLFE	DANIEL	WILLIAM
ROSS	MICHAEL	ALLAN
RUSTEBERG	SHEPHALI	
RYAN	STEPHEN	LAW
RYBICKI	MARIA	
SAADIEH	ANN	CHARLOTTE
SAFFER	MORRIS	
SAKAMOTO	JANICE	NAOMI
SAMUDA	MADELINE	
SAMUDA	RONALD	J.
SASAKI	MITSUGU	
SASAKURA	MASAYO	
SASAKURA	TAKAYUKI	
SASSOON	CHERIE	RACHEL
SCHMATZ	ANDREAS	JOACHIM KARL
SCHOCH	DANIEL	STEWART
SCHUH	WOLFGANG	
SCHUMER	ARTHUR	ALAN
SCHUMER	TRACY	ANN
SEAMAN	THOMAS	WYLIE
SEE	BYRON	JIAO-XIAN
SEIDEN	ROBERT	A.
SEITZ	SUSANNE	CAROL
SHAH	MONISH	S
SHILO	NAFTALI	SIMHA
SHIN	MINA	
SHIRREFF	IAN	ROBERT
SHU	YUAN-CHENG	
SHUM	ROSANNA	LOKE
SIKORSKI	CHRIS-TOPHER	MARK
SIMPSON	SARAH	ELIZABETH
SKORDOS	PANAYOTIS	A
SOKOLUK	VIVIANE	
SORIO	ROBERTO	ALESSAND-RO
SPERRY	STEPHANIE	Y
SPINETTE	FRANCOIS	G.
STEEVES	SHELDON	B
STEILMAN	DORTHEA	MARIE
STONEBRID-GE	PETER	
STROM-BERG	FRAN	
STROM-BERG	MERVIN	
STRONGMA-N	NANCY	HELEN
SU	PAUL	QI
SUISSA	ISRAEL	
SUK	MINSOO	
SUK	YOUNGHEE	
SUNG	YOUNG	JA
TAM	SALLY	BUN-KUEN
TANG	EUGENE	JUSTIN YUE CHUNG
TAY	ELIZABETH	MEI-LING
TAYLOR	ROBIN	LYNN
TELLEFSEN FLATEBO	RUTH	ESTHER
THADANI	ANAND	
THOMSON	PETER	STUART
THORBURN	JEAN	LILLIAN
TIPPETT	BRUCE	
TIPPETT	SUSAN	
TOEHL	LOUIS	MONTES
TOWNSEND	ERIK	SCOTT
TSANGRIDE-S	PHILIPPOS	ALEXANDR-OS
TSUTSUMI	MIE	
TUNG	LAWRENCE	BLAKE FENG-CHIH
UNDER-WOOD	PATRICIA	
UNO	KEITA	
UTCHENIK	BERNARD	A
VALDI	MICHELLE	LIANG
VALLEJO	ISABEL	
VAN DER WIELEN	FRANCOIS	
VAN DRIEM	FELIX	HENRI
VANASSE	ROGER	J
VERGANZA II	MIGUEL	JUNIOR
VICHMAN	YAIR	A
VINOGRAD-OVA	TATJANA	
WADE	CHRISTINA	
WAI	FELICIA	SIKYIN
WALBURN	WILLIAM	THOMAS
WANG	ERCHIE	
WANG	SING	
WEBB	MATTHEW	WARREN
WEBB	SUZANNE	RENEE
WEBBER	WILLIAM	SCOTT
WEBER	MICHAEL	GERARD
WEE	RONALD	QI RONG
WERDMOLD-ER	DIEDERIK	
WERNER	ALEXANDER	
WESTERMA-N	RICHARD	STEVEN
WESTPHAL	SANDRA	WANDA
WHITE	THOMAS	FRANK
WIESER	ANTHONY	A
WILD	ROLAND	OLIVER
WILLIAMS	SONG	CHA
WOLFERS	NANCY	A.
WOLL	SANDY	ANN
WONG	BILL	YIM-CHI
WONG	GODFREY	HIN-CHENK
WONG	LESTER	KIN-WAH
WONG	MIMY	HIU YING
WONG	WAI WAH	HELEN
WOO	JAMES	
WOOD	JOHN	CARTER
YAN	ANDREW	Y.
YANG	KIRK	Y-C
YANG	ROBERT	HSIANG
YANG	VERA	WEN-XIAN
YANG	WILLIAM	CHUNSU
YANG	YOUNG	AE
YANNOPOU-LOS	MINOS	G
YOON	ERNEST	JEONGHAN
YORKWILLI-AMS	JOHN	
YOUNG	ANTHONY	PETER
YU	LILLIAN	CHI CHIA
ZAVATTI	GABRIELLA	ALANA
ZHANG	LI	PING
ZHU	LILI	
ZOMBANAKI-S	ANDREAS	
ZU SAYN-WITTGEN-STEIN BERLEBU-RG	SEBASTIAN	FREDRIC

Dated: February 5, 2010.

Angie Kaminski,

Manager Team 103, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. 2010–3921 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
February 26, 2010

Part II

Federal Housing Finance Agency

12 CFR Parts 1249 and 1282

2010–2011 Enterprise Affordable Housing Goals; Enterprise Book-Entry Procedures; Proposed Rule

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1249 and 1282

RIN 2590–AA26

2010–2011 Enterprise Affordable Housing Goals; Enterprise Book-Entry Procedures

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: Section 1128(b) of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to provide for the establishment, monitoring and enforcement of new affordable housing goals effective for 2010 and 2011 for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). Section 1332(a) of the Safety and Soundness Act, as amended by HERA, requires the Federal Housing Finance Agency (FHFA) to establish three single-family owner-occupied purchase money mortgage goals and a single-family refinancing mortgage goal. Section 1333(a) of the Safety and Soundness Act requires FHFA to establish a multifamily special affordable housing goal, as well as providing for a multifamily special affordable housing subgoal. FHFA is issuing and seeking comments on a proposed rule that would establish new affordable housing goals for 2010 and 2011, consistent with the Safety and Soundness Act, as amended. The proposed rule would also revise and update the rules for counting mortgages for purposes of the affordable housing goals to ensure clarity and consistency with the new goals.

DATES: Written comments must be received on or before April 12, 2010.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA26, by any one of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA26, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA26, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov.* Please include "RIN 2590–AA26" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include "RIN 2590–AA26" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Nelson Hernandez, Senior Associate Director, Housing Mission and Goals, (202) 408–2993, Brian Doherty, Manager, Housing Mission and Goals, (202) 408–2991, Paul Manchester, Principal Economist, Housing Mission and Goals—Quantitative Analysis, (202) 408–2946, Sharon Like, Associate General Counsel, (202) 414–8950, Lyn Abrams, Attorney, (202) 414–8951, or Kevin Sheehan, Attorney, (202) 414–8952. These are not toll-free numbers. The mailing address for each contact is: Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule, and will revise the language of the proposed rule as appropriate after taking all comments into consideration. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Internet Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

II. Background

A. Establishment of FHFA

Effective July 30, 2008, HERA amended the Safety and Soundness Act to create FHFA as an independent agency of the Federal Government.[1] HERA transferred the safety and soundness supervisory and oversight responsibilities over the Enterprises from the Office of Federal Housing Enterprise Oversight (OFHEO) to FHFA. HERA also transferred the charter compliance authority and responsibility to establish, monitor and enforce the affordable housing goals for the Enterprises from the Department of Housing and Urban Development (HUD) to FHFA. FHFA is responsible for ensuring that the Enterprises operate in a safe and sound manner, including maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient, competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities.[2]

Section 1302 of HERA provides, in part, that all regulations, orders and determinations issued by the Secretary of HUD (Secretary) with respect to the Secretary's authority under the Safety and Soundness Act, the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act (together, the Charter Acts), shall remain in effect and be enforceable by the Secretary or the Director of FHFA, as the case may be, until modified, terminated, set aside or superseded by the Secretary or the Director, any court, or operation of law. The Enterprises continue to operate under regulations promulgated by OFHEO and HUD until FHFA issues its own regulations.[3] The Enterprises are government-sponsored enterprises (GSEs) chartered by Congress for the purpose of establishing secondary market facilities for residential mortgages.[4] Specifically, Congress established the Enterprises to provide stability in the secondary market for residential mortgages, respond appropriately to the private capital market, provide ongoing assistance to the secondary market for residential mortgages, and promote access to mortgage credit throughout the nation.[5]

B. Statutory and Regulatory Background

Prior to HERA, the Safety and Soundness Act provided the Secretary of HUD with the authority to establish, monitor and enforce affordable housing

[1] *See* Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, § 1101, Public Law 110–289, 122 Stat. 2654 (2008), codified at 12 U.S.C. 4501 *et seq.*

[2] *See* 12 U.S.C. 4513.

[3] *See* HERA at section 1302, 122 Stat. 2795.

[4] *See* 12 U.S.C. 1716 *et seq.;* 12 U.S.C. 1451 *et seq.*

[5] *Id.*

goals for the Enterprises.[6] HUD issued regulations establishing affordable housing goals for the Enterprises, which were periodically updated, most recently in 2004, when HUD established new housing goal levels for 2005 through 2008.[7] HUD's regulations provided for the housing goal levels for 2008 to continue in effect in 2009 and each year thereafter until replaced by new annual housing goals established by HUD.[8] In August 2009, FHFA issued a final rule that adopted many of the existing housing goals provisions in a new part 1282 of title 12 of the Code of Federal Regulations. As authorized by section 1331(c) of the Safety and Soundness Act, the final rule also revised the levels of the existing affordable housing goals in light of current market conditions.[9]

The Safety and Soundness Act, as amended by HERA, requires the Director of FHFA to establish new affordable housing goals effective for 2010 and beyond. The new housing goals include four goals for single-family, owner-occupied housing, one multifamily special affordable housing goal, and one multifamily special affordable housing subgoal.[10] The single-family housing goals target purchase money mortgages for low-income families, families that reside in low-income areas, and very low-income families, and refinancing mortgages for low-income families.[11] The multifamily special affordable housing goal targets multifamily housing affordable to low-income families, and the multifamily special affordable housing subgoal targets multifamily housing affordable to very low-income families.[12]

C. Conservatorship

On September 6, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises in accordance with the Safety and Soundness Act, as amended by HERA, to maintain the Enterprises in a safe and sound financial condition. The Enterprises remain under conservatorship at this time.

III. Prospective and Market-Based Goals

Following passage of the Safety and Soundness Act, HUD established housing goals for Fannie Mae and Freddie Mac in October 1993,[13] and revised and expanded those goals in 1995,[14] 2000,[15] and 2004.[16] Multi-year goals were set in the 1993 housing goals rule for 1993–94 (subsequently extended to 1995), in the 1994 housing goals rule for 1996–99 (with the goal levels for 1999 continuing in effect for 2000), in the 2000 housing goals rule for 2001–03 (with the goal levels for 2003 continuing in effect for 2004), and in the 2004 housing goals rule for 2005–08.

In each case, the numerical goals were established up to four years in advance. The goals were set as specific minimum goal-qualifying percentages of all dwelling units financed by mortgages acquired by each Enterprise in a given year, except for the special affordable multifamily subgoal, which was set as a minimum dollar volume of this type of business. In the 2004 final rule, HUD added three single-family home purchase subgoals, which were similarly set as specific minimum goal-qualifying percentages of all home purchase mortgages financed by the Enterprises on owner-occupied properties in metropolitan statistical areas (MSAs).

HUD set the goals for 1993–2008 based on the six factors as specified in the Safety and Soundness Act. The most important such factors were past performance on the goals and, especially, for the home purchase subgoals, HUD's estimates of the goal-qualifying shares of home purchase mortgages in the primary mortgage market on properties in MSAs. For the overall goals, HUD's estimates of the goal-qualifying shares of all dwelling units financed in the primary market by the Enterprises in each year were also important. For example, HUD estimated that low- and moderate-income units would account for 50–55 percent of all units financed in the primary mortgage market for 2003–04, and 51–56 percent of all units financed in 2005–08. The low- and moderate-income goal was set at 50 percent for 2003–04, and was later established to increase in accordance with the market range over the 2005–08 period—specifically, 52 percent for 2005, 53 percent for 2006, 55 percent for 2007, and 56 percent for 2008. A similar approach was followed with regard to the overall underserved areas and special affordable goals for 2005–08.

As recent market developments show, it can be difficult to forecast the goals-qualifying shares of the primary mortgage market several years in advance. The forecasts developed by HUD were based on the assumption of a "home purchase market environment," a market environment in which purchase mortgages dominate over refinancing mortgages. However, when market conditions result in higher than average refinance activity, the actual market goals-qualifying shares can be significantly different from the forecast because the actual refinance share would dominate. A second reason for the divergence between forecasted and actual shares of goals-qualifying units in the primary mortgage market is the variation in the affordability of housing, such as measured by the National Association of Realtors (NAR) housing affordability index. If the price of a product or service declines, it is more affordable to the consumer. In this respect, housing is no different from any other product. A third reason for divergence is the variance in the size of the multifamily mortgage market over time. Under the previous goals counting regime, multifamily units played a significant role in whether an Enterprise met the goals. A fourth reason for the divergence is the change in the size of the share of the mortgage market accounted for by Federal Housing Administration (FHA) and Department of Veterans Affairs (VA) mortgages. As discussed below, the market share of mortgages insured by FHA increased dramatically in recent years, from a monthly low of 2.5 percent in October 2005 to 32 percent in December 2008.

As measured after the fact, HUD's market estimates often differed significantly from the actual goals-qualifying shares of the primary market. Specifically, the actual low- and moderate-income share of the primary market in 2003 was 53 percent, which was within HUD's 2001–2003 forecasted range of 50–55 percent, but when the share increased to 58 percent for 2004, it exceeded the upper end of the range. The low- and moderate-income share of the primary market remained high, at 57 percent for 2005, above HUD's 2005–2008 forecasted range of 51–56 percent, but then decreased to 55 percent for 2006 and 52 percent for 2007. Thus, over the 2005–2007 period, the low- and moderate-income goals increased steadily, while the low- and moderate-income share of the primary mortgage market decreased steadily.

While the Enterprises are in conservatorship, FHFA expects the Enterprises to continue to fulfill their core statutory purposes, including their support for affordable housing. The affordable housing goals are one set of measures of that support. FHFA does not intend for the Enterprises to undertake uneconomic or high-risk activities in support of the goals.

[6] *See* 12 U.S.C. 4561 *et seq.* (2008).
[7] *See* 24 CFR part 81 (2008).
[8] *See* 24 CFR 81.12 through 81.14 (2008).
[9] *See* 74 FR 39873 (Aug. 10, 2009).
[10] *See* 12 U.S.C. 4561 and 4563(a)(2).
[11] *See* 12 U.S.C. 4562.
[12] *See* 12 U.S.C. 4563.
[13] *See* 58 FR 53048 (Oct. 13, 1993) and 58 FR 53072 (Oct. 13, 1993).
[14] *See* 60 FR 61846 (Dec. 1, 1995).
[15] *See* 65 FR 65044 (Oct. 31, 2000).
[16] *See* 69 FR 63580 (Nov. 2, 2004).

Further, the fact that the Enterprises are in conservatorship should not be a justification for withdrawing support from these market segments. While in conservatorship the Enterprises have tightened their underwriting standards to avoid poor quality mortgages that have contributed substantially to their losses. Maintaining sound underwriting discipline going forward is important for conserving the Enterprises' assets and for supporting their mission in a manner in which the achievement of housing goals directly relates to actual market conditions. In light of these circumstances and the difficulties in anticipating market deviations from the normal home purchase environment in the traditional approach to goal-setting, FHFA proposes in this rule to measure the Enterprises' single-family goal performance relative to benchmark levels for the goals-qualifying shares of the Enterprises' mortgage purchases, as well as relative to the *actual* goals-qualifying shares of the primary mortgage market. A dual approach prevents exclusive reliance on multi-year mortgage market forecasts. The primary disadvantage of this approach is that information on the goals-qualifying shares of the current single-family primary market is not available until the release of Home Mortgage Disclosure Act (HMDA) data in late summer of the following year, approximately nine months after the rating period. However, FHFA believes that the market-based approach proposed in this rule is an appropriate measure of mission achievement under the housing goals for the Enterprises, especially while they are operating in conservatorship, and that the overall advantages of this approach outweigh the disadvantages.

In 2010, FHFA expects to begin to conduct a monthly survey of single-family mortgage originations pursuant to section 1324(c) of the Safety and Soundness Act, as amended by HERA, and make data collected under that survey available to the public.[17] Release of that data is likely to provide detailed information on home mortgage lending activity more frequently and in a timelier manner than does the public release of the data collected under HMDA. FHFA will use the survey data in its monitoring of Enterprise affordable housing goals performance in 2010 and subsequent years.

This proposed rule would establish single-family housing goals that include (1) an assessment of Enterprise performance as compared to the actual share of the market that meets the criteria for each goal, and (2) a benchmark level to measure Enterprise performance. The benchmark levels for performance are intended to provide greater certainty for the Enterprises in establishing strategies for meeting the affordable housing goals. An Enterprise would be found to have failed to meet a housing goal if its annual performance falls below both the benchmark level and the actual share of the market that meets the criteria for a particular housing goal for that year. An Enterprise would not be found to have failed to meet a goal if it achieves the benchmark level for that goal, even if the actual market size for the year is higher than the benchmark level, because for planning purposes the Enterprises need to be able to rely on the benchmarks that FHFA has set.[18]

The proposed approach to setting goals, involving both the setting of a prospective target and an assessment of actual market opportunity, is a departure from past practice at HUD, as well as in the transitional housing goals established by FHFA for 2009. FHFA has determined that this approach is appropriate in light of the difficulties of predicting the market, especially in light of recent market turmoil, but also in view of the difficulty in making those projections accurately even in more stable economic environments. FHFA views this approach as fully consistent with Congressional intent in granting goal-setting power to the regulator, in light of the many provisions that Congress inserted into the statute to enable the goals to be adjusted to reflect changing market conditions or otherwise suggesting that the goals should be set in light of market conditions. Those provisions include: The requirement that the agency calculate the preceding three-year average percentages of goal-eligible originations for each goal category, and take that information into account in setting the single-family goals;[19] the authority to adjust goals, when they have been set for more than one year, based on market conditions;[20] the discretionary authority to adjust a goal in response to a petition, partly in response to market conditions and the risk of "over-investment";[21] and provisions for relief from enforcement if goals are determined not to have been feasible.[22]

IV. Changes in Structure of Housing Goals for 2010–2011

The proposed rule would modify the structure of the housing goals established by HUD for 2005–2008, and subsequently extended and modified for 2009 by FHFA, in a number of ways for 2010–2011. There would be no overall goals for 2010–2011 covering all of each Enterprise's mortgage purchases, as in the past. Rather, there would be four separate goals for purchases of single-family mortgages and two goals for purchases of multifamily mortgages. These changes, many of which are required by changes made by HERA in the governing statute, are described in more detail below.

Enterprise goal performance under each of the single-family housing goals is measured using a fraction of qualifying mortgage purchases as a percent of total mortgage purchases. Neither the numerator nor the denominator includes Enterprise transactions or activities that are not mortgage purchases as defined by FHFA or that would be specifically excluded as ineligible under proposed § 1282.16(b). The 2010–2011 single-family goals, as proposed, would establish separate goals for home purchase mortgages and refinancing mortgages. This differs from past treatment, which combined such purchases for the overall goals.

In addition, the proposed rule would count only conventional loans for purposes of the housing goals. This means that certain FHA loans that previously counted toward the goals, such as Home Equity Conversion Mortgages (HECMs), will no longer be counted. Second liens, which also counted toward the goals in the past, would be excluded from counting for purposes of the housing goals in the future. The Enterprises have purchased very few second liens in the past.

Under the 2010–2011 goals, mortgages financing rental units in single-family properties, which were previously included in the goals, would no longer be counted. However, FHFA will continue to monitor the Enterprises' purchases of such mortgages with regard to rental units in both 2–4 unit owner-occupied housing and investor-owned 1–4 unit rental housing.

The 2010–2011 multifamily goals would be based on the numbers of affordable dwelling units financed, rather than being specified in minimum dollar terms. The special affordable

[17] 12 U.S.C. 4544(c).

[18] *See* 12 U.S.C. 4561(b), acknowledging "the need for the enterprises to reasonably and sufficiently plan their operations and activities in advance, including operations and activities necessary to meet such annual goals."

[19] 12 U.S.C. 4562(e)(2)(A).

[20] 12 U.S.C. 4562(e)(3).

[21] 12 U.S.C. 4564(b)(1), (2).

[22] 12 U.S.C. 4566(b).

multifamily subgoal in effect prior to 2010 applied to purchases of mortgages on housing for families with incomes below 60 percent of area median income (AMI) and for families with incomes between 60 percent and 80 percent of AMI living in low-income areas. The overall multifamily goal for 2010–2011 is somewhat broader in its coverage than the previous special affordable multifamily goal, applying to mortgages on housing for families with incomes no greater than 80 percent of AMI, regardless of location. However, the 2010–2011 very low-income multifamily subgoal would be targeted to households with slightly lower incomes. The qualifying household income for purposes of the 2010–2011 multifamily subgoal would be at or below 50 percent of AMI.

The 2010–2011 low-income home purchase and refinancing goals in the proposed rule would target households with lower incomes than the past low- and moderate-income goals. The past low- and moderate-income goals included families with incomes up to 100 percent of AMI. Under the proposed rule, the low-income home purchase and refinancing goals would include only families with incomes no greater than 80 percent of AMI.

The 2010–2011 low-income areas home purchase goal would be somewhat more targeted than the past underserved areas home purchase subgoal. For example, the new low-income areas housing goal includes families in census tracts with incomes up to 80 percent of AMI, while the underserved areas home purchase subgoal included families in census tracts with incomes up to 90 percent of AMI. The narrower scope of the low-income areas housing goal may be seen by comparing performance on the underserved areas home purchase subgoal in 2008 (approximately 30 percent for both Enterprises) with what their performance would have been on the low-income areas home purchase goal in 2008 (approximately 15 percent for both Enterprises).

V. Analysis of Single-Family Housing Goals

Section 1332(e)(2) of the Safety and Soundness Act, as amended by HERA, requires FHFA to consider the following seven factors in setting single-family housing goals:

(1) National housing needs;

(2) Economic, housing, and demographic conditions, including expected market developments;

(3) The performance and effort of the Enterprises toward achieving the housing goals under this section in previous years;

(4) The ability of the Enterprise to lead the industry in making mortgage credit available;

(5) Such other reliable mortgage data as may be available;

(6) The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described, relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively; and

(7) The need to maintain the sound financial condition of the Enterprises.[23]

FHFA's consideration of the size of the market for each housing goal includes consideration of the percentage of goals-qualifying mortgages under each housing goal, as calculated based on HMDA data for the three most recent years for which data is available.[24]

A. Analysis of Factors for Single-Family Housing Goals

FHFA's analysis of each of the factors is set forth below.

1. National Housing Needs

With the collapse of subprime and Alt-A lending, tighter credit conditions, and stricter underwriting standards, single-family mortgage originations fell 38 percent in 2008. The Enterprises' share of single-family mortgage-backed securities (MBS) issuance rose to over 73 percent in that year, however, and the credit risk characteristics of their purchases began to improve. Falling house prices caused equity in homes to decline sharply. The resetting of interest rates on poorly underwritten adjustable rate mortgages (ARMs) originated in recent years, deteriorating household balance sheets, rising unemployment, continued credit tightening, and the deepening recession contributed to increases in mortgage delinquency and home foreclosure rates as well as sharply lower housing starts and sales.

The decline in home prices that began in 2007 accelerated sharply in 2008. Continued tightening in lender credit policies, large inventories of unsold homes, significant volumes of homes in foreclosure, rising unemployment, and increasing pessimism among potential homebuyers combined to drive home prices down further.

Despite improving housing affordability, the U.S. homeownership rate declined since peaking at 69 percent in 2004. In the third quarter of 2009, the homeownership rate was 67.6 percent, down from the 67.9 percent in the third quarter of 2008.[25] The homeownership rate for married couples with children declined from 78.8 percent in the third quarter of 2008 to 77.9 percent in the third quarter of 2009.[26] The homeownership rate for Black households declined markedly from 48.2 percent in the third quarter of 2008 to 46.8 percent in the third quarter of 2009.[27] Between 2000 and 2005, the homeowner vacancy rate—the proportion of the homeowner inventory that is vacant for sale—averaged about 1.7 percent. However, that rate increased 70 basis points in 2006 alone, to 2.7 percent in the fourth quarter, and has inched up generally every year since, reaching 2.9 percent in the first and fourth quarters of 2008. That was the highest rate since the Census Bureau began collecting that statistic in 1956. The persistently high rate reflects both the high level of foreclosures and declining home sales.

A recent NAR study of homebuyers and sellers between July 2008 and June 2009 shows the number of first-time homebuyers rose to 47 percent of all homebuyers, from 41 percent in the prior year's study. The median age for first-time homebuyers was 30 years and the median income was $61,600. The typical first-time homebuyer purchased a home costing $156,000, down from $165,000 in the prior year's study. The study found that 55 percent of entry level buyers financed their purchase with an FHA loan, and another 8 percent used the VA loan program.[28]

According to FHFA's Monthly Interest Rate Survey (MIRS), the average loan-to-value ratio (LTV ratio) of single-family, conventional, purchase money mortgages, which increased rapidly from 73.6 percent in 2003 to 79.3 percent in 2007, fell to 76.7 percent in 2008. The proportion of such loans with LTV ratios greater than 90 percent dropped sharply from 2007's level of 29 percent—the highest level recorded—to 18 percent in 2008.

HMDA data for 2008 indicated that applications from Black borrowers fell by 48 percent, and applications from Hispanic borrowers fell by 55 percent.[29]

[23] 12 U.S.C. 4562(e)(2).

[24] *See* 12 U.S.C. 4562(e)(2)(A).

[25] *U.S. Housing Market Conditions,* 3rd Quarter 2009. Department of Housing and Urban Development at 87.

[26] *U.S. Housing Market Conditions,* 3rd Quarter 2009. Department of Housing and Urban Development at 89.

[27] *U.S. Housing Market Conditions,* 3rd Quarter 2009. Department of Housing and Urban Development at 88.

[28] "NAR Survey Shows First-Time Home Buyers Set Record in Past Year." Press Release. National Association of Realtors. Nov. 13, 2009.

[29] "HMDA Data Show Huge Decline in 2008 Mortgage Activity—Except at Government Insured Programs." *Inside Mortgage Finance.* Oct. 2, 2009 at 8.

Originations rose somewhat in the first two quarters of 2009 over the last two quarters of 2008, but the $410 billion in mortgage originations in the third quarter of 2009 showed a decline of more than 25 percent over the second quarter's $550 billion.[30]

One of the key catalysts of the current economic crisis was falling housing prices after the substantial increase that began in 2000. From January 2000 through the May 2006 peak, the S&P/Case-Shiller housing price index rose by approximately 105 percent, only to fall by more than 30 percent since then. The less volatile FHFA housing price index, which reflects the book of business of the Enterprises, peaked later and has since declined about 11 percent.

Changes in mortgage underwriting, particularly for affordable products, had a direct impact on the national housing market. During the boom, as house price appreciation reduced affordability, low documentation Alt-A loans, interest-only loans and ARMs proliferated. Subprime market share tripled to more than 20 percent of the market. Lenders accepted more loans with higher LTV ratios and lower borrower credit scores. The Joint Center for Housing Studies report, "State of the Nation's Housing 2009," describes the effect of loosened mortgage underwriting standards on the housing market. In 2005, a household with median owner income of about $57,000 and spending 28 percent of income on mortgage principal and interest could qualify for a 30-year, fixed-rate loan of $225,000. If the same borrower took out an ARM loan at a discounted interest rate, the maximum loan amount increased to $265,000. By adding an interest-only feature to that ARM and qualifying the household based on the initial interest-only payments, the potential loan size grew to $356,000. Allowing the borrower to spend 38 percent of income on mortgage costs meant that the mortgage loan could total approximately $482,000. Interagency regulatory guidance on nontraditional and subprime loans issued in 2006 and 2007, including guidance to the Enterprises by OFHEO, contributed to limiting the numbers of such loans as underwriting standards were subsequently strengthened.[31]

A result of the crisis is that the mortgage market has returned to more traditional and prudent lending standards. Mortgage underwriting standards in the near term can be expected to continue to be more conservative than earlier in the decade.

The decline in housing prices has made housing more affordable. A composite index of housing affordability for the third quarter of 2009 showed that families earning the median income had 159.2 percent of the income needed to purchase a median-priced existing single-family home, a figure 24 percent higher than the 128.6 percent reported for the third quarter of 2008, although down from the 169.2 percent affordability level of the prior quarter.[32] Housing price declines have brought standard affordability ratios closer to or even above historical levels. In one national survey of 122 metropolitan areas, the number of areas where the home price is less than three times the median household income has declined to the same level as in 2003.[33] While the unemployment rate may decline in 2010 and 2011, or at a minimum the rate of unemployment may level off, there are concerns as to whether jobs will return in areas where excess single-family housing units are located.[34]

From April 2008 through December 2008, eligible first-time homebuyers received a $7,500 tax credit. From January 2009 through the end of November 2009, the tax credit was revised to include an $8,000 non-refundable tax credit. On November 5, 2009, the Congress enacted H.R. 3548, the Unemployment Compensation Extension Act, which extended and expanded the $8,000 non-refundable homebuyer tax credit. Under the legislation, qualifying first-time homebuyers receive the $8,000 tax credit if they sign a contract by April 30, 2010, and close by June 30, 2010. To encourage "move up" homebuyers, the legislation allows homebuyers who purchase a new primary residence to qualify for a $6,500 tax credit, provided they owned their current home for at least five consecutive years in the previous eight years.[35]

2. Economic, Housing and Demographic Conditions

The current turmoil in the housing and mortgage markets has created less than favorable conditions for expansions in credit to borrowers on the margins of homeownership. The adverse market conditions include: (1) Tightened credit underwriting practices; (2) sharply increased standards of private mortgage insurance (MI) companies; (3) increased role of FHA in the marketplace; (4) collapse of the private label mortgage-backed securities (PLS) market; and (5) increasing unemployment. These developments contribute to a decrease in the overall number of single-family loans likely to qualify for affordable housing goals credit.

Tightened credit underwriting practices. In general, more conservative underwriting standards in the mortgage market will likely result in fewer goals-qualifying loans and a lower percentage of goal-qualifying loans in the market. Underwriting standards in the mortgage market generally, and at Fannie Mae and Freddie Mac, tightened considerably in 2008 and 2009 in response to declining market conditions and early payment defaults, among other factors, and such standards can be expected to remain in place in the near future. In May 2008, responding to changes in private MI underwriting, Fannie Mae revised its down payment policy to lower the maximum allowable LTV ratio for loans underwritten by Desktop Underwriter (DU) and for manually underwritten loans. The implementation of Fannie Mae's updated DU Version 8.0, effective in December 2009, generally reduces the allowable "back-end" borrower debt-to-income ratio—the portion of a borrower's income that goes toward paying debts—to 45 percent. In addition, it eliminates DU recommendations for Expanded Approval II and Expanded Approval III loans, loans which historically counted heavily toward the housing goals.[36] If the DU 8.0 revisions had been in effect

[30] "Mortgage Origination Volume Dropped Sharply in 3Q09, But 2009 May End on a Rising Trend." *Inside Mortgage Finance.* Oct. 30, 2009 at 3–4.

[31] *See* Office of Federal Housing Enterprise Oversight, "OFHEO Director James B. Lockhart Commends Enterprises on Implementation of Subprime Mortgage Lending Guidance," News Release (Sept. 10, 2007), available at *http://www.fhfa.gov/webfiles/1608/Lockhartcommends ENTERPRISEsreSubprime91007.pdf. See also* Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Statement on Subprime Mortgage Lending, 72 FR 37569–37575 (July 10, 2007); and Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609–58618 (Oct. 4, 2006).

[32] *U.S. Housing Market Conditions,* 3rd Quarter 2009. Department of Housing and Urban Development at 17.

[33] "State of the Nation's Housing 2009." Joint Center for Housing Studies of Harvard University at 9.

[34] Emile J. Brinkmann, Mortgage Bankers Association. Senate Banking, Housing and Urban Affairs Committee. Oct. 20, 2009 at 3.

[35] "House Clears Extension of Jobless Benefits, Homebuyer's Tax Credit." Congressional Quarterly Today Online News. Nov. 5, 2009.

[36] Desktop Originator/Desktop Underwriter Release Notes. DU Version 8.0. DODU 0909. Fannie Mae. Sept. 22, 2009. DU 8.0 will allow a back-end ratio of up to 50 percent for case files with strong compensating factors.

for all of 2009, substantially fewer goals-qualifying loans would have been underwritten. The changes to DU will likely have a similar effect in 2010 and 2011. Freddie Mac has similarly tightened its underwriting standards.

Sharply increased standards of private mortgage insurers. Much like tighter credit underwriting standards generally, higher underwriting standards of private MI providers have resulted in fewer goal-qualifying loans and a lower percentage of goal-qualifying loans in the market. As a result of stress in the mortgage markets, beginning in late 2007, MI providers implemented major changes in the types of risk they were able to insure. MI providers that had experienced substantial ratings downgrades acted to minimize losses by imposing stricter underwriting standards on loans with high LTVs. In October 2009, Standard and Poor's put five MI providers on credit watch for potential downgrades, citing economic developments that were having a negative effect on the MI providers' book of business.[37] For the first nine months of 2009, private MI activity was down more than 60 percent from the previous year. MGIC, the largest mortgage insurer, reported a $517.8 million net loss for the third quarter of 2009, an amount equal to more than half of the MI industry's loss for the period.[38] In addition, MI providers have implemented measures in "declining markets" that have sharply limited the insurability of certain higher-LTV mortgage loans.

As a result of these conditions, the availability of MI for high-LTV or low credit score loans is much reduced relative to what it was a few years ago. These developments limit the ability of MI providers to write new business and reduce the overall mortgage lending volume, particularly for higher-LTV mortgages, which historically have tended to be more likely to count for purposes of the housing goals.

Increased role of FHA in the marketplace. Another factor that has had substantial marketplace impact is the increase in the share of mortgages insured by FHA and mortgages guaranteed by the VA. These loans generally are pooled into mortgage-backed securities guaranteed by the Government National Mortgage Association (GNMA). Purchases of mortgages insured by FHA and mortgages guaranteed by the VA ordinarily do not receive goals credit. In general, the impact of the FHA market on the percentage of loans in the conventional market that qualify for a particular goal depends on: (1) The goal-qualifying size of the overall market; (2) the share of the market accounted for by FHA mortgages; and (3) the extent to which FHA mortgages have goals qualifying characteristics.

The market share of mortgages insured by FHA and mortgages guaranteed by the VA has risen dramatically. In the third quarter of 2009, FHA endorsed a record $104.2 billion in mortgages, which brought the agency's total production to $360.7 billion for the government's fiscal year, or nearly a billion dollars a day.[39] A key reason for this growth is that Fannie Mae and Freddie Mac generally cannot buy loans with original LTV ratios greater than 80 percent without some form of credit enhancement. With the stresses on private mortgage insurers, borrowers without substantial down payments are increasingly dependent on government insurance programs. Nearly 80 percent of FHA's purchase-loan borrowers in 2009 were first-time homebuyers, and in the second quarter of 2009, nearly half of all first-time buyers in the housing market used FHA-insured loans.[40] To ensure long-term actuarial soundness, FHA announced several policy changes on January 20, 2010 that could have the effect of limiting its role in the mortgage market, including: (1) Reducing the maximum permissible seller concession from the current 6 percent to 3 percent, which is in line with marketplace norms; (2) requiring a minimum credit score of 580 for new borrowers seeking to qualify for the 3.5 percent downpayment program; and (3) increasing the up-front mortgage insurance premium by 50 basis points, to 2.25 percent. In addition, FHA asked for a change in the law to allow it the ability to increase the maximum annual mortgage insurance premium.[41]

Collapse of private label securities market. In the middle part of the decade—the period covered by the prior HUD rule on affordable housing goals—Fannie Mae and Freddie Mac were major purchasers of the AAA-rated tranches of PLS that contained substantial amounts of subprime mortgages. While the size and nature of the Enterprises' subprime holdings differed, these purchases had an impact on the achievement of the housing goals for each Enterprise, particularly for the home purchase subgoals. Such loans were not a large factor in the mortgage marketplace in 2008 or 2009. OFHEO provided guidance to the Enterprises in 2007 incorporating interagency policy guidance from the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Board and the National Credit Union Administration. The guidance restricted the purchase of such securities by the Enterprises when certain terms of mortgages backing those securities are harmful to the borrower.[42]

Increasing unemployment. Unemployment and underemployment have an effect on mortgage default rates, and on the number of borrowers seeking and obtaining a purchase money mortgage or a refinance. According to the Bureau of Labor Statistics of the U.S. Department of Labor, the unemployment rate rose from 9.8 percent to 10.1 percent in October 2009, as nonfarm payroll employment continued to decline. Construction employment decreased by 62,000 jobs in October.[43] The unemployment rate declined to 10.0 percent in November 2009,[44] and it remained at that level in December 2009.[45] The average duration of unemployment has also increased significantly over the last year.

NeighborWorks, a national network of community-based organizations actively involved in foreclosure mitigation

[37] "FHA Ends 2009 Fiscal Year With a Bang, Topping $100 Billion in Quarterly Originations for the First Time." *Inside Mortgage Finance.* Oct. 30, 2009 at 8.

[38] "Private MIs Continue to Take a Beating as FHA Rockets to New Record Market Share." *Inside Mortgage Finance.* Nov. 13, 2009 at 3–4.

[39] "FHA Ends 2009 Fiscal Year With a Bang, Topping $100 Billion in Quarterly Originations for the First Time." *Inside Mortgage Finance.* Oct. 30, 2009 at 8.

[40] "HUD Secretary, FHA Commissioner Report on FHA's Finances." HUD Press Release No. 09–214. Nov. 12, 2009.

[41] "FHA Announces Policy Changes to Address Risk and Strengthen Finances." HUD Press Release No. 10–001. Jan. 20, 2010.

[42] On August 10, 2007, OFHEO issued letters directing the Enterprises to apply the principles and practices of the interagency *Statement on Subprime Mortgage Lending* to their purchases of subprime loans in the regular flow of business, including bulk purchases. OFHEO directed that, not later than September 13, 2007, nontraditional and subprime loans purchased by Fannie Mae and Freddie Mac as part of PLS transactions comply with the *Interagency Guidance on Nontraditional Mortgage Product Risks* and the *Statement on Subprime Mortgage Lending.* This application to PLS conformed to the underwriting provisions of the guidance. Further, OFHEO directed that the Enterprises adopt such business practices and take such quality control steps as necessary to ensure the orderly and effective implementation of the guidance with respect to the purchase of PLS. OFHEO News Release (Sept. 10, 2007).

[43] "The Employment Situation—October 2009." Economic News Release USDL–09–1331. Bureau of Labor Statistics. U.S. Department of Labor. Nov. 6, 2009.

[44] "The Employment Situation—November 2009." Economic News Release USDL–09–1479. Bureau of Labor Statistics. U.S. Department of Labor. Dec. 4, 2009.

[45] "The Employment Situation—December 2009." Economic News Release USDL–09–1583. Bureau of Labor Statistics. U.S. Department of Labor. Jan. 18, 2010.

counseling, has estimated that the two leading causes of mortgage default rates were a reduction in income (28 percent of defaults) and loss of income (17 percent of defaults).[46] The high rates of unemployment and underemployment are likely to continue to have a significant impact on the size of the mortgage market going forward.

Refinancings. In 2009, Fannie Mae and Freddie Mac refinanced 4 million mortgage loans through November. Refinancing volumes are strongly influenced by mortgage interest rates and LTV ratios on existing mortgages.

Under the umbrella of the Administration's Making Home Affordable program, the Home Affordable Refinance Program (HARP) is an effort by the Enterprises to enhance the opportunity for owners to refinance. Under this program, homeowners whose mortgages are owned or guaranteed by Fannie Mae or Freddie Mae who are current on their mortgages have the opportunity to reduce their monthly mortgage payments to take advantage of low monthly mortgage interest rates, which Freddie Mac's January 21, 2010 weekly report indicated had fallen to 4.99 percent for a 30-year, fixed-rate mortgage. For homeowners with a current LTV ratio between 80 and 125 percent, the Enterprises will refinance mortgages without requiring additional mortgage insurance.

Demographic conditions. In establishing the 2010 goals, FHFA analyzed current demographic trends for their possible effect on housing demand. Analysis of current trends reveals that by 2008, household formation rates were already on the decline. In addition, the recession and unemployment have reduced immigration, which in the past has been a driver of housing demand. It is still too early to assess the impact of the current economic downturn on housing demand, particularly given regional variations in impact and mitigating factors, such as increased affordability of housing ownership. In the long-term, housing demand is likely to increase as a result of population growth, immigration, and future household formation by the generation born between 1981 and 2000.[47] However, the impact of long-term demographic conditions on short-term goals performance would be minimal.

3. The Performance and Effort of the Enterprises Toward Achieving the Housing Goals in Previous Years

Section 1332(a) of the Safety and Soundness Act, as amended by section 1128 of HERA, requires FHFA to establish three single-family home purchase mortgage goals for the Enterprises: A goal for low-income families; a goal for families that reside in low-income areas; and a goal for very low-income families. Revised section 1332(a) also requires FHFA to establish a goal for single-family refinancing mortgages for low-income families. The following section reviews what performance would have been on these four single-family goals if they had been in effect over the 2001–08 period.

Low-Income Families Housing Goal. The affordable housing goals in the Safety and Soundness Act, as amended, apply to the Enterprises' acquisitions of "conventional, conforming, single-family, purchase money mortgages financing owner-occupied housing" for the targeted groups. Accordingly, they are similar in structure to the home purchase subgoals established by HUD for Fannie Mae and Freddie Mac for 2005–08, and subsequently extended and modified for 2009 by FHFA. One difference is that the subgoals established by HUD applied only to mortgages on properties in metropolitan areas, while the new goals apply to mortgages on properties in all locations.

The low-income families housing goal applies to mortgages made to "low-income families," defined as families with incomes no greater than 80 percent of AMI.[48] Past performance on this goal, if it had been in effect in previous years, is shown in Table 1. As indicated, Fannie Mae's performance would have risen markedly between 2001 and 2003, and then, with the exception of 2006, would have fallen steadily between 2003 and 2008. Its performance last year, at 23.2 percent, would have been the lowest of the period. Freddie Mac's performance generally would have risen between 2001 and 2005, and then declined between 2005 and 2008. Its performance last year would have been 24.5 percent, also the lowest of the period.

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[46] NeighborWorks, *National Foreclosure Mitigation Counseling Program Update,* Jan. 23, 2009.

[47] "State of the Nation's Housing 2009." Joint Center for Housing Studies of Harvard University.

[48] 12 U.S.C. 4502(14).

Table 1

GSE Past Performance on the Low-Income Home Purchase Goal, 2001-08

(Performance if 2010 goal had been in effect; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)

Year	Type of Home Purchase (HP) Mortgages	GSE Fannie Mae	GSE Freddie Mac	HMDA Market Share
2008	Low-Income HP Mortgages	227,297	161,657	
	Total HP Mortgages	979,999	661,115	
	Low-Inc. % of HP Mortgages	23.2%	24.5%	26.5%
2007	Low-Income HP Mortgages	391,833	285,299	
	Total HP Mortgages	1,491,750	1,087,626	
	Low-Inc. % of HP Mortgages	26.3%	26.2%	25.4%
2006	Low-Income HP Mortgages	405,120	301,940	
	Total HP Mortgages	1,390,710	1,097,773	
	Low-Inc. % of HP Mortgages	29.1%	27.5%	23.5%
2005	Low-Income HP Mortgages	368,591	369,425	
	Total HP Mortgages	1,331,349	1,269,969	
	Low-Inc. % of HP Mortgages	27.7%	29.1%	24.8%
2004	Low-Income HP Mortgages	458,833	228,439	
	Total HP Mortgages	1,516,311	896,479	
	Low-Inc. % of HP Mortgages	30.3%	25.5%	27.1%
2003	Low-Income HP Mortgages	544,903	218,506	
	Total HP Mortgages	1,747,765	806,875	
	Low-Inc. % of HP Mortgages	31.2%	27.1%	
2002	Low-Income HP Mortgages	386,136	259,642	
	Total HP Mortgages	1,426,597	988,336	
	Low-Inc. % of HP Mortgages	27.1%	26.3%	
2001	Low-Income HP Mortgages	361,726	246,759	
	Total HP Mortgages	1,359,482	989,567	
	Low-Inc. % of HP Mortgages	26.6%	24.9%	

Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Low-income" refers to borrowers with incomes no greater than 80 percent of Area Median Income (AMI).

Very Low-Income Families Housing Goal. The Safety and Soundness Act, as revised by HERA, defines a "very low-income" owner-occupied property as one occupied by a family with income no greater than 50 percent of AMI.[49] Past performance on this goal, if it had been in effect in previous years, is shown in Table 2. As indicated, Fannie Mae's performance would have risen from 6.8 percent in 2001 to 9.0 percent in 2003 and 2004, and then, with the exception of 2006, generally decreased, to 5.6 percent in 2008, the lowest in the period. Freddie Mac's performance on this goal would have changed little over the 2001–08 period, remaining in the range of 6.2 percent to 7.0 percent.

[49] 12 U.S.C. 4502(24).

Table 2

GSE Past Performance on the Very Low-Income Home Purchase Goal, 2001-08

(Performance if 2010 goal had been in effect; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)

Year	Type of Home Purchase (HP) Mortgages	GSE Fannie Mae	GSE Freddie Mac	HMDA Market Share
2008	Very Low-Income HP Mortgages	54,518	41,006	
	Total HP Mortgages	979,999	661,115	
	Very Low-Income % of HP Mtgs.	5.6%	6.2%	7.1%
2007	Very Low-Income HP Mortgages	95,180	67,860	
	Total HP Mortgages	1,491,750	1,087,626	
	Very Low-Income % of HP Mtgs.	6.4%	6.2%	6.2%
2006	Very Low-Income HP Mortgages	110,802	70,319	
	Total HP Mortgages	1,390,710	1,097,773	
	Very Low-Income % of HP Mtgs.	8.0%	6.4%	5.6%
2005	Very Low-Income HP Mortgages	94,786	91,532	
	Total HP Mortgages	1,331,349	1,269,969	
	Very Low-Income % of HP Mtgs.	7.1%	7.2%	5.8%
2004	Very Low-Income HP Mortgages	136,745	58,063	
	Total HP Mortgages	1,516,311	896,479	
	Very Low-Income % of HP Mtgs.	9.0%	6.5%	6.8%
2003	Very Low-Income HP Mortgages	157,637	56,615	
	Total HP Mortgages	1,747,765	806,875	
	Very Low-Income % of HP Mtgs.	9.0%	7.0%	
2002	Very Low-Income HP Mortgages	95,824	66,797	
	Total HP Mortgages	1,426,597	988,336	
	Very Low-Income % of HP Mtgs.	6.7%	6.8%	
2001	Very Low-Income HP Mortgages	92,595	61,151	
	Total HP Mortgages	1,359,482	989,567	
	Very Low-Income % of HP Mtgs.	6.8%	6.2%	

Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Very Low-income" refers to borrowers with incomes no greater than 50 percent of Area Median Income (AMI).

Low-Income Areas Housing Goal. The low-income areas housing goal targets the Enterprises' purchases of mortgages in specified geographic areas, in a manner similar to the previous underserved areas goal. The Safety and Soundness Act, as revised by HERA, now defines a "low-income area" as a census tract or block numbering area in which the median income does not exceed 80 percent of AMI, including families with incomes not greater than 100 percent of AMI who reside in minority census tracts and in designated disaster areas.[50] It defines a "minority census tract" as a census tract that has a minority population of at least 30 percent and a median family income of less than 100 percent of AMI.[51]

According to the 2000 census, of the 66,144 unique census tracts, there were 18,613 low-income tracts. There were 25,254 tracts with a minority population of at least 30 percent, of which 5,711 had a tract income greater than 80 percent of AMI but less than or equal to 100 percent of AMI. Accordingly, based on the 2000 census, there were 24,324 tracts that would be targeted by this goal, excluding tracts in designated disaster areas, but only families with incomes no greater than AMI would be included in the 5,711 high-minority, moderate-income tracts.

Past performance on the low-income areas housing goal, if it had been in effect in previous years, excluding designated disaster areas, is shown in Table 3. As indicated, Fannie Mae's

[50] 12 U.S.C. 4502(28).

[51] 12 U.S.C. 4502(29).

performance would have varied over time. It would have reached its highest level, 19.3 percent, in 2002, and its lowest level, 15.1 percent, in 2008. Freddie Mac's performance would have peaked at 19.3 percent in 2002, then fallen sharply to 13.3 percent in 2003, and would have been 15.2 percent in 2008.

Table 3

GSE Past Performance on the Low-Income Areas Home Purchase Goal, 2001-08

(Performance if 2010 goal had been in effect; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)

Year	Type of Home Purchase (HP) Mortgages	GSE Fannie Mae	GSE Freddie Mac	HMDA Market Share
2008	Low-Income Tract HP Mortgages	119,154	81,338	
	High-Minority Tract HP Mortgages	29,302	19,369	
	Subtotal Goal-Qualifying Mortgages	148,456	100,707	
	Total HP Mortgages	979,999	661,115	
	Low-Inc. Area % of Mortgages	15.1%	15.2%	15.4%
2007	Low-Income Tract HP Mortgages	209,070	152,521	
	High-Minority Tract HP Mortgages	47,595	36,131	
	Subtotal Goal-Qualifying Mortgages	256,665	188,652	
	Total HP Mortgages	1,491,750	1,087,626	
	Low-Inc. Area % of Mortgages	17.2%	17.3%	17.8%
2006	Low-Income Tract HP Mortgages	200,921	157,430	
	High-Minority Tract HP Mortgages	49,399	37,670	
	Subtotal Goal-Qualifying Mortgages	250,320	195,100	
	Total HP Mortgages	1,390,710	1,097,773	
	Low-Inc. Area % of Mortgages	18.0%	17.8%	18.4%
2005	Low-Income Tract HP Mortgages	176,702	191,222	
	High-Minority Tract HP Mortgages	42,681	46,399	
	Subtotal Goal-Qualifying Mortgages	219,383	237,621	
	Total HP Mortgages	1,331,349	1,269,969	
	Low-Inc. Area % of Mortgages	16.5%	18.7%	17.2%
2004	Low-Income Tract HP Mortgages	209,410	102,979	
	High-Minority Tract HP Mortgages	58,382	25,188	
	Subtotal Goal-Qualifying Mortgages	267,792	128,167	
	Total HP Mortgages	1,516,311	896,479	
	Low-Inc. Area % of Mortgages	17.7%	14.3%	16.3%
2003	Low-Income Tract HP Mortgages	218,239	85,538	
	High-Minority Tract HP Mortgages	69,738	21,944	
	Subtotal Goal-Qualifying Mortgages	287,977	107,482	
	Total HP Mortgages	1,747,766	806,874	
	Low-Inc. Area % of Mortgages	16.5%	13.3%	
2002	Low-Income Tract HP Mortgages	223,439	153,455	
	High-Minority Tract HP Mortgages	64,956	36,966	
	Subtotal Goal-Qualifying Mortgages	288,395	190,421	
	Total HP Mortgages	1,426,597	988,336	
	Low-Inc. Area % of Mortgages	20.2%	19.3%	
2001	Low-Income Tract HP Mortgages	201,903	135,745	
	High-Minority Tract HP Mortgages	55,687	33,291	
	Subtotal Goal-Qualifying Mortgages	257,590	169,036	
	Total HP Mortgages	1,359,482	989,567	
	Low-Inc. Area % of Mortgages	18.9%	17.1%	

Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Low-income tracts" are those with tract income no greater than 80 percent of area median income (AMI). "High minority tract mortgages" refer to home purchase loans made to families with incomes no greater than 100 percent of AMI living in tracts where minorities comprise at least 30 percent of the population and tract median income exceeds 80 percent of AMI but does not exceed 100 percent of AMI. This goal also includes home purchase loans made to families in designated disaster areas, but such mortgages are not included in this table.

Refinancing Housing Goal. Under the Safety and Soundness Act, as revised by HERA, the refinancing housing goal is targeted to low-income families, *i.e.,* families with incomes no greater than 80 percent of AMI. It applies to mortgages that are "given to pay off or prepay an existing loan secured by the same property." Thus, the goal would not apply to home equity loans.

Past performance on this goal, if it had been in effect in previous years, is shown in Table 4. As indicated, Fannie Mae's performance would have peaked in 2004, following the 2001–03 refinance boom, and declined thereafter, to a low of 23.1 percent last year. Freddie Mac's performance would have peaked in 2005, and then also declined, to 23.9 percent in 2008.

Table 4

GSE Past Performance on the Low-Income Refinance Goal, 2001-08

(Performance if 2010 goal had been in effect; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)

Year	Type of Refinance Mortgages	GSE Fannie Mae	GSE Freddie Mac	HMDA Market Share
2008	Low-Income Refinance Mtgs.	336,611	234,035	
	Total Refinance Mortgages	1,457,881	978,187	
	Low-Inc. % of Refinance Mtgs.	23.1%	23.9%	24.1%
2007	Low-Income Refinance Mtgs.	373,196	304,060	
	Total Refinance Mortgages	1,485,335	1,168,055	
	Low-Inc. % of Refinance Mtgs.	25.1%	26.0%	23.3%
2006	Low-Income Refinance Mtgs.	341,625	316,260	
	Total Refinance Mortgages	1,250,096	1,139,833	
	Low-Inc. % of Refinance Mtgs.	27.3%	27.7%	23.7%
2005	Low-Income Refinance Mtgs.	432,261	484,267	
	Total Refinance Mortgages	1,499,315	1,660,103	
	Low-Inc. % of Refinance Mtgs.	28.8%	29.2%	25.6%
2004	Low-Income Refinance Mtgs.	626,987	387,825	
	Total Refinance Mortgages	2,134,012	1,465,570	
	Low-Inc. % of Refinance Mtgs.	29.4%	26.5%	27.0%
2003	Low-Income Refinance Mtgs.	1,621,444	832,176	
	Total Refinance Mortgages	6,324,265	3,823,803	
	Low-Inc. % of Refinance Mtgs.	25.6%	21.8%	
2002	Low-Income Refinance Mtgs.	779,227	616,977	
	Total Refinance Mortgages	3,267,256	2,768,510	
	Low-Inc. % of Refinance Mtgs.	23.8%	22.3%	
2001	Low-Income Refinance Mtgs.	561,919	405,748	
	Total Refinance Mortgages	2,323,674	1,752,313	
	Low-Inc. % of Refinance Mtgs.	24.2%	23.2%	

Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Low-income" refers to borrowers with incomes no greater than 80 percent of Area Median Income (AMI).

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Interpreting Past Goal Performance Data. Past performance is not necessarily a good indicator of future goal performance, due to changes in mortgage interest rates, home prices, credit availability, and other factors. This subsection briefly discusses the role of the purchase of PLS in achieving past performance, and the possible effects of changes in underwriting guidelines recently adopted by the Enterprises. Also, FHFA has partial-year data which allow calculation of each Enterprise's performance in the first three quarters of 2009 relative to the proposed 2010–2011 goals. Such data are proprietary, but preliminary full-

year data will be included in the final rule for the 2010–2011 goals.

The Enterprises purchased PLS in recent years primarily due to anticipated profitability, to maintain market share, and because some PLS, especially those containing subprime mortgages, helped achieve the housing goals. The performance data in Tables 1–4 include the effects of these PLS purchases. Elsewhere in the proposed rule is a discussion regarding counting mortgages included in PLS toward the affordable housing goals in 2010–2011.

In response to the housing crisis and their financial difficulties, including the performance of PLS, the Enterprises have adopted more conservative underwriting guidelines. As previously discussed, those changes will affect goal performance.

4. The Ability of the Enterprises To Lead the Industry in Making Mortgage Credit Available

As background for the statutory requirement to consider the Enterprises' "ability * * * to lead the industry in making mortgage credit available," a Senate committee report on legislation leading to the enactment of the Safety and Soundness Act in 1992 expressed concern that Enterprise purchases had not kept pace with market originations of mortgages to low- and moderate-income borrowers.[52] FHFA shares that concern and has defined the proposed Enterprise housing goals in part against that history. FHFA believes that, in fact, the Enterprises have played a leading role in sustaining the mortgage market during the recent crisis.

Leading the industry in making mortgage credit available includes making mortgage credit available to primary market borrowers at differing income levels. It also includes the ability of the Enterprises to respond to pressing mortgage needs in the current market, such as the threat of a loss of a home by the borrower, for example, by implementing the loan modification and refinance programs under the Administration's Making Home Affordable Program, and by supporting State and local housing finance agencies. The Enterprises' ability to respond is reflected through the introduction of safe and sound innovative products, technology and process improvements.

In the current market environment, the Enterprises, along with FHA and VA, now lead the market. From 1997–2003, the Enterprises' share of mortgage originations grew to almost 55 percent. From 2004–2006, the private mortgage market predominated, and the Enterprises' market share dropped to below 35 percent. After the private mortgage market began to deteriorate in 2007, the Enterprises' share of the single-family mortgage market grew to about 75 percent, with FHA and VA accounting for the bulk of the balance.[53]

At the same time, the Enterprises have been severely stressed by the financial crisis. As described below, they have suffered losses that have depleted their capital and resulted in their being sustained only by multi-billion-dollar infusions of capital from the U.S. Treasury under the Senior Preferred Stock Purchase Agreements. In this environment, in which FHFA as conservator is also exercising a statutory mandate to conserve and preserve the Enterprises' assets, it is especially important that the Enterprises not take on undue additional credit risk by purchasing mortgages in any defined segment in quantities beyond what market originations reasonably provide.

FHFA has taken into account all of the foregoing considerations in assessing the Enterprises' ability to lead the industry.

5. Other Mortgage Data

The primary source of reliable mortgage data for establishing the affordable housing goals is the HMDA data reported by originators. Enterprise mortgage purchase data are compared to HMDA data to evaluate the Enterprises' performance with respect to leading or lagging the housing market under specific goals.

FHFA also uses other reliable data sources including the American Housing Survey (AHS), Census demographics, commercial sources such as Moody's,[54] and other industry and trade research sources, *e.g.,* Mortgage Bankers Association (MBA),[55] Inside Mortgage Finance Publications,[56] NAR,[57] National Association of Home Builders (NAHB),[58] and the Commercial Mortgage Securities Association.[59] The FHFA MIRS,[60] previously administered by the Federal Housing Finance Board, a predecessor agency to FHFA, is used to complement forecast models for home purchase loan originations by making intra-annual adjustments prior to the public release of HMDA mortgage data. In the development of economic forecasts, FHFA uses data and information from Wells Fargo, PNC, Fannie Mae, Freddie Mac, The Wall Street Journal Survey and Forcast.org. In addition, FHFA uses market and economic data from the Bureau of Labor Statistics, the Federal Reserve Board, the Department of Commerce Bureau of Economic Analysis, and FedStats.[61]

6. Market Size

In general, the single-family mortgage market environment of 2009 is expected to extend to 2010, with modest improvements in 2011. Much of FHFA's estimates of the mortgage market rely on the Federal Reserve continuing to support low interest rates.[62] Other quantifiable factors influencing FHFA's outlook for the mortgage market include general growth in the economy, employment and inflation. Other factors that are less easily quantified include the effect of the extension and expansion of the homebuyer tax credit on the mortgage market. Activity in the subprime market is expected to be minimal through 2011.

The composition of the mortgage market will be influenced by FHA's market share, which rose significantly in 2008–2009 and continues to be high, and by the rate of refinancing. Given that underwriting standards are expected to be tight in 2010 and 2011, FHA will most likely continue to have a much larger presence in the mortgage market. In addition, rising interest rates or a combination of depressed housing prices and high LTV ratios could push down the number of homeowners refinancing their mortgages, lowering the refinance rate.

The outlook for the housing and mortgage markets over the 2010–2011 period remains guarded. Both of these markets will be heavily influenced by general economic factors as well as internal market forces. In developing its Economic and Mortgage Outlook (*see* Table 5, below) FHFA uses an average of forecasted values for key economic indicators drawn from several industry

[52] S. Rep. No. 102–282, at 10–11 (1992).

[53] Address by Edward DeMarco, Acting Director of the Federal Housing Finance Agency, New England Mortgage Bankers 22nd Annual Conference, Oct. 1, 2009 at 5.

[54] *http://www.moodys.com/.*

[55] *http://www.mbaa.org/.*

[56] *http://www.imfpubs.com/.*

[57] *http://www.realtor.org/.*

[58] *http://www.nahb.org/.*

[59] *http://www.cmsaglobal.org/CMSA_Resources/Research/Market_Statistics/Market_Statistics/.*

[60] *http://www.fhfa.gov/Default.aspx?Page=250.*

[61] *http://www.fedstats.gov/other.html.*

[62] "The [Federal Open Market] Committee will maintain the target range for the Federal funds rate at 0 to ¼ percent and continues to anticipate that economic conditions, including low rates of resource utilization, subdued inflation trends, and stable inflation expectations, are likely to warrant exceptionally low levels of the Federal funds rate for an extended period." Board of Governors of the Federal Reserve System, Press Release, Nov. 4, 2009.

sources.[63] On average, industry forecasters project the economy to rebound in 2010 and 2011, with real Gross Domestic Product (GDP) growing at a rate of 2.6 and 2.8 percent, respectively. Industry assessments on housing markets are generally reserved. If unemployment remains high, at approximately 10 percent, it would have a negative impact on the housing market. There are also concerns over the impact of the overall economy on housing markets. According to the MBA, "[h]ousing markets are beginning to slowly recover from the worst recession in decades, but are vulnerable to additional macroeconomic shocks."[64] Industry forecasters expect that inflation will remain low, and the minutes of the November 2009 meeting of the Federal Open Market Committee (FOMC) indicate that the FOMC expects core inflation to slow somewhat further over the next two years and inflation to be subdued for some time. The FOMC has also concluded that "economic conditions were likely to warrant exceptionally low [Federal funds rates] for an extended period."[65] Mortgage interest rates are currently dependent on Federal policies and somewhat independent of the Federal funds rate, but for the period between 2010 and 2011, FHFA is not assuming a substantial increase in mortgage interest rates.

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[63] These forecasts include those by the Mortgage Bankers Association, Fannie Mae, Freddie Mac, the National Association of Realtors, Wells Fargo, Wall Street Journal Forecast Survey, PNC Financial and forecast.org.

[64] Mortgage Bankers Association, *Mortgage Finance Commentary,* Nov. 10, 2009.

[65] *See* Federal Open Market Committee of the Federal Reserve System, *Minutes of the Federal Open Market Committee,* Nov. 3–4, 2009. Accessed at *http://www.federalreserve.gov/monetarypolicy/fomcminutes20091104.htm.*

Table 5

Economic and Mortgage Market Outlook

	2004	2005	2006	2007	2008	2009	2010	2011
Real GDP Growth	3.6%	3.1%	2.7%	2.1%	0.4%	-2.4%	2.6%	2.8%
Unemployment Rate	5.5%	5.1%	4.6%	4.6%	5.8%	9.3%	10.1%	9.4%
Inflation Rate[1]	1.8%	2.2%	2.5%	2.3%	2.3%	1.7%	1.1%	1.0%
1-Year Treasury Yield	1.9%	3.6%	4.9%	4.5%	1.8%	0.5%	0.8%	1.5%
10-Year Treasury Yield	4.3%	4.3%	4.8%	4.6%	3.7%	3.3%	4.0%	4.6%
30-Year Mortgage Fixed Rate[2]	5.8%	5.9%	6.4%	6.3%	6.0%	5.0%	5.5%	6.2%
Housing Starts[3]	1,951	2,071	1,810	1,341	899	552	726	1,010
Home Sales[3]	7,929	8,356	7,563	6,437	5,375	5,558	5,924	6,467
Single-Family Originations[4]	$2,919	$3,120	$2,980	$2,430	$1,500	$1,922	$1,315	$1,415
Change in Housing Prices[5]	9.3%	9.3%	3.6%	-1.1%	-8.2%	-0.2%	0.0%	0.6%
Housing Affordability Index[6]	126	114	108	114	135	168	149	132
Refinance Mortgage Share	54%	49%	48%	51%	51%	67%	46%	37%
FHA Market Share	7%	4%	4%	6%	25%	30%	30%	30%
Median Sales Price - New Homes[7]	$218	$234	$243	$244	$230	$213	$214	$219
Median Sales Price - Existing Homes[7]	$193	$218	$222	$217	$197	$173	$174	$178

Note: Shaded area indicates forecasted values. 2009 includes actual (YTD) and forecast values. Forecasts are an average forecast of Mortgage Bankers Association, Fannie Mae, Freddie Mac, National Association of Realtors, Wells Fargo, Wall Street Journal Forecast Survey, PNC Financial, forecast.org, Standard and Poor's and the National Association of Home Builders.

[1]Annual change in Core CPI (less food and energy)

[2]Freddie Mac, Primary Mortgage Market Survey

[3]Thousands of units

[4]Billions of dollars

[5]FHFA House Price Index, 4th quarter over 4th quarter change

[6]National Association of Realtors

[7]Thousands of dollars

Mortgages insured by FHA are likely to continue to represent a significant share of the mortgage market in 2010 and 2011. These loans generally are pooled into mortgage-backed securities guaranteed by GNMA. Purchases of

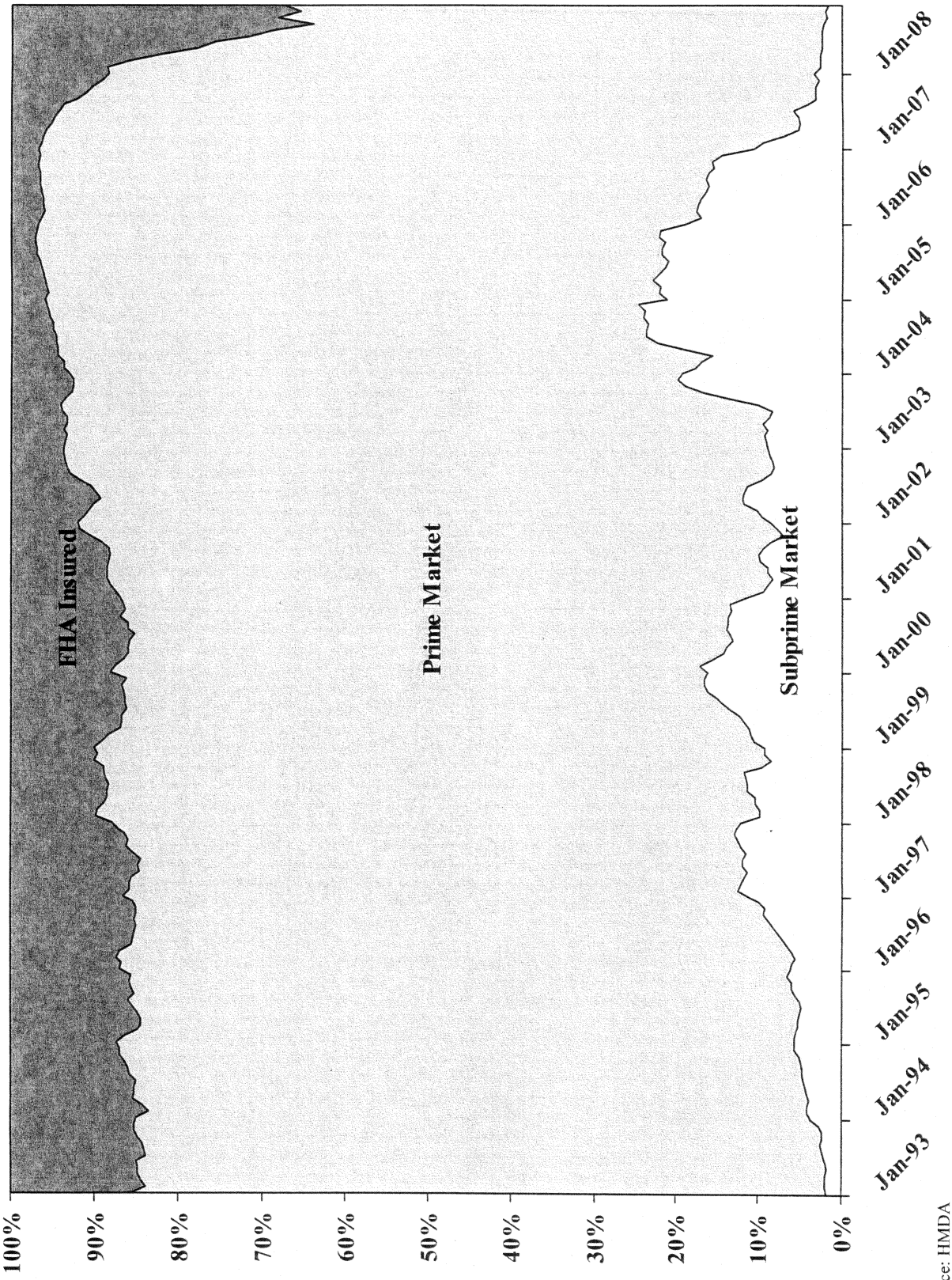
mortgages insured by FHA and VA ordinarily do not receive affordable housing goals credit.

As shown in Figure 1, the market share of all mortgages insured by FHA increased dramatically, from a low of 2.5 percent in 2005 to a high of 32 percent in December 2008. A key reason for this growth is that Fannie Mae and Freddie Mac generally cannot buy loans with original LTV ratios greater than 80 percent without some form of credit enhancement. With the stresses on private mortgage insurers, borrowers without substantial down payments are increasingly dependent on government insurance programs. Since FHA's market share increase appears to coincide with the demise of the subprime market, it would be easy to conclude that for high-risk borrowers, FHA loans are replacing loans from subprime lenders. However, FHA's internal data indicate that the average riskiness of the loans they insure has actually decreased, *i.e.,* credit risk scores increased, since late 2007.[66]

[66] *See* FHA Outlook, a monthly statistical summary of application insurance endorsement, delinquency and claim information on FHA single family programs. Available at *http://www.hud.gov/offices/hsg/comp/rpts/ooe/olmenu.cfm.*

Figure 1

Market Distribution by Mortgage Type



Source: HMDA

With the increase in the FHA loan limit in 2008, FHA is able to endorse larger mortgages. These mortgages would otherwise have been originated as conventional mortgages. In 2008, nearly 80 percent of FHA's

endorsements of refinancing mortgages came from mortgages that were previously conventional mortgages, and this share increased throughout the year.[67] FHA's market share for home purchase mortgages increased from 3.8 percent in January 2007 to 32 percent in December 2008. The share of FHA endorsed refinancing loans increased from 4 percent in 2007 to 15 percent of the conforming market in 2008. As expected, these additional mortgages reduced the share of FHA mortgages that were for low- and very low-income borrowers. While the share of FHA loans for lower-income borrowers decreased, the share of lower-income borrower loans increased in the conventional conforming market between 2007 and 2008 (*see* Table 6).

Table 6

Enterprise Housing Goals Market Estimates 2009 - 2011

Year	Low-Income Borrower PMM Goal	Very Low-Income Borrower PMM Goal	Low-Income Area PMM Goal	Low-Income Borrower Refinance Goal
2004	27.1%	6.8%	16.3%	27.0%
2005	24.8%	5.8%	17.2%	25.6%
2006	23.5%	5.6%	18.4%	23.7%
2007	25.4%	6.2%	17.8%	23.3%
2008	26.5%	7.1%	15.4%	24.1%
2009 *	28.0% ± 1.1%	8.4% ± 0.5%	12.4% ± 0.7%	20.8% ± 3.4%
2010 *	28.2% ± 2.2%	8.3% ± 1.0%	12.2% ± 1.6%	24.9% ± 5.5%
2011 *	27.1% ± 2.8%	7.6% ± 1.3%	13.1% ± 2.3%	26.1% ± 6.6%

*Estimated (95% confidence)

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The experience for the low-income areas goal is different. While FHA endorsed more loans on properties located in low-income areas, it endorsed an even larger number of loans in higher-income areas. As a result, the low-income areas share of FHA's mortgages decreased. However, unlike the borrower-income based goals, the low-income area share of the conventional market also decreased. While the volume of conventional conforming mortgages in 2008 was 50 percent of that in 2007, the volume of conventional conforming mortgages from low-income areas in 2008 was only 40 percent of the level in 2007. The low-income area share of the conventional conforming market fell by 240 basis points between 2007 and 2008. As shown in Table 5, FHA market share is expected to be 30 percent in 2009, 2010 and 2011.

The impact from the first-time homebuyer tax credit is unclear. Additional first-time homebuyers taking advantage of the $8,000 tax credit will likely have a positive impact on the housing goals. The additional repeat homebuyers who qualify for the $6,500 tax credit (there is a five-year occupancy requirement) will likely have a negative impact on the housing goals. For the proposed rule, FHFA has assumed that the homebuyer tax credit will have no significant impact on the share of conventional loans to low- and moderate-income borrowers or on the share of conventional loans that support housing purchases in lower-income areas.

FHFA's estimates of the market performance for the three single-family owner-occupied property purchase money mortgage housing goals and the refinancing mortgage housing goal are provided in Table 6. FHFA estimates that the low-income and very low-income borrower mortgage shares of the home purchase mortgage market will be 24 percent to 30 percent and 6 percent to 9 percent, respectively, in 2010 and 2011. The share of goal-qualifying mortgages in low-income areas in the home purchase mortgage market is estimated to be 11 percent to 15 percent in 2010 and 2011. With a projected refinance rate of 46 percent in 2010 (down from 67 percent in 2009), FHFA estimates that 19 percent to 30 percent of refinance mortgages will be made to low-income borrowers. The refinance rate is expected to fall to 37 percent in 2011, resulting in an estimate that the low-income borrower mortgage share of the refinance mortgage market will be 19 percent to 33 percent in that year. To arrive at these estimates, FHFA used econometric methods to extend the trends of the market performance for each goal, based on a monthly time series database provided by the Federal Financial Institutions Examination Council (FFIEC) and the Federal Reserve Board.

A detailed description of FHFA's analysis of the mortgage market for 2010 and 2011 market model methodology, is contained in a document entitled "Market Estimates for the 2010 and 2011 Enterprise Single-Family Housing Goals," which is available at *http://www.fhfa.gov.*

[67] *Id.* 2008 was the first year FHA reported refinance endorsements by whether they were a refinance of a conventional mortgage or an FHA mortgage.

Sustainable Mortgages

An alternative to defining the market for determining whether a mortgage is eligible to count toward the housing goals would be to focus on the sustainability of the mortgage. Under this approach, the housing goals would be defined in such a way that only mortgages that support sustainable home ownership would count toward the goals. This would require a standard to differentiate between mortgages that are sustainable and mortgages that are likely not to be sustainable.

One approach would be to use historical data on the cumulative default rates (CDRs) of mortgages acquired by the Enterprises and make a determination, based on statistical models that predict CDR, whether mortgages with specific characteristics promote sustainable homeownership. The higher the predicted CDR of a mortgage with specific characteristics, the higher the probability the mortgage will default sometime within its life. FHFA would determine that mortgages with expected CDRs above some point did not promote sustainable homeownership. It might also be possible to establish a statistical correlation between a mortgage's expected CDR and the spread between the yield on the loan and some benchmark interest rate. If so, it might be possible to use that spread as a basis for determining whether mortgages promoted sustainable homeownership.

Both Enterprises use statistical models to calculate expected CDR as part of their business decision strategy. FHFA could rely on Enterprise statistical models or develop its own models to estimate CDRs for the purpose of determining whether mortgages acquired by the Enterprises had estimated CDRs above a specified threshold. FHFA would also have to develop estimates of the share of single-family mortgages originated each year that had estimated CDRs above and below that threshold. To develop its own statistical models, FHFA could use loan-level mortgage data obtained from the Enterprises and leased from private vendors. Data obtained through the mortgage market survey required by section 1324(c) of the Safety and Soundness Act, as amended by HERA, might also be useful.

FHFA invites comments on this alternative to estimating the market and counting single-family mortgages toward the housing goals.

7. Financial Condition of the Enterprises

In the first two full years of the current housing crisis—from July 2007 through the first half of 2009—combined losses at the Enterprises totaled $165 billion. In the first half of 2009, the Enterprises reported combined losses of $47 billion. The financial performance of both Enterprises is dominated by credit-related expenses and losses that stem principally from purchases of PLS and purchases and guarantees of mortgages originated in 2006 and 2007. Since the establishment of the conservatorship for the Enterprises in September 2008, the combined losses of the two Enterprises depleted their capital and required them to draw from the U.S. Treasury under the Senior Preferred Stock Purchase Agreements.

FHFA's duties as conservator require the conservation and preservation of the assets of the two Enterprises. Given the importance of the Enterprises to the housing market, any goal-setting must be closely linked to putting the Enterprises in sound and solvent condition. Over the long term, such actions will assist homeowners and neighborhoods while saving the Enterprises money. In 2009, FHFA attempted to align the Enterprises' affordable housing goals with safe and sound practices and market reality, and the housing goals requirements for 2010 and 2011 must be similarly aligned.

B. Single-Family Housing Goal Levels

Based on the factors described above, proposed § 1282.12 would establish the benchmark levels for the single-family housing goals for 2010 and 2011 as follows:

Housing goals for low-income families. The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for low-income families would be 27 percent of the total number of such mortgages purchased by that Enterprise.

Housing goals for families in low-income areas. The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for families in low-income areas would be 13 percent of the total number of such mortgages purchased by that Enterprise.

Housing goals for very low-income families. The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for very low-income families would be 8 percent of the total number of such mortgages purchased by that Enterprise.

Housing goals for refinancing mortgages. The benchmark level of the annual goal for each Enterprise's purchases of refinancing mortgages on owner-occupied single-family housing for low-income families would be 25 percent of the total number of such mortgages purchased by that Enterprise.

VI. Analysis of Multifamily Housing Goals

Section 1333(a)(4) of the Safety and Soundness Act, as amended by HERA, requires FHFA to consider the following six factors in setting multifamily special affordable housing goals:

(1) National multifamily mortgage credit needs and the ability of the Enterprise to provide additional liquidity and stability for the multifamily mortgage market;

(2) The performance and effort of the Enterprise in making mortgage credit available for multifamily housing in previous years;

(3) The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;

(4) The ability of the Enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;

(5) The availability of public subsidies;

(6) The need to maintain the sound financial condition of the Enterprise.[68]

A. Analysis of Factors for Multifamily Housing Goals

FHFA's analysis of each of the factors is set forth below.

1. National Multifamily Mortgage Credit Needs

Due to the credit crisis, traditional sources of multifamily credit, primarily commercial mortgage-backed securities (CMBS), life insurance companies, commercial banks, and thrifts, have significantly reduced lending or stopped lending completely. This has left Freddie Mac and Fannie Mae as the principal sources of financing for most multifamily mortgages. FHA, another active source of multifamily credit, has capacity constraints that limit its ability to significantly expand lending through its insured programs.

With multifamily property prices having fallen by almost 34 percent from the third quarter of 2008 to the third quarter of 2009,[69] many properties that

[68] 12 U.S.C. 4563(a)(4).

[69] Moody's/Real CPPI Report, Jan. 2010.

would have been eligible for refinance through Enterprise programs lack enough equity to meet Enterprise loan underwriting standards. Declining multifamily property prices will adversely affect owners who financed with interest-only loans over the past decade. As these loans become due, properties with non-amortizing loans will not have accumulated sufficient additional equity over the term of the loan to counter the effects of declining property values.

While obtaining multifamily credit is difficult for most owners, demand for new multifamily housing credit has also waned. According to the U.S. Census Bureau, multifamily housing starts plummeted by 47 percent from September 2008 to December 2009.[70] Sales of multifamily properties are far below normal levels in part because property owners are waiting for property values to stabilize. Many other multifamily property owners, unable to refinance, have been granted extensions by lenders, or in the case of loans securitized through CMBS, by the servicer. On the positive side, the maturations of multifamily loans acquired by the Enterprises and backing CMBS issuances are unlikely to begin to increase significantly until after 2010.

While the Enterprises have primarily purchased the highest-rated CMBS tranches, they may be indirectly affected by increasing CMBS delinquency rates. According to a March 2009 report by Deutsche Bank, delinquencies on CMBS issuances began to accelerate in late 2008, and should peak at 6 to 7 percent in late 2010.[71] According to December 2009 data released by the MBA,[72] delinquencies on CMBS issuances rose slightly from 3.89 percent to 4.06 percent in the third quarter of 2009. The CMBS delinquency rate in the third quarter of 2008 was 0.63 percent. As properties collateralizing CMBS issuances become delinquent, foreclosures and workouts will increase, further depressing prices of all commercial properties, including multifamily properties. This will make refinancing maturing multifamily loans more challenging for the Enterprises.

While multifamily delinquencies remain relatively low for both Fannie Mae[73] and Freddie Mac,[74] 0.062 percent and 0.014 percent respectively, there is growing concern among multifamily property owners and investors about properties that are overleveraged or generating negative cashflows. Depending on the magnitude of distressed properties requiring restructuring, both Fannie Mae's and Freddie Mac's multifamily activity could exceed FHFA forecasts.

2. Past Performance

HUD established dollar-based multifamily subgoals for the Enterprises for the years 1996 through 2008. HERA extended the 2008 subgoals through 2009, subject to review by FHFA, and in its August 10, 2009 final rule on the housing goals, FHFA increased these 2009 subgoals modestly, from $5.49 billion to $6.56 billion for Fannie Mae, and from $3.92 billion to $4.60 billion for Freddie Mac.

HERA changed the structure of the multifamily housing goal for 2010 and beyond. The multifamily housing goal for 2009 is set in terms of units for very low-income families and low-income families in low-income areas. The scope of the goal is broader for 2010–2011, covering units affordable to all low-income families (those with incomes no greater than 80 percent of AMI) regardless of property location.

Section 1333(a)(2) of the Safety and Soundness Act, as revised by HERA, requires the Director to establish "additional requirements for the purchase by each enterprise of mortgages on multifamily housing that finance dwelling units affordable to very low-income families," with "very low-income" families defined as those with incomes no greater than 50 percent of AMI.[75] To implement this provision, FHFA is proposing to establish a multifamily housing subgoal for very low-income families. FHFA invites comment on this proposed requirement.

Section 1333(a)(3) of the Safety and Soundness Act, as revised by HERA, provides that the Director shall require each Enterprise to report on its purchases of mortgages on multifamily housing "of a smaller or limited size that is affordable to low-income families." The provision defines small multifamily projects as those containing 5 to 50 units or as those with mortgages of up to $5,000,000. The Director may adjust the definition to include projects containing different numbers of units or with mortgages of different amounts. The provision further states that the Director may establish additional requirements related to such units by regulation.[76]

FHFA proposes to define such small multifamily properties as those containing 5 to 50 units, which is consistent with industry standards. FHFA already requires reporting by the Enterprises for purchases of mortgages secured by such properties. FHFA invites comments on whether additional requirements for small multifamily properties should be considered.

Multifamily special affordable housing goal. Both Enterprises played major roles in funding multifamily units for low-income families between 2001 and 2008, as shown in Table 7. Fannie Mae financed an average of 417,000 such units over this period, peaking at 538,000 units in 2003, while Freddie Mac financed an average of 364,000 units, peaking at 492,000 units in 2007. However, as discussed elsewhere in the proposed rule, the Enterprises followed different approaches to the multifamily market, with Freddie Mac relying to a significant extent on the purchase of CMBS, while Fannie Mae depended to a greater extent on the direct purchase of multifamily loans originated by its Delegated Underwriting and Servicing (DUS) lenders.

As indicated in Table 7, Fannie Mae's financing of low-income multifamily units fell by 16 percent, from 532,000 units in 2007 to 448,000 in 2008 units. Financing fell more sharply at Freddie Mac, by 44 percent, from 492,000 units in 2007 to 276,000 units in 2008. This difference reflects the drop in CMBS purchases by Freddie Mac. As a result, Freddie Mac's financing of such units was 62 percent of Fannie Mae's financing, the lowest ratio of the 2001–08 period.

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[70] "New Residential Construction in December 2009." U.S. Census Bureau, Joint Release, U.S. Department of Housing and Urban Development, Jan. 20, 2009.

[71] *Commercial Real Estate Outlook Q1 2009,* Deutsche Bank, Mar. 2009.

[72] *MBA Commercial/Multifamily Mortgage Delinquency Report,* Dec. 7, 2009.

[73] Fannie Mae: *Monthly Summary, November 2009,* Table 9.

[74] Freddie Mac: *Monthly Volume Summary: November 2009,* Table 6.

[75] 12 U.S.C. 4563(a)(2).

[76] 12 U.S.C. 4563(a)(3).

Table 7

GSE Funding of Low-Income Multifamily Units, 2001-08

(Performance if 2010 goal had been in effect, based on units or dollar volume)

Performance Measure	Year of Purchase	GSE Fannie Mae	GSE Freddie Mac	Ratio
Number of Low-Income Multifamily Units Financed	2008	448,075	275,683	0.62
	2007	531,941	492,077	0.93
	2006	423,674	422,421	1.00
	2005	342,152	382,613	1.12
	2004	316,133	398,711	1.26
	2003	538,042	419,543	0.78
	2002	344,833	255,947	0.74
	2001	393,615	264,693	0.67
	Average	417,308	363,961	0.87
Dollar Volume (in billions) of Low-Income Multifamily Units Financed	2008	$19.04	$12.82	0.67
	2007	$26.57	$24.15	0.91
	2006	$18.66	$19.24	1.03
	2005	$12.93	$18.07	1.40
	2004	$10.90	$15.43	1.42
	2003	$18.50	$13.80	0.75
	2002	$11.31	$9.14	0.81
	2001	$12.32	$8.67	0.70
	Average	$16.28	$15.17	0.93

Source: FHFA analysis of GSE loan-level data. "Low-income" refers to multifamily rental units affordable to families with incomes no greater than 80 percent of Area Median Income (AMI).

Very low-income multifamily subgoal. HERA revised the definition of "very low-income" families as it pertains to the Enterprises' housing goals. Under the housing goals established by HUD for 1993–2008, "very low-income" referred to borrowers with incomes no greater than 60 percent of AMI, or for rental units, to units affordable to families with incomes in this range, with adjustments for family size. This definition was changed by HERA to refer to borrowers with incomes no greater than 50 percent of AMI, or for rental units, to units affordable to families with incomes in this range, with adjustments for family size.[77] The new definition of "very low-income" families is consistent with that used in some other housing programs.

Enterprise financing of rental units for very low-income families over the 2001–08 period is reported in Table 8. On average, Fannie Mae funded 94,000 such units each year, and Freddie Mac funded 86,000 such units. The same general pattern prevailed over time as that shown in Table 7, with a modest drop in funding by Fannie Mae and a substantial drop (55 percent) by Freddie Mac. As a result, the number of such units financed by Freddie Mac in 2008 was 49 percent of the number financed by Fannie Mae, the lowest ratio of this period.

[77] 12 U.S.C. 4502(24).

Table 8

GSE Funding of Very Low-Income Multifamily Units, 2001-08

(Performance if a 2010 subgoal had been in effect, based on units or dollar volume)

Performance Measure	Year of Purchase	GSE		
		Fannie Mae	Freddie Mac	Ratio
Number of Very Low-Income Multifamily Units Financed	2008	92,622	45,822	0.49
	2007	115,251	102,415	0.89
	2006	118,585	136,023	1.15
	2005	93,605	103,884	1.11
	2004	72,520	101,902	1.41
	2003	106,297	91,316	0.86
	2002	82,197	49,862	0.61
	2001	71,318	54,218	0.76
	Average	94,049	85,680	0.91
Dollar Volume (in billions) of Very Low-Income Multifamily Units Financed	2008	$2.91	$1.44	0.50
	2007	$4.12	$3.77	0.91
	2006	$3.90	$4.55	1.17
	2005	$2.71	$3.86	1.42
	2004	$1.81	$2.88	1.59
	2003	$2.74	$2.26	0.82
	2002	$2.01	$1.33	0.66
	2001	$1.63	$1.18	0.72
	Average	$2.73	$2.66	0.97

Source: FHFA analysis of GSE loan-level data. "Very Low-income" refers to multifamily rental units affordable to families with incomes no greater than 50 percent of Area Median Income (AMI).

Financing of low-income units in small multifamily properties. As discussed above, HERA recognizes the important role played by small multifamily housing as a source of affordable rental housing. According to the 2007 AHS, multifamily properties containing 5–49 units (a slightly different definition than the 5–50 unit definition in HERA) constituted 77 percent of all multifamily units and 74 percent of multifamily units constructed in the previous 4 years. Table 9 reports additional information on small multifamily properties affordable to low-income families.

Both Enterprises increased their financing of low-income multifamily units between 2001 and 2003, from 24,000 units to 155,000 units for Fannie Mae, and from 44,000 units to 138,000 units for Freddie Mac. This increase was motivated at least in part by the favorable counting treatment that HUD allowed for financing goal-qualifying units in small multifamily properties over the 2001–03 period. Under this counting treatment, each goal-qualifying unit counted twice in the numerator and once in the denominator in calculating goal performance.

As indicated in Table 9, both Enterprises decreased their roles in the small multifamily market after the expiration of the favorable HUD counting treatment—for Fannie Mae, an average of 49,000 units for 2004–07, and for Freddie Mac, an average of 24,000 such units. Fannie Mae financed 44,000 low-income small multifamily units in 2008, approximately equal to the average for 2004–07, while Freddie Mac financed only 2,078 such units in 2008, a decrease of 91 percent from its 2004–07 average. FHFA is concerned about Freddie Mac's virtual exit from this business and seeks comment on whether small multifamily low-income housing subgoals should be established for future years.

Table 9

GSE Funding of Low-Income Units in Small Multifamily Properties, 2001-08

("Small multifamily properties" are defined as those with 5-50 units)

Performance Measure	Year of Purchase	GSE		
		Fannie Mae	Freddie Mac	Ratio
Number of Low-Income Units in Small Multifamily Properties Financed	2008	43,979	2,078	0.05
	2007	65,348	23,744	0.36
	2006	44,816	23,471	0.52
	2005	53,842	11,408	0.21
	2004	33,085	37,062	1.12
	2003*	155,105	138,858	0.90
	2002*	42,394	35,340	0.83
	2001*	23,852	44,340	1.86
	Average	57,803	39,538	0.68
Dollar Volume (in billions) of Low-Income Units in Small Multifamily Properties Financed	2008	$2.09	$0.12	0.06
	2007	$3.33	$1.54	0.46
	2006	$2.20	$1.04	0.47
	2005	$2.23	$0.62	0.28
	2004	$1.30	$1.31	1.01
	2003*	$6.14	$4.59	0.75
	2002*	$1.44	$1.29	0.90
	2001*	$0.67	$1.41	2.10
	Average	$2.42	$1.49	0.61

Source: FHFA analysis of GSE loan-level data. "Low-income" refers to multifamily rental units affordable to families with incomes no greater than 80 percent of Area Median Income (AMI).

***For 2001-03, HUD "bonus points" (double credit) for funding goal-qualifying units in small multifamily properties were in effect.**

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3. Market Size

The multifamily mortgage market is likely to remain relatively unchanged in 2010 as compared to 2009, and the dollar amount of multifamily loans financed in 2010 will likely be similar to that of 2009, approximately $40–45 billion. Poor property fundamentals, especially declines in property value, will affect the type of properties and owners that can access multifamily credit. If the multifamily market begins to recover in 2011, multifamily originations may increase. Projections of such activity, however, are uncertain. Accordingly, for purposes of this rulemaking, the multifamily goals for both 2010 and 2011 are based on the overall multifamily market for 2009 and Enterprise multifamily performance in the years 2004–2008, taking into account the average percent of very low-income and low-income purchases by the Enterprises in those years. As in prior years, the multifamily goals are set separately for each Enterprise. Unlike prior years, the multifamily goals are measured in units rather than dollar volume.

The proportion of multifamily affordable units available for financing in 2010 and 2011 will likely be below historical levels due to weakness in the multifamily housing market. Steep declines in multifamily property prices since mid-2007 have caused a significant loss of equity for owners, many of whom can no longer qualify for Enterprise financing without placing substantial cash into the property. The loss of equity for most owners has meant that only financially strong properties and borrowers will qualify for Enterprise financing. These properties often have a much lower proportion of affordable units.

Another factor that will likely constrain Enterprise multifamily loan production in 2010 and 2011 will be the relatively small dollar amount of loans maturing in the Enterprise portfolios in 2010 and 2011. The MBA expects only $26 billion in total maturing multifamily mortgages in 2010. However, the volume of maturing loans is expected to increase from 2011 onward.[78]

For well over a decade, Freddie Mac relied upon purchases of CMBS and structured deals involving large portfolios of affordable multifamily loans to meet applicable affordable housing goals. Beginning in 2006 and 2007, CMBS made up a significant portion of Fannie Mae's affordable multifamily purchases. These sources of affordable units are now either

[78] *Multifamily Housing News:* MBA Says Large Amounts of Multifamily Loans Will Mature in 2011 and After, Feb. 11, 2009.

unavailable or do not meet Enterprise standards. Therefore, based on the factors discussed above, multifamily affordable purchases in the very low-income category are likely to be near historical lows in 2009 overall. The effect, though, will be more pronounced at Freddie Mac. The percentage of very low-income multifamily purchases in 2010 for Freddie Mac will be below its average for 2004 to 2008. Fannie Mae is expected to have a very low-income purchase volume near its average for the past several years.

4. Ability of the Enterprise To Lead the Market in Making Multifamily Mortgage Credit Available

As described above in the context of the single-family goals, Congress in enacting the Safety and Soundness Act was concerned that the Enterprises were lagging behind market originations of mortgages for the benefit of low- and moderate-income households. FHFA has been cognizant of that concern in setting goals for the Enterprises.

With the current credit crisis negatively affecting the commercial real estate market, the Enterprises have become market leaders by default. The disciplined underwriting and credit standards they bring to the industry have contributed to relatively low delinquency rates. Compared to the industry, the Enterprises have relatively conservative multifamily underwriting parameters. With the fundamentals of multifamily real estate very weak (*e.g.,* high vacancy rates, stagnant rents and falling property values), the Enterprises have enhanced their credit standards to reduce risk exposure, which has meant that owners of the strongest performing properties are more likely to obtain credit from lenders selling to the Enterprises. As noted previously, Fannie Mae and Freddie Mac comprise a large portion of the multifamily market. As a result, in 2009 they not only led the multifamily market, they effectively were the market.

5. Availability of Public Subsidies

Public subsidies for multifamily housing have been affected by the mortgage credit crisis. Low-income housing tax credits (LIHTCs), an important source of equity for new low-income housing, have fallen in value. However, on October 19, 2009, FHFA announced, in conjunction with the Treasury Department and HUD, an initiative to support State and local housing finance agencies (HFAs) through a new bond purchase program that will support new lending by HFAs, and a temporary credit and liquidity program that will improve the access of HFAs to liquidity for outstanding HFA bonds. Fannie Mae and Freddie Mac each played critical roles in this program, which helped support low mortgage rates and expand resources for low- and middle-income borrowers who want to purchase or rent homes that are affordable over the long term. On January 13, 2010, the Treasury Department, FHFA and HUD announced the completion of all transactions under the initiative, which involved more than 90 HFAs.

The Enterprises actively purchase mortgages on properties with HUD Housing Assistance Plan (HAP) contracts. Newly constructed or rehabilitated properties usually receive forward commitments from the Enterprises with part of the new equity coming from LIHTCs. The remaining Section 8 properties are refinancings where the property owners sign long-term use agreements with HUD and receive a HAP contract in return. The Enterprises can also assist State and local HFAs by credit enhancing HFA bonds, and by offering permanent financing for properties rehabilitated through the Neighborhood Stabilization Program and other HUD grants.

6. Financial Condition of Enterprises

As previously discussed, in the first two full years of the current housing crisis—from July 2007 through the first half of 2009—combined losses at the Enterprises totaled $165 billion. In the first half of 2009, the Enterprises reported combined losses of $47 billion. The financial performance of both Enterprises is dominated by credit-related expenses and losses stemming principally from purchases of PLS and purchases and guarantees of mortgages originated in 2006 and 2007. Since the establishment of the conservatorship for the Enterprises in September 2008, the combined losses of the two Enterprises depleted their capital and required them to draw from the U.S. Treasury under the Senior Preferred Stock Purchase Agreements.

FHFA's duties as conservator require the conservation and preservation of the assets of the two Enterprises. Given the importance of the Enterprises to the housing market, any goal setting must be closely linked to putting the Enterprises in sound and solvent condition. Over the long term, such actions will assist homeowners and neighborhoods while saving the Enterprises money. In 2009, FHFA attempted to align the Enterprises' affordable housing goals with safe and sound practices and market reality, and the housing goals requirements for 2010 and 2011 must be similarly aligned.

B. Multifamily Housing Goal Levels

As a result of the changes in HERA, the proposed rule would establish the multifamily affordable housing goals for each Enterprise separately from the single-family housing goals beginning in 2010. Qualifying multifamily units previously had been included with single-family affordable purchases in the overall goals. Additional requirements for multifamily housing were imposed under a multifamily special affordable subgoal. The multifamily affordable goals for each Enterprise in 2010 and 2011 would be established in terms of low-income and very low-income units financed annually.

Estimates of Enterprise multifamily purchase volume in 2009 were used by FHFA as a proxy for 2010 volumes. With uncertainty as to the path of the economy's recovery, FHFA's estimation for 2011 origination volume is unchanged from 2010.

The proposed rule would set the multifamily goal levels using the average percentage of very low-income and low-income purchases in 2008 for both Enterprises. The year 2008 was chosen, rather than the average for 2004–2008, because 2008 performance more closely reflects current market conditions. Multifamily loan purchase volumes for 2010 were estimated using 2009 part-year volumes. The average low- and very low-income origination rates were multiplied by the expected origination volumes for 2010 and 2011 to derive low- and very low-income unit volumes for the Enterprises.

Freddie Mac multifamily volume has not kept pace with Fannie Mae's volume since the beginning of the credit crisis in 2008, especially for very low-income units, due in part to Freddie Mac's reliance on CMBS and structured purchases from banks and thrifts. Those sources of mortgages are not now readily available and are likely to reappear in only limited volumes in the near term.

Fannie Mae, on the other hand, is better positioned than Freddie Mac to purchase affordable units through its flow business. For example, Fannie Mae has a group dedicated to purchasing mortgages on small multifamily properties (5 to 50 units). Smaller properties, in general, have higher percentages of affordable units than larger properties. Furthermore, Fannie Mae's DUS program allows it to share credit losses with lenders. Mortgages on small multifamily properties, however, are often more at risk of delinquency and default than other multifamily mortgage property types. Perhaps more

importantly, mortgages on small properties are usually more expensive to originate and underwrite than mortgages on large properties because the costs, mostly fixed, are spread over fewer units.[79] The DUS program helps Fannie Mae mitigate some of that credit risk of purchasing affordable multifamily units.

Since Fannie Mae will likely purchase significantly more multifamily units in 2010 than Freddie Mac, based on 2009 data, the proposed rule would set different goals for each of the Enterprises, as was done in previous years. Based on 2008 Enterprise affordable housing performance, FHFA anticipates that for low-income units and very low-income units, multifamily mortgages acquired by Freddie Mac will finance fewer units than multifamily mortgages acquired by Fannie Mae in 2010 and 2011. The disparity will be even greater for very low-income units. Freddie Mac will likely purchase multifamily loans that finance about half as many very low-income units as will be financed by multifamily loans acquired by Fannie Mae in 2010 and 2011. While in conservatorship, FHFA expects Freddie Mac's board of directors and new senior management team to assess Freddie Mac's business model with respect to multifamily housing.

Proposed § 1282.13 would establish the multifamily special affordable housing goals and subgoals as follows. Unlike with the single-family goals described above, FHFA has not defined these goals as prospective targets, with compliance to be assessed by reference to actual market data. Rather, because the availability of the necessary market data is less certain for the multifamily market, FHFA has set goals in the traditional prospective manner, but these goals remain subject to the statutory provisions enabling them to be adjusted, or providing relief from enforcement, if market conditions so require.

Multifamily low-income housing goals. The annual goal for Fannie Mae's purchases of mortgages on multifamily residential housing affordable to low-income families would be at least 237,000 dwelling units for each of 2010 and 2011. The annual goal for Freddie Mac's purchases of mortgages on multifamily residential housing affordable to low-income families would be at least 215,000 such dwelling units for each of 2010 and 2011.

Multifamily very low-income housing subgoals. The annual subgoal for Fannie Mae's purchases of mortgages on multifamily residential housing affordable to very low-income families would be at least 57,000 dwelling units for each of 2010 and 2011. The annual subgoal for Freddie Mac's purchases of mortgages on multifamily residential housing affordable to very low-income families would be at least 28,000 such dwelling units for each of 2010 and 2011.

These proposed multifamily goals reflect the financial and operational condition of the Enterprises in conservatorship.

VII. Section-by-Section Analysis

A. Definitions—Proposed § 1282.1

Proposed § 1282.1 would set forth definitions applicable to the housing goals provisions. The proposed rule includes a number of technical amendments to conform the definitions to the statutory definitions in the Safety and Soundness Act, as amended by HERA.

The proposed rule would remove a number of definitions that were used in regulatory provisions that have been revised or eliminated based on HERA's amendments of the Safety and Soundness Act. Proposed § 1282.1 would no longer include definitions for "central city," "ECOA," "government-sponsored enterprise, or GSE," "home purchase mortgage," "New England," "ongoing program," "other underserved area," "owner-occupied unit," "portfolio of loans," "real estate mortgage investment conduit (REMIC)," "rural area," "underserved area," and "wholesale exchange."

Proposed § 1282.1 would add new definitions of "extremely low-income," "low-income," and "moderate-income," and it would revise the income levels in the definition of "very low-income." The proposed rule would also replace the definition of "low-income area" with a new definition for "families in low-income areas." Each of these definitions is revised to be substantially the same as the corresponding definition in section 1303 of the Safety and Soundness Act, as amended by HERA.[80]

Proposed § 1282.1 would add new definitions for "borrower income," "FEMA," "HMDA," "minority census tract," "mortgage revenue bond," "non-metropolitan area," "owner-occupied housing," "private label security," and "purchase money mortgage." The new definitions are intended to reflect common usage and provide certainty in interpreting the terms as used in new and existing regulatory provisions.

Proposed § 1282.1 would also make minor conforming revisions to several definitions. The definition of "contract rent" would be revised to make clear that the market rent for similar units in the neighborhood, as used by the lender or appraiser in underwriting a property, may be used as the anticipated rent for unoccupied units. The proposed rule would add language to the definition of "utilities" clarifying that charges for cable or telephone service shall not be included. Proposed § 1282.1 would clarify that Metropolitan Divisions are included in the definition of "metropolitan area" to facilitate comparisons with census and HMDA information. Unnecessary references to the form of payment would be eliminated from the definition of "mortgage purchase." Proposed § 1282.1 would remove the definition of "refinancing" and incorporate those provisions in a new definition of "refinancing mortgage." In order to avoid confusion about whether a transaction should be treated as a loan modification or a refinancing, proposed § 1282.1 would exclude workout agreements from the definition. The definition of "mortgage" in proposed § 1282.1 would not include references to personal property manufactured housing loans pending further review of the appropriate treatment of such loans under the Enterprise and Bank housing goals.

The definitions for "mortgages contrary to good lending practices" and "mortgages with unacceptable terms or conditions or resulting from unacceptable practices" would be deleted, with their substantive provisions revised and consolidated into a single new definition of "mortgage with unacceptable terms or conditions." The definition of "HOEPA mortgage" would be revised to conform FHFA's definition to the coverage in HOEPA itself. The definition of "mortgage with unacceptable terms or conditions" in proposed § 1282.1 would include a new provision regarding mortgages with annual percentage rates (APRs) above a certain level. The new provision is intended to cover mortgages that were formerly included in the definition of "HOEPA mortgage." The provision in the definition of "mortgage with unacceptable terms or conditions" relating to a borrower's ability to pay would be replaced with a provision incorporating interagency guidance on nontraditional and subprime mortgages. This change is intended to cover similar types of mortgages while providing greater consistency between the

[79] "Why do Small Multifamily Properties Bedevil Us?" Shekar Narasimhan, The Brookings Institution, Nov. 2001, *http://www.brookings.edu/articles/2001/11metropolitanpolicy_narasihan.aspx.*

[80] 12 U.S.C. 4502.

provisions of the housing goals and other regulatory provisions.

Designated disaster areas. The new definition of "families in low-income areas" includes families with incomes at or below 100 percent of AMI who reside in "designated disaster areas." The proposed rule would define "designated disaster areas" as areas at the census tract level and include only census tracts in counties approved for individual assistance within the declared major disaster area where the average real property damage severity, as reported by the Federal Emergency Management Agency (FEMA), exceeds $1,000 per household for that census tract.

Disaster areas are declared when an area is adversely affected by some unforeseen event. However, not all disasters impact housing to the same degree, and the severity of the impact varies within the declared area. Presidential Major Disaster Declarations are defined by FEMA at the county level in the area affected by the major disaster and can be declared to be eligible for public assistance, individual assistance or both. Public assistance is available to local governments for the repair, replacement or clean-up of public infrastructure. Individual assistance is broken down further into two categories, housing needs and "other than housing needs." [81] Housing needs include repair, replacement and construction of homeowner residences. The proposed rule would limit the definition of "designated disaster areas" to those counties eligible for individual assistance, and it would establish a minimum average real property damage severity.

For purposes of complying with the Community Reinvestment Act (CRA), regulators have made the determination that "[e]xaminers will consider institution activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended." [82] To accommodate the Enterprises' business planning requirements, for purposes of the low-income areas housing goal, the proposed rule would treat a designated disaster area as effective beginning no later than January 1 of the year following the FEMA designation and continuing through December 31 of the third full calendar year following the FEMA designation. If data is available in a particular case to support treatment as a designated disaster area from an earlier date, FHFA may provide for such treatment.

FHFA welcomes comments on the proposed changes to the definitions under § 1282.1.

B. Housing Goals—Proposed §§ 1282.11 Through 1282.13

As required by sections 1331(a) and 1333(a)(2) of the Safety and Soundness Act, as amended by HERA, this subpart establishes four single-family housing goals and one multifamily special affordable housing goal for 2010 and 2011. The subpart would also establish one multifamily special affordable housing subgoal for 2010 and 2011. The single-family housing goals would be based both on the proposed benchmark levels and on an evaluation of the Enterprise's performance relative to the market for each housing goal in each year. Proposed § 1282.11(b) would require the Director to establish housing goals for a particular year by December 1 of the previous year.[83] Although the initial final rule establishing the new housing goals under the Safety and Soundness Act, as amended by HERA, will not be published for effect until early 2010, FHFA will evaluate performance under the housing goals established for 2010 on a calendar year basis.

Proposed § 1282.12(b) would establish criteria for determining the size of the market based on HMDA data. The criteria for establishing the size of the market reflect the types of mortgages that would be counted for purposes of the housing goals and that would typically be eligible for purchase by an Enterprise. Additional details regarding the housing goals are discussed above, along with the factors considered by FHFA in establishing the proposed housing goals.

C. Discretionary Adjustment of Housing Goals—Proposed § 1282.14

Consistent with the requirements of section 1334 of the Safety and Soundness Act, as amended by HERA, proposed § 1282.14 would provide for an Enterprise to petition the Director to reduce the level of any goal or subgoal.[84] Proposed § 1282.14 would set forth the standards and procedures for consideration by the Director in determining whether to reduce a goal or subgoal level.

D. General Counting Requirements—Proposed § 1282.15

Proposed § 1282.15 would set forth general requirements for the counting of Enterprise mortgage purchases toward the achievement of the housing goals. Performance under the single-family housing goals would be evaluated based on the percentage of all single-family, owner-occupied mortgages purchased by an Enterprise that meet a particular goal. Performance under the multifamily housing goals would be evaluated based on the total number of units that meet a particular goal and are financed by mortgages purchased by an Enterprise.

The data estimation methodologies in this section would be revised to reflect changes in the affordable housing goals for 2010. The methodology for estimating affordability for single-family rental properties would be eliminated as unnecessary because the single-family housing goals are measured in terms of mortgages rather than units. The option to exclude single-family owner-occupied units with missing data up to one percent of the total number of single-family owner-occupied units backing mortgages purchased by an Enterprise would also be removed because it is no longer in use by either Enterprise. The option to request approval of alternative methodologies would also be removed. In light of the shorter time period for which the affordable housing goals are being established, it should not be necessary to make changes to the rules for missing data prior to FHFA's proposal of new housing goals for later years.

E. Special Counting Requirements—Proposed § 1282.16

Proposed § 1282.16 would set forth special counting requirements for the receipt of full, partial or no credit for a transaction toward achievement of the housing goals. A number of clarifying and conforming changes would be made to this section to ensure consistent application of the counting rules among the Enterprises. Proposed § 1282.16(b) would make clear that where a mortgage falls within one of the categories excluded from consideration under the housing goals, the mortgage should be excluded even if it otherwise would fall within one of the special counting rules in proposed § 1282.16(c). For example, a non-conventional mortgage that would

[81] Federally declared disaster areas are managed by FEMA and can be tracked at FEMA's Web site. *See http://www.fema.gov/news/disasters.fema.*

[82] The Department of the Treasury, the Federal Reserve Board and the Federal Deposit Insurance Corporation, *Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice,* 74 FR 509 (Jan. 6, 2009).

[83] *See* 12 U.S.C. 4561(b).

[84] 12 U.S.C. 4564.

be excluded from consideration pursuant to proposed § 1282.16(b)(3) could not be counted even if it otherwise would be counted as a seasoned mortgage under proposed § 1282.16(c)(6). Proposed § 1282.16(c) would also make clear that where a transaction falls under more than one of the special counting rules in § 1282.16(c), all of the applicable requirements must be satisfied in order for the loan to be counted for purposes of the affordable housing goals.

Proposed § 1282.16(b) would eliminate the current exclusion of jumbo conforming loans from consideration for purposes of the affordable housing goals.[85] These loans had been excluded from consideration in the past because the goals had been established based on market estimates that preceded the increases in the conforming loan limits. Because the higher loan limits have been considered in the evaluation of the market for this proposed rule, it is no longer necessary to exclude such loans from consideration for purposes of the affordable housing goals.

Proposed § 1282.16(b)(1) would be revised to refer more specifically to equity investments in low-income housing tax credits, which are consistent with the Charter Acts of the Enterprises. Proposed § 1282.16(b)(11) would make explicit the existing prohibition on counting mortgages toward performance under the affordable housing goals if the mortgage has previously been counted for purposes of the performance of either Enterprise under the housing goals. In order to limit excessively burdensome recordkeeping that could result, the rule would make clear that this limitation only extends back for five years.

Proposed § 1282.16(b)(12) would exclude purchases of mortgages secured by properties that have not been certified as ready for occupancy from consideration for purposes of the affordable housing goals. Proposed § 1282.16(b)(14) would reflect the statutory limitation on housing goals credit for mortgages receiving assistance under the Housing Trust Fund and the Capital Magnet Fund established by HERA.[86]

Proposed § 1282.16(c) would no longer include real estate mortgage investment conduits (REMICs) as mortgage purchases for purposes of the housing goals, consistent with the general exclusion of PLS under proposed § 1282.16(b)(13). Proposed § 1282.16(c) would also eliminate consideration of expiring assistance contracts, reflecting the changes under HERA to the former special affordable housing goal. Proposed § 1282.16(c)(5) would amend the provisions regarding cooperative housing and condominiums to reflect HERA's treatment of single-family housing and multifamily housing under separate goals. Proposed § 1282.16(c)(8) would remove current limitations on counting mortgage revenue bonds related to the source of funds for repayment and the presence of additional credit enhancements. The proposed rule would require that an Enterprise have sufficient information available to determine the eligibility of any underlying mortgages before counting such mortgages or units for purposes of the housing goals. Proposed § 1282.16(c)(10) would reflect the accepted terminology for the Administration's Making Home Affordable program.

Proposed § 1282.16(d) would relocate existing provisions regarding HOEPA mortgages and mortgages with unacceptable terms or conditions from current § 1282.16(c). Placing these provisions in a separate paragraph reflects the fact that unlike other types of mortgage purchases, HOEPA mortgages and mortgages with unacceptable terms and conditions must be counted in the denominator as mortgage purchases but can never be counted in the numerator, regardless of whether the mortgages would otherwise qualify based on the affordability and other counting criteria. The proposed treatment is consistent with past practice and with section 1332(i) of the Safety and Soundness Act, as amended by HERA, which provides that no credit may be given for mortgages that FHFA determines are "unacceptable or contrary to good lending practices."[87]

Proposed § 1282.16(e) would clarify that FHFA may provide guidance on the treatment of any transactions under the affordable housing goals. Such guidance may be provided in response to a request from one or both Enterprises, or it may be provided at the initiation of FHFA.

Private Label Securities. Proposed § 1282.16(b)(13) would exclude PLS from counting for purposes of the affordable housing goals. Historically, the Enterprises—particularly Freddie Mac—relied on PLS purchases to help them achieve certain affordable housing goals. Freddie Mac met the 2005 and 2006 affordable housing goals and subgoals in part through its purchases of AAA-rated tranches of PLS backed by subprime mortgages that were targeted to satisfy goals and subgoals. As house price appreciation and rising interest rates reduced housing affordability, PLS proliferated as the subprime share of the market grew to more than 20 percent. Fannie Mae and Freddie Mac began to follow suit in response to declining market share and in pursuit of higher profits. The Enterprises not only modified their own underwriting standards, but they also bought hundreds of billions of dollars' worth of AAA-rated tranches of subprime and Alt-A PLS for the yield and, in certain instances, to satisfy specific housing goals and subgoals.

The results of providing large-scale funding for such loans were adverse for borrowers who entered into mortgages that did not sustain homeownership and for the Enterprises themselves. Although Fannie Mae and Freddie Mac have a combined 57 percent share of mortgages outstanding in their guaranteed portfolio, the mortgages in that portfolio account for only 25 percent of serious delinquencies. However, while PLS account for 12 percent of all mortgages outstanding, PLS account for 34 percent of serious delinquencies. As delinquencies in PLS portfolios triggered downgrades, 90 percent of the PLS holdings of the Enterprises experienced a downgrade. In light of that record, FHFA proposes to exclude PLS from consideration under the housing goals.

In addition to the recent dismal performance of PLS, it is reasonable to separate any future growth of the PLS market from the Enterprises' housing goals. The housing goals reflect Congress' concern that the Enterprises' charter mission to support the stability, liquidity and affordability of the secondary market not be managed to the detriment or neglect of goal-eligible mortgages. In this way the goals may be seen as a mechanism to ensure that each Enterprise serves all segments of the mortgage market available to it. Even to the extent that a non-GSE secondary mortgage market returns, loans backing new or seasoned PLS would not count in either the numerator or the denominator for purposes of assessing housing goals.

FHFA invites comment on the proposed exclusion of PLS and on alternatives to not counting PLS mortgages in meeting the housing goals. For example, mortgages backing such securities could be counted if an appropriate senior Enterprise officer certified that the mortgages are compliant with all existing regulations regarding good mortgage practices, and with the interagency guidance on subprime lending and non-traditional

[85] *See* 12 CFR 1282.16(b)(10).

[86] *See* 12 U.S.C. 4568, 4569.

[87] 12 U.S.C. 4562(i).

loans. Such certification, for example, could be required to include a description of the methods used to determine that loans included in such PLS met those conditions. The certification could also require regular and ongoing review of PLS purchases to ensure that they meet existing requirements regarding good mortgage practices and recent interagency regulatory guidance on non-traditional and subprime loans.

Commercial Mortgage Backed Securities (CMBS) would also be excluded from counting toward the affordable housing goals under the proposed rule. FHFA invites comment on whether CMBS should be treated differently than other PLS for purposes of the affordable housing goals.

Home Equity Conversion Mortgages and Subordinate Liens. Proposed § 1282.16(b)(3) would exclude the purchases of all non-conventional single-family mortgages, including HECMs, from counting towards the Enterprises' housing goals. Certain non-conventional mortgages, including HECMs, have been counted toward the goals in the past. HERA, however, amended section 1332(a) of the Safety and Soundness Act to restrict the single-family housing goals to include only conventional mortgages.[88] This restriction does not preclude the Enterprises' purchase of Charter-compliant non-conventional single-family mortgages, including HECMs, but such purchases would not count toward the housing goals—that is, such purchases would be excluded from both the numerator and denominator in calculating goal performance.

Proposed § 1282.16(b)(10) would also exclude the purchases of subordinate lien mortgages (second mortgages) from counting towards the Enterprises' housing goals. This exclusion would reflect the fact that, under section 1331 of the Safety and Soundness Act, as amended, the single-family housing goals are limited to purchase money or refinancing mortgages. This would exclude "piggy-back" liens that may be acquired by an Enterprise along with the corresponding first lien mortgage and subordinate lien mortgages, such as home equity loans, acquired separately by an Enterprise where the Enterprise does not also acquire the corresponding first lien mortgage. This provision would not preclude the Enterprises' purchase of Charter-compliant subordinate lien mortgages, but as with HECMs, such purchases would not count toward the housing goals. FHFA seeks comments on this provision.

[88] 12 U.S.C. 4562(a).

F. Affordability Definitions—Proposed §§ 1282.17 Through 1282.19

Proposed § 1282.17 would set forth definitions and establish cutoff points or boundaries for the statutory and traditionally defined levels of affordability based on area median income for owners and tenants of rental units where the family size and income are known to the Enterprise. In addition to the levels of affordability that currently appear at § 1282.17, this section would include an additional paragraph (e) for extremely low-income borrowers and tenants with income at or below 30 percent of AMI with adjustments for family size. Although the Enterprise housing goals do not specifically target extremely low-income borrowers or tenants, the proposed rule would establish cutoffs for determining such affordability to facilitate any reporting or analysis of such data that is required.

Proposed § 1282.18 would set forth definitions and establish cutoff points or boundaries for the statutory and traditionally defined levels of affordability based on AMI for tenants of rental units where the family size is not known to the Enterprise. In addition to the levels of affordability that currently appear at § 1282.18, this section would include an additional paragraph (e) for extremely low-income tenants with income at or below 30 percent of AMI with adjustments for unit size.

Proposed § 1282.19 would set forth definitions and establish cutoff points or boundaries for the statutory and traditionally defined levels of affordability based on AMI for tenants of rental units where tenant income is not known to the Enterprise. In addition to the levels of affordability that currently appear at § 1282.19, this section would include an additional paragraph (e) for extremely low-income tenants with income at or below 30 percent of AMI with adjustments for unit size.

G. Housing Goals Enforcement—Proposed §§ 1282.20 and 1282.21

Proposed § 1282.20 would provide that the Director shall determine whether an Enterprise has met the affordable housing goals, in accordance with the standards established under the Safety and Soundness Act, as amended by HERA. If the Director determines that an Enterprise has failed to meet any housing goal, the Director shall provide notice to the Enterprise in accordance with 12 U.S.C. 4566(b). The determination of compliance with the single-family housing goals would be based both on the size of the market for that year and the benchmark levels established in this subpart. The provision formerly found at § 1282.20 referenced the obligation of the Enterprises under the Safety and Soundness Act to engage in certain kinds of activities in meeting the affordable housing goals. The regulatory provision did not add to or expand the requirements of the statute and would be removed as unnecessary, but the statutory obligation remains in effect.[89]

Proposed § 1282.21 would include requirements for submission of a housing plan by an Enterprise for failure or substantial probability of failure to meet any housing goal that was or is feasible. The requirement to submit a housing plan would be at the discretion of the Director.

H. Reporting Requirements—Proposed Subpart D

Proposed subpart D would relocate existing reporting requirements from part 81, subpart E of title 24 of the Code of Federal Regulations. Proposed § 1282.65 would relocate an existing regulatory provision on data certification from 24 CFR 81.102. These provisions have continued in effect pursuant to section 1302 of HERA. Upon the effective date of the final housing goals rule, the reporting requirement and Enterprise data integrity provisions in 24 CFR part 81 will no longer be in effect.

The proposed rule would make various conforming changes throughout subpart D. Proposed § 1282.62(b) would require the Enterprises to submit loan-level mortgage data on a quarterly basis. Previously such submissions were required only semi-annually. Advances in technology limit the burden of more frequent submissions, and the additional data provided will facilitate FHFA's monitoring of performance under the housing goals. Proposed §§ 1282.62(c) and 1282.63 would revise the time periods for submission to FHFA of the required Mortgage Reports and Annual Housing Activities Reports (AHARs), respectively. The shorter time periods will permit FHFA to evaluate the performance of the Enterprises on a more timely basis. Proposed § 1282.63 would also require that the Enterprises make their AHARs available to the public online. FHFA does not expect that the requirement to make available online information that is already publicly available will be burdensome to the Enterprises. Proposed § 1282.64 would eliminate the requirement for the Enterprises to submit information that is typically made publicly available by each Enterprise. The Director may

[89] *See* 12 U.S.C. 4565(b).

continue to request such reports, information and data as the Director deems necessary. Proposed subpart D would not include the provisions regarding submission of additional data or reports and the addresses for submission of information that were formerly found at 24 CFR 81.65 and 81.66. Proposed § 1282.64 is sufficiently broad to encompass any requests for additional data or reports that the Director deems necessary.

Proposed § 1282.65 would simplify the detailed procedures laid out in the previous data integrity provision found at 24 CFR 81.102. FHFA will implement the data integrity process pursuant to its general regulatory authority over the Enterprises. FHFA expects that the Enterprises will continue to work cooperatively with FHFA to identify and resolve any discrepancies or errors in the housing goals data reported to FHFA. The proposed provision would maintain the most important aspects of the data integrity process in the regulation, including the requirement that the Enterprises certify the accuracy of their submissions.

I. Book-Entry Procedures—Proposed Part 1249

Proposed part 1249 would relocate existing regulatory provisions on book-entry procedures from part 81, subpart H of title 24 of the Code of Federal Regulations. These provisions have continued in effect pursuant to section 1302 of HERA. Upon the effective date of the final housing goals rule, the book-entry procedures in 24 CFR part 81 will no longer be in effect. The proposed rule would also relocate definitions that are currently found in § 1282.2 and that are applicable only to the book-entry procedures in proposed part 1249 to a new section 1249.10 in that part. The proposed rule would make conforming changes throughout the part, including a clarification that the waiver provision in proposed § 1249.17 applies only to the book-entry provisions in part 1249. Section 1249.15 would be amended to reflect the transfer of authority from the Secretary of HUD to the Director. The proposed rule would not make any changes to the substance of the book-entry provisions.

VIII. Paperwork Reduction Act

The proposed rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 1249

Federal Reserve System, Securities.

12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4511, 4513, 4526, FHFA proposes to amend chapter XII of title 12 of the Code of Federal Regulations by adding part 1249 and revising part 1282 to read as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER C—ENTERPRISES

PART 1249—BOOK-ENTRY PROCEDURES

Sec.

1249.10 Definitions.
1249.11 Maintenance of Enterprise Securities.
1249.12 Law governing rights and obligations of United States, Federal Reserve Banks, and Enterprises; rights of any person against United States, Federal Reserve Banks, and Enterprises; law governing other interests.
1249.13 Creation of Participant's Security Entitlement; security interests.
1249.14 Obligations of Enterprises; no adverse claims.
1249.15 Authority of Federal Reserve Banks.
1249.16 Withdrawal of Eligible Book-entry Enterprise Securities for conversion to definitive form.
1249.17 Waiver of regulations.
1249.18 Liability of Enterprises and Federal Reserve Banks.
1249.19 Additional provisions.

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526.

§ 1249.10 Definitions.

(a) *General.* Unless the context requires otherwise, terms used in this part that are not defined in this part, have the meanings as set forth in 31 CFR 357.2. Definitions and terms used in 31 CFR part 357 should read as though modified to effectuate their application to the Enterprises.

(b) *Other terms.* As used in this part, the term:

Book-entry Enterprise Security means an Enterprise Security issued or maintained in the Book-entry System. Book-entry Enterprise Security also means the separate interest and principal components of a Book-entry Enterprise Security if such security has been designated by the Enterprise as eligible for division into such components and the components are maintained separately on the books of one or more Federal Reserve Banks.

Book-entry System means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the Enterprises, on which Book-entry Enterprise Securities are issued, recorded, transferred and maintained in book-entry form.

Definitive Enterprise Security means an Enterprise Security in engraved or printed form, or that is otherwise represented by a certificate.

Eligible Book-entry Enterprise Security means a Book-entry Enterprise Security issued or maintained in the Book-entry System which by the terms of its Security Documentation is eligible to be converted from book-entry form into definitive form.

Enterprise Security means any security or obligation of Fannie Mae or Freddie Mac issued under its respective Charter Act in the form of a Definitive Enterprise Security or a Book-entry Enterprise Security.

Entitlement Holder means a Person or an Enterprise to whose account an interest in a Book-entry Enterprise Security is credited on the records of a Securities Intermediary.

Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains book-entry Securities accounts (including Book-entry Enterprise Securities) and transfers book-entry Securities (including Book-entry Enterprise Securities).

Participant means a Person or Enterprise that maintains a Participant's Securities Account with a Federal Reserve Bank.

Person, as used in this part, means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, an Enterprise, or a Federal Reserve Bank.

Revised Article 8 has the same meaning as in 31 CFR 357.2.

Securities Documentation means the applicable statement of terms, trust indenture, securities agreement or other documents establishing the terms of a Book-entry Enterprise Security.

Security means any mortgage participation certificate, note, bond, debenture, evidence of indebtedness, collateral-trust certificate, transferable share, certificate of deposit for a security, or, in general, any interest or instrument commonly known as a "security".

Transfer message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry Enterprise Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

§ 1249.11 Maintenance of Enterprise Securities.

An Enterprise Security may be maintained in the form of a Definitive Enterprise Security or a Book-entry Enterprise Security. A Book-entry Enterprise Security shall be maintained in the Book-entry System.

§ 1249.12 Law governing rights and obligations of United States, Federal Reserve Banks, and Enterprises; rights of any person against United States, Federal Reserve Banks, and Enterprises; law governing other interests.

(a) Except as provided in paragraph (b) of this section, the following rights and obligations are governed solely by the book-entry regulations contained in this part, the Securities Documentation, and Federal Reserve Bank Operating Circulars (but not including any choice of law provisions in the Securities Documentation to the extent such provisions conflict with the Book-entry regulations contained in this part):

(1) The rights and obligations of an Enterprise and the Federal Reserve Banks with respect to:

(i) A Book-entry Enterprise Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Enterprise Securities; and

(2) The rights of any Person, including a Participant, against an Enterprise and the Federal Reserve Banks with respect to:

(i) A Book-entry Enterprise Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Enterprise Securities;

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1249.13(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1249.13(c)(1), is governed by the law determined in the manner specified in paragraph (d) of this section.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

(d) To the extent not otherwise inconsistent with this part, and notwithstanding any provision in the Securities Documentation setting forth a choice of law, the provisions set forth in 31 CFR 357.11 regarding law governing other interests apply and shall be read as though modified to effectuate the application of 31 CFR 357.11 to the Enterprises.

§ 1249.13 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book-entry that a Book-entry Enterprise Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) An Enterprise and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank, an Enterprise, or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 1249.12(b) or (d). The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 1249.14 Obligations of Enterprises; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 1249.13(c)(1), for the

purposes of this part, the Enterprise and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Enterprise Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks nor an Enterprise is liable to a Person asserting or having an adverse claim to a Security Entitlement or to a Book-entry Enterprise Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Enterprise Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Enterprise to make payments (including payments of interest and principal) with respect to Book-entry Enterprise Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest or other payments on Book-entry Enterprise Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Federal Reserve Bank or otherwise paid as directed by the Participant.

(2) Book-entry Enterprise Securities are redeemed in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the redemption proceeds, including both redemption proceeds, where applicable, to a Funds Account at such Federal Reserve Bank or otherwise paying such redemption proceeds as directed by the Participant. No action by the Participant ordinarily is required in connection with the redemption of a Book-entry Enterprise Security.

§ 1249.15 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Enterprises to perform the following functions with respect to the issuance of Book-entry Enterprise Securities offered and sold by an Enterprise to which this part applies, in accordance with the Securities Documentation, Federal Reserve Bank Operating Circulars, this part, and any procedures established by the Director consistent with these authorities:

(1) To service and maintain Book-entry Enterprise Securities in accounts established for such purposes;

(2) To make payments with respect to such securities, as directed by the Enterprise;

(3) To effect transfer of Book-entry Enterprise Securities between Participants' Securities Accounts as directed by the Participants;

(4) To effect conversions between Book-entry Enterprise Securities and Definitive Enterprise Securities with respect to those securities as to which conversion rights are available pursuant to the applicable Securities Documentation; and

(5) To perform such other duties as fiscal agent as may be requested by the Enterprise.

(b) Each Federal Reserve Bank may issue Federal Reserve Bank Operating Circulars not inconsistent with this part, governing the details of its handling of Book-entry Enterprise Securities, Security Entitlements, and the operation of the Book-entry System under this part.

§ 1249.16 Withdrawal of Eligible Book-entry Enterprise Securities for conversion to definitive form.

(a) Eligible Book-entry Enterprise Securities may be withdrawn from the Book-entry System by requesting delivery of like Definitive Enterprise Securities.

(b) A Federal Reserve Bank shall, upon receipt of appropriate instructions to withdraw Eligible Book-entry Enterprise Securities from book-entry in the Book-entry System, convert such securities into Definitive Enterprise Securities and deliver them in accordance with such instructions. No such conversion shall affect existing interests in such Enterprise Securities.

(c) All requests for withdrawal of Eligible Book-entry Enterprise Securities must be made prior to the maturity or date of call of the securities.

(d) Enterprise Securities which are to be delivered upon withdrawal may be issued in either registered or bearer form, to the extent permitted by the applicable Securities Documentation.

§ 1249.17 Waiver of regulations.

The Director reserves the right, in the Director's discretion, to waive any provision(s) of this part in any case or class of cases for the convenience of an Enterprise, the United States, or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not adversely affect any substantial existing rights, and the Director is satisfied that such action will not subject an Enterprise or the United States to any substantial expense or liability.

§ 1249.18 Liability of Enterprises and Federal Reserve Banks.

An Enterprise and the Federal Reserve Banks may rely on the information provided in a Transfer Message, and are not required to verify the information. An Enterprise and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a Transfer Message, or evidence submitted in support thereof.

§ 1249.19 Additional provisions.

(a) *Additional requirements.* In any case or any class of cases arising under these regulations, an Enterprise may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the Enterprise be necessary for the protection of the interests of the Enterprise.

(b) *Notice of attachment for Enterprise Securities in Book-entry System.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

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SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

Sec.

Subpart A—General

1282.1 Definitions.

Subpart B—Housing Goals

1282.11 General.
1282.12 Single-family housing goals.
1282.13 Multifamily special affordable housing goal and subgoal.
1282.14 Discretionary adjustment of housing goals.
1282.15 General counting requirements.
1282.16 Special counting requirements.
1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).
1282.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

1282.19 Affordability—Rent level definitions—tenant income is not known.
1282.20 Determination of compliance with housing goals; notice of determination.
1282.21 Housing plans.

Subpart C—[Reserved]

Subpart D—Reporting Requirements

1282.61 General.
1282.62 Mortgage reports.
1282.63 Annual Housing Activities Report.
1282.64 Periodic reports.
1282.65 Enterprise data integrity.

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566, 4603.

Subpart A—General

§ 1282.1 Definitions.

(a) *Statutory terms.* All terms defined in the Safety and Soundness Act are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section.

(b) *Other terms.* As used in this part, the term:

AHAR means the Annual Housing Activities Report that an Enterprise submits to the Director under section 309(n) of the Fannie Mae Charter Act or section 307(f) of the Freddie Mac Act.

AHAR information means data or information contained in the AHAR.

AHS means the American Housing Survey published by HUD and the Department of Commerce.

Balloon mortgage means a mortgage providing for payments at regular intervals, with a final payment ("balloon payment") that is at least 5 percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specified period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

Borrower income means the total gross income relied on in making the credit decision.

Charter Act means the Fannie Mae Charter Act, as amended, or the Freddie Mac Act, as amended.

Contract rent means the total rent that is, or is anticipated to be, specified in the rental contract as payable by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges that are included in the rental contract. In determining contract rent, rent concessions shall not be considered, *i.e.,* contract rent is not decreased by any rent concessions. Contract rent is rent net of rental subsidies. Anticipated rent for unoccupied units may be the market rent for similar units in the neighborhood as determined by the lender or appraiser for underwriting purposes.

Conventional mortgage means a mortgage other than a mortgage as to which an Enterprise has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Day means a calendar day.

Designated disaster area means any census tract (1) that is located in a county designated by FEMA as adversely affected by a declared major disaster, (2) where individual assistance payments were authorized by FEMA, and (3) where average damage severity, as reported by FEMA, exceeds $1,000 per household in the census tract. A census tract shall be treated as a "designated disaster area" for purposes of this part beginning on the January 1 after the FEMA designation of the county, or such earlier date as determined by FHFA, and continuing through December 31 of the third full calendar year following the FEMA designation.

Director means the Director of FHFA or his or her designee.

Dwelling unit means a room or unified combination of rooms intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property.

Enterprise means Fannie Mae or Freddie Mac (*Enterprises* means, collectively, Fannie Mae and Freddie Mac).

Extremely low-income means:

(i) In the case of owner-occupied units, income not in excess of 30 percent of area median income; and

(ii) In the case of rental units, income not in excess of 30 percent of area median income, with adjustments for smaller and larger families in accordance with this part.

Families in low-income areas means:

(i) Any family that resides in a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income;

(ii) Any family with an income that does not exceed area median income that resides in a minority census tract; and

(iii) Any family with an income that does not exceed area median income that resides in a designated disaster area.

Family means one or more individuals who occupy the same dwelling unit.

Fannie Mae means the Federal National Mortgage Association and any affiliate thereof.

Fannie Mae Charter Act means the Federal National Mortgage Association Charter Act, as amended (12 U.S.C. 1715 *et seq.*).

FEMA means the Federal Emergency Management Agency.

FHFA means the Federal Housing Finance Agency.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Freddie Mac means the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Freddie Mac Act means the Federal Home Loan Mortgage Corporation Act, as amended (12 U.S.C. 1451 *et seq.*).

Ginnie Mae means the Government National Mortgage Association.

HMDA means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*).

HOEPA mortgage means a mortgage covered by section 103(aa) of the Home Ownership Equity Protection Act (HOEPA) (15 U.S.C. 1602(aa)), as implemented by the Board of Governors of the Federal Reserve System.

HUD means the United States Department of Housing and Urban Development.

Lender means any entity that makes, originates, sells, or services mortgages, and includes the secured creditors named in the debt obligation and document creating the mortgage.

Low-income means:

(i) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(ii) In the case of rental units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families in accordance with this part.

Median income means, with respect to an area, the unadjusted median family income for the area as most recently determined by HUD. FHFA will provide the Enterprises annually with information specifying how the median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income.

Metropolitan area means a metropolitan statistical area (MSA), or a portion of such an area, including Metropolitan Divisions, for which median family income estimates are determined by HUD.

Minority means any individual who is included within any one or more of the following racial and ethnic categories:

(i) American Indian or Alaskan Native—a person having origins in any of the original peoples of North and

South America (including Central America), and who maintains Tribal affiliation or community attachment;

(ii) Asian—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

(iii) Black or African American—a person having origins in any of the black racial groups of Africa;

(iv) Hispanic or Latino—a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race; and

(v) Native Hawaiian or Other Pacific Islander—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Minority census tract means a census tract that has a minority population of at least 30 percent and a median income of less than 100 percent of the area median income.

Moderate-income means:

(i) In the case of owner-occupied units, income not in excess of area median income; and

(ii) In the case of rental units, income not in excess of area median income, with adjustments for smaller and larger families in accordance with this part.

Mortgage means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages. "Mortgage" includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage data means data obtained by the Director from the Enterprises under section 309(m) of the Fannie Mae Charter Act and section 307(e) of the Freddie Mac Act.

Mortgage purchase means a transaction in which an Enterprise bought or otherwise acquired a mortgage or an interest in a mortgage for portfolio, resale, or securitization.

Mortgage revenue bond means a tax-exempt bond or taxable bond issued by a State or local government or agency where the proceeds from the bond issue are used to finance residential housing.

Mortgage with unacceptable terms or conditions means a single-family mortgage, including a reverse mortgage, or a group or category of such mortgages, with one or more of the following terms or conditions:

(i) Excessive fees, where the total points and fees charged to a borrower exceed the greater of 5 percent of the loan amount or a maximum dollar amount of $1,000, or an alternative amount requested by an Enterprise and determined by the Director as appropriate for small mortgages.

(A) For purposes of this definition, points and fees include:

(*1*) Origination fees;

(*2*) Underwriting fees;

(*3*) Broker fees;

(*4*) Finder's fees; and

(*5*) Charges that the lender imposes as a condition of making the loan, whether they are paid to the lender or a third party;

(B) For purposes of this definition, points and fees do not include:

(*1*) Bona fide discount points;

(*2*) Fees paid for actual services rendered in connection with the origination of the mortgage, such as attorneys' fees, notary's fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections;

(*3*) The cost of mortgage insurance or credit-risk price adjustments;

(*4*) The costs of title, hazard, and flood insurance policies;

(*5*) State and local transfer taxes or fees;

(*6*) Escrow deposits for the future payment of taxes and insurance premiums; and

(*7*) Other miscellaneous fees and charges that, in total, do not exceed 0.25 percent of the loan amount;

(ii) An annual percentage rate that exceeds by more than 8 percentage points the yield on Treasury securities with comparable maturities as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit was received;

(iii) Prepayment penalties, except where:

(A) The mortgage provides some benefit to the borrower (*e.g.,* a rate or fee reduction for accepting the prepayment premium);

(B) The borrower is offered the choice of another mortgage that does not contain payment of such a premium;

(C) The terms of the mortgage provision containing the prepayment penalty are adequately disclosed to the borrower; and

(D) The prepayment penalty is not charged when the mortgage debt is accelerated as the result of the borrower's default in making his or her mortgage payments;

(iv) The sale or financing of prepaid single-premium credit life insurance products in connection with the origination of the mortgage;

(v) Underwriting practices contrary to the Interagency Guidance on Nontraditional Mortgage Product Risks (71 FR 58609) (Oct. 4, 2006), the Interagency Statement on Subprime Mortgage Lending (72 FR 37569) (July 10, 2007), or similar guidance subsequently issued by Federal banking agencies;

(vi) Failure to comply with fair lending requirements; or

(vii) Other terms or conditions that are determined by the Director to be an unacceptable term or condition of a mortgage.

Multifamily housing means a residence consisting of more than four dwelling units. The term includes cooperative buildings and condominium projects.

Non-metropolitan area means a county, or a portion of a county, including those counties that comprise Micropolitan Statistical Areas, located outside any metropolitan area for which median family income estimates are published annually by HUD.

Owner-occupied housing means single-family housing in which a mortgagor resides, including two- to four-unit owner-occupied properties where one or more units are used for rental purposes.

Participation means a fractional interest in the principal amount of a mortgage.

Private label security means any mortgage-backed security that is neither issued nor guaranteed by Fannie Mae, Freddie Mac, Ginnie Mae, or any other government agency.

Proprietary information means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that contain trade secrets or privileged or confidential, commercial, or financial information that, if released, would be likely to cause substantial competitive harm.

Public data means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that the Director determines are not proprietary and may appropriately be disclosed consistent with other applicable laws and regulations.

Purchase money mortgage means a mortgage given to secure a loan used for

the purchase of a single-family residential property.

Refinancing mortgage means a mortgage undertaken by a borrower that satisfies or replaces an existing mortgage of such borrower. The term does not include:

(i) A renewal of a single payment obligation with no change in the original terms;

(ii) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), with a corresponding change in the payment schedule;

(iii) An agreement involving a court proceeding;

(iv) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage;

(v) A renegotiated balloon mortgage on a multifamily property where the balloon payment was due within 1 year after the date of the closing of the renegotiated mortgage; and

(vi) A conversion of a balloon mortgage note on a single-family property to a fully amortizing mortgage note where the Enterprise already owns or has an interest in the balloon note at the time of the conversion.

Rent means, for a dwelling unit:

(i) When the contract rent includes all utilities, the contract rent; or

(ii) When the contract rent does not include all utilities, the contract rent plus:

(A) The actual cost of utilities not included in the contract rent; or

(B) A utility allowance.

Rental housing means dwelling units in multifamily housing and dwelling units that are not owner-occupied in single-family housing.

Rental unit means a dwelling unit that is not owner-occupied and is rented or available to rent.

Residence means a property where one or more families reside.

Residential mortgage means a mortgage on single-family or multifamily housing.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 *et seq.*).

Seasoned mortgage means a mortgage on which the date of the mortgage note is more than 1 year before the Enterprise purchased the mortgage.

Second mortgage means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

Single-family housing means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for cable or telephone service.

Utility allowance means either:

(i) The amount to be added to contract rent when utilities are not included in contract rent (also referred to as the "AHS-derived utility allowance"), as issued periodically by FHFA; or

(ii) The utility allowance established under the HUD Section 8 Program (42 U.S.C. 1437f) for the area where the property is located.

Very low-income means:

(i) In the case of owner-occupied units, income not in excess of 50 percent of area median income; and

(ii) In the case of rental units, income not in excess of 50 percent of area median income, with adjustments for smaller and larger families in accordance with this part.

Working day means a day when FHFA is officially open for business.

Subpart B—Housing Goals

§ 1282.11 General.

(a) *General.* Pursuant to the requirements of the Safety and Soundness Act (12 U.S.C. 4561 through 4566), this subpart establishes:

(1) Three single-family owner-occupied purchase money mortgage housing goals, a single-family refinancing mortgage housing goal, a multifamily special affordable housing goal and a multifamily special affordable housing subgoal;

(2) Requirements for measuring performance under the goals; and

(3) Procedures for monitoring and enforcing the goals.

(b) *Annual goals.* Each housing goal shall be established by regulation no later than December 1 of the preceding year, except that any housing goal may be adjusted by regulation to reflect subsequent available data and market developments.

§ 1282.12 Single-family housing goals.

(a) *Single-family housing goals.* An Enterprise shall be in compliance with a single-family housing goal if its performance under the housing goal meets or exceeds either:

(1) The share of the market that qualifies for the goal, or

(2) The benchmark level for the goal.

(b) *Size of market.* The size of the market for each goal shall be established annually by FHFA based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market shall be determined based on the following criteria:

(1) Only owner-occupied, conventional loans shall be considered;

(2) Purchase money mortgages and refinancing mortgages shall only be counted for the applicable goal or goals;

(3) All mortgages flagged as HOEPA loans or subordinate lien loans shall be excluded;

(4) All mortgages with original principal balances above the conforming loan limits for single unit properties for the year being evaluated (rounded to the nearest $1,000) shall be excluded;

(5) All mortgages with rate spreads of 300 basis points or more above the applicable average prime offer rate as reported in the Home Mortgage Disclosure Act data shall be excluded; and

(6) All mortgages that are missing information necessary to determine appropriate counting under the housing goals shall be excluded.

(c) *Low-income Families Housing Goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2010 and 2011 shall be 27 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(d) *Very Low-income Families Housing Goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for very low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2010 and 2011 shall be 8 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(e) *Low-income Areas Housing Goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied

single-family housing that consists of mortgages for families in low-income areas shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2010 and 2011 shall be 13 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(f) *Refinancing Housing Goal.* The percentage share of each Enterprise's total purchases of refinancing mortgages on owner-occupied single-family housing that consists of refinancing mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2010 and 2011 shall be 25 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

§ 1282.13 Multifamily special affordable housing goal and subgoal.

(a) *Multifamily housing goal and subgoal.* An Enterprise shall be in compliance with a multifamily housing goal or subgoal if its performance under the housing goal or subgoal meets or exceeds the benchmark level for the goal.

(b) *Multifamily Low-income Housing Goal.* For the years 2010 and 2011, the goal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be, for Fannie Mae, at least 237,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise in each year, and for Freddie Mac, at least 215,000 such dwelling units in each year.

(c) *Multifamily Very low-income Housing Subgoal.* For the years 2010 and 2011, the subgoal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be, for Fannie Mae, at least 57,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise in each year, and for Freddie Mac, at least 28,000 such dwelling units in each year.

§ 1282.14 Discretionary adjustment of housing goals.

(a) An Enterprise may petition the Director in writing during any year to reduce any goal or subgoal for that year.

(b) The Director shall seek public comment on any such petition for a period of 30 days.

(c) The Director shall make a determination regarding the petition within 30 days after the end of the public comment period. If the Director requests additional information from the Enterprise after the end of the public comment period, the Director may extend the period for a final determination for a single additional 15-day period.

(d) The Director may reduce a goal or subgoal pursuant to a petition for reduction only if:

(1) Market and economic conditions or the financial condition of the Enterprise require such a reduction; or

(2) Efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of the Safety and Soundness Act or the purposes of the Charter Acts (12 U.S.C. 1716; 12 U.S.C. 1451 note).

§ 1282.15 General counting requirements.

(a) *Calculating the numerator and denominator for single-family housing goals.* Performance under each of the single-family housing goals shall be measured using a fraction that is converted into a percentage. Neither the numerator nor the denominator shall include Enterprise transactions or activities that are not mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under § 1282.16(b).

(1) *The numerator.* The numerator of each fraction is the number of mortgage purchases of an Enterprise in a particular year that finance owner-occupied single-family properties that count toward achievement of a particular single-family housing goal.

(2) *The denominator.* The denominator of each fraction is the total number of mortgage purchases of an Enterprise in a particular year that finance owner-occupied single-family properties. A separate denominator shall be calculated for purchase money mortgages and for refinancing mortgages.

(b) *Missing data or information for single-family housing goals.* When an Enterprise lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular single-family housing goal, that mortgage purchase shall be included in the denominator for that housing goal, except under the circumstances described in this paragraph (b).

(1) Mortgage purchases financing owner-occupied single-family properties shall be evaluated based on the income of the mortgagors and the area median income at the time the mortgage was originated. To determine whether mortgages may be counted under a particular family income level, *i.e.,* low- or very low-income, the income of the mortgagors is compared to the median income for the area at the time of the mortgage application, using the appropriate percentage factor provided under § 1282.17.

(2) When the income of the mortgagor(s) is not available to determine whether a mortgage purchase counts toward achievement of a particular single-family housing goal, an Enterprise's performance with respect to such mortgage purchase may be evaluated using estimated affordability information by multiplying the number of mortgage purchases with missing borrower income information in each census tract by the percentage of all single-family owner-occupied mortgage originations in the respective tracts that would count toward achievement of each goal, as determined by FHFA based on the most recent Home Mortgage Disclosure Act data available.

(3) The estimation methodology in paragraph (b)(2) of this section may be used up to a nationwide maximum that shall be calculated by multiplying, for each census tract, the percentage of all single-family owner-occupied mortgage originations with missing borrower incomes (as determined by FHFA based on the most recent Home Mortgage Disclosure Act data available for home purchase and refinance mortgages, respectively) by the number of Enterprise mortgage purchases secured by single-family owner-occupied properties for each census tract, summed up over all census tracts. Separate nationwide maximums shall be calculated for purchase money mortgages and for refinancing mortgages. If the nationwide maximum is exceeded, then the estimated number of goal-qualifying mortgages will be adjusted by the ratio of the applicable nationwide maximum to the total number of mortgage purchases secured by single-family owner-occupied properties for the Enterprise in that year. Mortgage purchases in excess of the nationwide maximum, and any units for which estimation information is not available, shall remain in the

denominator of the respective goal calculation.

(c) *Counting dwelling units for multifamily housing goal and subgoal.* Performance under the multifamily housing goal and subgoal shall be measured by counting the number of dwelling units that count toward achievement of a particular housing goal or subgoal in all multifamily properties financed by mortgages purchased by an Enterprise in a particular year. Only dwelling units that are financed by mortgage purchases, as defined by FHFA, and that are not specifically excluded as ineligible under § 1282.16(b), may be counted for purposes of the multifamily housing goal and subgoal.

(d) *Counting rental units.* For purposes of counting rental units toward achievement of the multifamily housing goal and subgoal, mortgage purchases financing such units shall be evaluated based on the income of actual or prospective tenants where such data is available, *i.e.,* known to a lender.

(1) *Use of income.* Each Enterprise shall require lenders to provide to the Enterprise tenant income information, but only when such information is known to the lender. When the income of actual tenants is available, the income of the tenant shall be compared to the median income for the area, adjusted for family size as provided in § 1282.17, or as provided in § 1282.18 if family size is not known.

(i) When such tenant income information is available for all occupied units, the Enterprise's performance shall be based on the income of the tenants in the occupied units. For unoccupied units that are vacant and available for rent and for unoccupied units that are under repair or renovation and not available for rent, the Enterprise shall use rent levels for comparable units in the property to determine affordability, except as provided in paragraph (d)(1)(ii) of this section.

(ii) When income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be counted at the maximum income level established under such housing program for that unit. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, each Enterprise must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

(2) *Use of rent.* When the income of the prospective or actual tenants of a dwelling unit is not available, performance under the multifamily housing goal and subgoal will be evaluated based on rent and whether the rent is affordable to the income group targeted by the housing goal and subgoal. A rent is affordable if the rent does not exceed the maximum income levels as provided in § 1282.19. In determining contract rent for a dwelling unit, the actual rent or average rent by unit type shall be used.

(3) *Model units and rental offices.* A model unit or rental office in a multifamily property may be counted for purposes of the multifamily housing goal and subgoal only if an Enterprise determines that the number of such units is reasonable and minimal considering the size of the multifamily property.

(4) *Timeliness of information.* In evaluating affordability under the multifamily housing goal and subgoal, each Enterprise shall use tenant and rental information as of the time of mortgage acquisition.

(e) *Missing data or information for multifamily housing goal and subgoal.* (1) When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a multifamily mortgage purchased by an Enterprise counts toward achievement of the multifamily housing goal or subgoal because neither the income of prospective or actual tenants, nor the actual or average rental data, are available, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability information by multiplying the number of rental units with missing affordability information in properties securing multifamily mortgages purchased by the Enterprise in each census tract by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal and subgoal, as determined by FHFA based on the most recent decennial census.

(2) The estimation methodology in paragraph (e)(1) of this section may be used up to a nationwide maximum of ten percent of the total number of rental units in properties securing multifamily mortgages purchased by the Enterprise in the current year. Multifamily rental units in excess of this maximum, and any units for which estimation information is not available, shall not be counted for purposes of the multifamily housing goal and subgoal.

(f) *Credit toward multiple goals.* A mortgage purchase (or dwelling unit financed by such purchase) by an Enterprise in a particular year shall count toward the achievement of each housing goal for which such purchase (or dwelling unit) qualifies in that year.

(g) *Application of median income.* (1) For purposes of determining an area's median income under §§ 1282.17 through 1282.19 and the definitions in § 1282.1, the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(ii) In all other areas, the county in which the property is located, except that where the State non-metropolitan median income is higher than the county's median income, the area is the State non-metropolitan area.

(2) When an Enterprise cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the Enterprise shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act, if the Enterprise can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract;

(ii) A census place code;

(iii) A block-group enumeration district;

(iv) A nine-digit zip code; or

(v) Another appropriate geographic segment that is partially located in more than one area ("split area").

(h) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases (or dwelling units) for that year; a sampling of such purchases (or dwelling units) is not acceptable.

(i) *Newly available data.* When an Enterprise uses data to determine whether a mortgage purchase (or dwelling unit) counts toward achievement of any goal and new data is released after the start of a calendar quarter, the Enterprise need not use the new data until the start of the following quarter.

§ 1282.16 Special counting requirements.

(a) *General.* FHFA shall determine whether an Enterprise shall receive full, partial, or no credit toward achievement of any of the housing goals for a transaction that otherwise qualifies under this part. In this determination, FHFA will consider whether a transaction or activity of the Enterprise is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market, provided however that such

mortgage purchase actually fulfills the Enterprise's purposes and is in accordance with its Charter Act.

(b) *Not counted.* The following transactions or activities shall not be counted for purposes of the housing goals and shall not be included in the numerator or the denominator in calculating either Enterprise's performance under the housing goals, even if the transaction or activity would otherwise be counted pursuant to paragraph (c) of this section:

(1) Equity investments in low-income housing tax credits;

(2) Purchases of State and local government housing bonds except as provided in paragraph (c)(8) of this section;

(3) Purchases of non-conventional single-family mortgages;

(4) Commitments to buy mortgages at a later date or time;

(5) Options to acquire mortgages;

(6) Rights of first refusal to acquire mortgages;

(7) Any interests in mortgages that the Director determines, in writing, shall not be treated as interests in mortgages;

(8) Mortgage purchases to the extent they finance any dwelling units that are secondary residences;

(9) Single-family refinancing mortgages that result from conversion of balloon notes to fully amortizing notes, if the Enterprise already owns or has an interest in the balloon note at the time conversion occurs;

(10) Purchases of subordinate lien mortgages (second mortgages);

(11) Purchases of mortgages or interests in mortgages that were previously counted by either Enterprise under any current or previous housing goal within the five years immediately preceding the current performance year;

(12) Purchases of mortgages where the property has not been approved for occupancy;

(13) Purchases of private label securities;

(14) Enterprise contributions to the Housing Trust Fund (12 U.S.C. 4568) and the Capital Magnet Fund (12 U.S.C. 4569), and mortgage purchases funded with such grant amounts; and

(15) Any combination of factors in paragraphs (b)(1) through (b)(14) of this section.

(c) *Other special rules.* Subject to FHFA's determination of whether an Enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the transactions and activities identified in this paragraph (c) shall be treated as mortgage purchases as described. A transaction or activity that is covered by more than one paragraph below must satisfy the requirements of each such paragraph. The mortgages (or dwelling units, for the multifamily housing goals) from each such transaction or activity shall be included in the denominator in calculating the Enterprise's performance under the housing goals, and shall be included in the numerator, as appropriate.

(1) *Credit enhancements.* (i) Mortgages (or dwelling units) financed under a credit enhancement entered into by an Enterprise shall be treated as mortgage purchases for purposes of the housing goals only when:

(A) The Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency); and

(B) The Enterprise assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the Enterprise if it had securitized the mortgages financed by such bonds.

(ii) When an Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the Enterprise may, on a case-by-case basis, seek approval from the Director for such activities to count toward achievement of the housing goals.

(2) [Reserved.]

(3) *Risk-sharing.* Mortgages purchased under risk-sharing arrangements between an Enterprise and any Federal agency under which the Enterprise is responsible for a substantial amount (50 percent or more) of the risk shall be treated as mortgage purchases for purposes of the housing goals.

(4) *Participations.* Participations purchased by an Enterprise shall be treated as mortgage purchases for purposes of the housing goals only when the Enterprise's participation in the mortgage is 50 percent or more.

(5) *Cooperative housing and condominiums.* (i) The purchase of a mortgage on a cooperative housing unit ("a share loan") or a mortgage on a condominium unit shall be treated as a mortgage purchase for purposes of the housing goals. Such a purchase shall be counted in the same manner as a mortgage purchase of single-family owner-occupied units.

(ii) The purchase of a mortgage on a cooperative building ("a blanket loan") or a mortgage on a condominium project shall be treated as a mortgage purchase for purposes of the housing goals. The purchase of a blanket loan or a condominium project mortgage shall be counted in the same manner as a mortgage purchase of a multifamily rental property.

(iii) Where an Enterprise purchases both a blanket loan on a cooperative building and share loans for units in the same building, both the blanket loan and the share loan(s) shall be treated as mortgage purchases for purposes of the housing goals. Where an Enterprise purchases both a condominium project mortgage and mortgages on condominium dwelling units in the same project, both the condominium project mortgages and the mortgages on condominium dwelling units shall be treated as mortgage purchases for purposes of the housing goals.

(6) *Seasoned mortgages.* An Enterprise's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of the housing goals, except where the Enterprise has already counted the mortgage under any current or previous housing goal within the five years immediately preceding the current performance year.

(7) *Purchase of refinancing mortgages.* The purchase of a refinancing mortgage by an Enterprise shall be treated as a mortgage purchase for purposes of the housing goals only if the refinancing is an arms-length transaction that is borrower-driven.

(8) *Mortgage revenue bonds.* The purchase or guarantee by an Enterprise of a mortgage revenue bond issued by a State or local housing finance agency shall be treated as a purchase of the underlying mortgages for purposes of the housing goals only to the extent the Enterprise has sufficient information to determine whether the underlying mortgages or mortgage-backed securities qualify for inclusion in the numerator for one or more housing goal.

(9) [Reserved.]

(10) *Loan modifications.* An Enterprise's modification of a loan in accordance with the Making Home Affordable program announced on March 4, 2009, that is held in the Enterprise's portfolio or that is in a pool backing a security guaranteed by the Enterprise, shall be treated as a mortgage purchase for purposes of the housing goals.

(11) [Reserved.]

(12) [Reserved.]

(13) [Reserved.]

(14) *Seller dissolution option.* (i) Mortgages acquired through transactions involving seller dissolution options shall be treated as mortgage purchases for purposes of the housing goals, only when:

(A) The terms of the transaction provide for a lockout period that prohibits the exercise of the dissolution option for at least one year from the date on which the transaction was entered into by the Enterprise and the seller of the mortgages; and

(B) The transaction is not dissolved during the one-year minimum lockout period.

(ii) The Director may grant an exception to the one-year minimum lockout period described in paragraphs (c)(14)(i)(A) and (B) of this section, in response to a written request from an Enterprise, if the Director determines that the transaction furthers the purposes of the Safety and Soundness Act and the Enterprise's Charter Act;

(iii) For purposes of this paragraph (c)(14), "seller dissolution option" means an option for a seller of mortgages to the Enterprises to dissolve or otherwise cancel a mortgage purchase agreement or loan sale.

(d) *HOEPA mortgages and mortgages with unacceptable terms or conditions.* HOEPA mortgages and mortgages with unacceptable terms or conditions, as defined in § 1282.1, shall be treated as mortgage purchases for purposes of the housing goals and shall be included in the denominator for each applicable single-family housing goal, but such mortgages shall not be counted in the numerator for any housing goal.

(e) *FHFA review of transactions.* FHFA may determine whether and how any transaction or class of transactions shall be counted for purposes of the housing goals, including treatment of missing data. FHFA will notify each Enterprise in writing of any determination regarding the treatment of any transaction or class of transactions under the housing goals.

§ 1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

In determining whether a dwelling unit is affordable where income information (and family size, for rental housing) is known to the Enterprise, the affordability of the unit shall be determined as follows:

(a) *Moderate-income* means:

(1) In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	70
2	80
3	90
4	100
5 or more	*

* 100% plus (8% multiplied by the number of persons in excess of 4).

(b) *Low-income (80%)* means:

(1) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	56
2	64
3	72
4	80
5 or more	*

* 80% plus (6.4% multiplied by the number of persons in excess of 4).

(c) *Low-income (60%)* means:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	42
2	48
3	54
4	60
5 or more	*

* 60% plus (4.8% multiplied by the number of persons in excess of 4).

(d) *Very low-income* means:

(1) In the case of owner-occupied units, income not in excess of 50 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	35
2	40
3	45
4	50
5 or more	*

* 50% plus (4% multiplied by the number of persons in excess of 4).

(e) *Extremely low-income* means:

(1) In the case of owner-occupied units, income not in excess of 30 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	21
2	24
3	27
4	30
5 or more	*

* 30% plus (2.4% multiplied by the number of persons in excess of 4).

§ 1282.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

In determining whether a rental unit is affordable where family size is not known to the Enterprise, income will be adjusted using unit size, and affordability determined as follows:

(a) *For moderate-income,* the income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	70
1 bedroom	75
2 bedrooms	90
3 bedrooms or more	*

* 104% plus (12% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income (80%),* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	56
1 bedroom	60
2 bedrooms	72

Unit size	Percentage of area median income
3 bedrooms or more	*

* 83.2% plus (9.6% multiplied by the number of bedrooms in excess of 3).

(c) *For low-income (60%),* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	42
1 bedroom	45
2 bedrooms	54
3 bedrooms or more	*

* 62.4% plus (7.2% multiplied by the number of bedrooms in excess of 3).

(d) *For very low-income,* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	35
1 bedroom	37.5
2 bedrooms	45
3 bedrooms or more	*

* 52% plus (6.0% multiplied by the number of bedrooms in excess of 3).

(e) *For extremely low-income,* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	*

* 31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).

§ 1282.19 Affordability—Rent level definitions—tenant income is not known.

For purposes of determining whether a rental unit is affordable where the income of the family in the dwelling unit is not known to the Enterprise, the affordability of the unit is determined based on unit size as follows:

(a) *For moderate-income,* maximum affordable rents to count as housing for moderate-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	*

* 31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income (80%),* maximum affordable rents to count as housing for low-income (80%) families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	16.8
1 bedroom	18
2 bedrooms	21.6
3 bedrooms or more	*

* 24.96% plus (2.88% multiplied by the number of bedrooms in excess of 3).

(c) *For low-income (60%),* maximum affordable rents to count as housing for low-income (60%) families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	12.6
1 bedroom	13.5
2 bedrooms	16.2
3 bedrooms or more	*

* 18.72% plus (2.16% multiplied by the number of bedrooms in excess of 3).

(d) *For very low-income,* maximum affordable rents to count as housing for very low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	10.5
1 bedroom	11.25
2 bedrooms	13.5
3 bedrooms or more	*

* 15.6% plus (1.8% multiplied by the number of bedrooms in excess of 3).

(e) *For extremely low-income,* maximum affordable rents to count as housing for extremely low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	6.3
1 bedroom	6.75
2 bedrooms	8.1
3 bedrooms or more	*

* 9.36% plus (1.08% multiplied by the number of bedrooms in excess of 3).

(f) *Missing Information.* Each Enterprise shall make every effort to obtain the information necessary to make the calculations in this section. If an Enterprise makes such efforts but cannot obtain data on the number of bedrooms in particular units, in making the calculations on such units, the units shall be assumed to be efficiencies except as provided in § 1282.15(e)(1).

§ 1282.20 Determination of compliance with housing goals; notice of determination.

(a) *Single-family housing goals.* The Director shall evaluate each Enterprise's performance under the Low-income Families Housing Goal, the Very Low-income Families Housing Goal, the Low-income Areas Housing Goal, and the Refinancing Mortgages Housing Goal on an annual basis. If the Director determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail to meet a single-family housing goal established by this subpart, the Director shall notify the Enterprise in writing of such preliminary determination.

(b) *Multifamily housing goal and subgoal.* The Director shall evaluate each Enterprise's performance under the Multifamily Low-income Housing Goal and the Multifamily Very Low-income Housing Subgoal on an annual basis. If the Director determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail to meet a multifamily housing goal or subgoal established by this subpart, the Director shall notify the Enterprise in writing of such preliminary determination.

(c) Any notification to an Enterprise of a preliminary determination under this section shall provide the Enterprise with an opportunity to respond in writing in accordance with the procedures at 12 U.S.C. 4566(b).

§ 1282.21 Housing plans.

(a) General. If the Director determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet any housing goal and that the achievement of the housing goal was or is feasible, the Director may require the Enterprise to submit a housing plan for approval by the Director.

(b) *Nature of plan.* If the Director requires a housing plan, the housing plan shall:

(1) Be feasible;

(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Enterprise will take:

(i) To achieve the goal for the next calendar year; and

(ii) If the Director determines that there is a substantial probability that the Enterprise will fail to meet a housing goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of the year; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c) *Deadline for submission.* The Enterprise shall submit the housing plan to the Director within 45 days after issuance of a notice requiring the Enterprise to submit a housing plan. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) *Review of housing plans.* The Director shall review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (c)(5).

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by an Enterprise, the Enterprise shall submit an amended plan acceptable to the Director not later than 15 days after the Director's disapproval of the initial plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If the amended plan is not acceptable to the Director, the Director may afford the Enterprise 15 days to submit a new plan.

Subpart C—[Reserved]

Subpart D—Reporting Requirements

§ 1282.61 General.

This subpart establishes data submission and reporting requirements to carry out the requirements of the Enterprises' Charter Acts and the Safety and Soundness Act.

§ 1282.62 Mortgage reports.

(a) *Loan-level data elements.* To implement the data collection and submission requirements for mortgage data, and to assist the Director in monitoring the Enterprises' housing goal activities, each Enterprise shall collect and compile computerized loan-level data on each mortgage purchased in accordance with 12 U.S.C. 1456(e) and 1723a(m). The Director may, from time to time, issue a list entitled "Required Loan-level Data Elements" specifying the loan-level data elements to be collected and maintained by the Enterprises and provided to the Director. The Director may revise the list by written notice to the Enterprises.

(b) *Quarterly Mortgage Reports.* Each Enterprise shall submit to the Director a quarterly Mortgage Report. The fourth quarter Mortgage Report shall serve as the Annual Mortgage Report and shall be designated as such. Each Mortgage Report shall include:

(1) Aggregations of the loan-level mortgage data compiled by the Enterprise under paragraph (a) of this section for year-to-date mortgage purchases, in the format specified in writing by the Director;

(2) Year-to-date dollar volume, number of units, and number of mortgages on owner-occupied and rental properties purchased by the Enterprise that do, and do not, qualify under each housing goal as set forth in this part; and

(3) Year-to-date computerized loan-level data consisting of the data elements required under paragraph (a) of this section.

(c) *Timing of Reports.* The Enterprises shall submit the Mortgage Report for each of the first 3 quarters of each year within 45 days of the end of the quarter. Each Enterprise shall submit its Annual Mortgage Report within 60 days after the end of the calendar year.

(d) *Revisions to Reports.* At any time before submission of its Annual Mortgage Report, an Enterprise may revise any of its quarterly reports for that year.

(e) *Format.* The Enterprises shall submit to the Director computerized loan-level data with the Mortgage Report, in the format specified in writing by the Director.

§ 1282.63 Annual Housing Activities Report.

To comply with the requirements in sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act and assist the Director in preparing the Director's Annual Report to Congress, each Enterprise shall submit to the Director an AHAR including the information listed in those sections of the Charter Acts. Each Enterprise shall submit such report within 60 days after the end of each calendar year, to the Director, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Each Enterprise shall make its AHAR available to the public online and at its principal and regional offices. Before making any such report available to the public, the Enterprise may exclude from the report any information that the Director has deemed proprietary.

§ 1282.64 Periodic reports.

Each Enterprise shall provide to the Director such reports, information and data as the Director may request from time to time.

§ 1282.65 Enterprise data integrity.

(a) *Certification.* (1) The senior officer of each Enterprise who is responsible for submitting the fourth quarter Annual Mortgage Report and the AHAR under sections 309(m) and (n) of the Fannie Mae Charter Act or sections 307(e) and (f) of the Freddie Mac Act, as applicable, or for submitting any other report(s), data or information for which certification is requested in writing by the Director, shall certify such report(s), data or information.

(2) The certification shall state as follows: "To the best of my knowledge and belief, the information provided herein is true, correct and complete."

(b) *Adjustment to correct errors, omissions or discrepancies in AHAR data.* FHFA shall determine the official housing goal performance figure for each Enterprise under the housing goals on an annual basis. FHFA may resolve any error, omission or discrepancy by adjusting the Enterprise's official housing goal performance figure. If the Director determines that the year-end data reported by an Enterprise for a year preceding the latest year for which data on housing goals performance was reported to FHFA contained a material error, omission or discrepancy, the Director may increase the corresponding housing goal for the current year by the number of mortgages (or dwelling units) that the Director determines were overstated in the prior year's goal performance.

Dated: February 16, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–3310 Filed 2–25–10; 8:45 am]

BILLING CODE P

Federal Register

Friday,
February 26, 2010

Part III

Securities and Exchange Commission

17 CFR Parts 230 and 240
Amendments to Rules Requiring Internet Availability of Proxy Materials; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33–9108; 34–61560; IC–29131; File No. S7–22–09]

RIN 3235–AK25

Amendments to Rules Requiring Internet Availability of Proxy Materials

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are amending rules under the Securities Exchange Act of 1934 and the Securities Act of 1933 to clarify and provide additional flexibility regarding the format of the Notice of Internet Availability of Proxy Materials that is sent to shareholders and to permit issuers and other soliciting persons to better communicate with shareholders by including explanatory materials regarding the reasons for the use of the notice and access proxy rules and the process of receiving and reviewing proxy materials and voting pursuant to the notice and access proxy rules. The amendments also revise the timeframe for delivering a Notice to shareholders when a soliciting person other than the issuer relies on the notice and access proxy rules and permit mutual funds to accompany the Notice with a summary prospectus.

DATES: *Effective Date:* March 29, 2010.

FOR FURTHER INFORMATION CONTACT: Steven G. Hearne, Special Counsel in the Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, or with respect to registered investment companies, Sanjay Lamba, Senior Counsel, in the Office of Disclosure Regulation, Division of Investment Management, at (202) 551–6784, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is amending Rule 14a–16 [1] under the Securities Exchange Act of 1934 [2] and Rule 498 [3] under the Securities Act of 1933.[4]

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I. Background and Overview of the Amendments

On October 14, 2009, we proposed amendments to the notice and access proxy rules to remove regulatory impediments that may be reducing shareholder response rates to proxy solicitations by permitting issuers and other soliciting persons to more effectively use the notice and access model.[5] These amendments were proposed based on our continuing review of the disclosures shareholders receive when they are asked to make a voting decision and the process followed when those votes are solicited.[6] As discussed in detail below, we are adopting the proposed amendments with certain modifications based on the comments received on the proposal.

We received 25 comment letters in response to the proposed amendments.[7] These letters came from corporations, professional associations, institutional investors, law firms, transfer agents, proxy service providers and other interested parties. We have reviewed and considered all of the comments that we received on the proposed amendments. Most commenters supported the use of the notice and access model and the Commission's proposed modifications to improve its implementation.[8] The adopted rules reflect changes made in response to some of these comments. We explain our revisions with respect to each proposed rule amendment in more detail throughout this release.

In 2007, the Commission established procedures that promote the use of the Internet as a reliable and cost-efficient means of making proxy materials available to shareholders.[9] The notice and access proxy rules require all issuers and other soliciting persons to post their proxy materials on an Internet Web site and provide a Notice of Internet Availability of Proxy Materials ("Notice") to shareholders. These rules also provide issuers and other soliciting persons an option as to whether to send a full set of proxy materials to all shareholders or to send shareholders only the Notice. According to Broadridge Financial Solutions, Inc. ("Broadridge"), over 1,300 corporate issuers used the notice-only option for distribution of the Notice to some portion of their beneficial owners under the notice and access model in the 2009 proxy season.[10] Commenters, including

[1] 17 CFR 240.14a–16.

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 230.498.

[4] 15 U.S.C. 77a *et seq.*

[5] Amendments to Rules Requiring Internet Availability of Proxy Materials, Release No. 33–9073 (Oct. 14, 2009) [74 FR 53954] (the "Proposing Release").

[6] *See, e.g.,* Facilitating Shareholder Director Nominations, Release No. 33–9046 (June 10, 2009) [74 FR 29024], Proxy Disclosure Enhancements, Release No. 33–9089 (Dec. 16, 2009) [74 FR 68443], and Order Approving Proposed Rule Change, as modified by Amendment No. 4, to Amend NYSE Rule 452 and Corresponding Listed Company Manual Section 402.08 to Eliminate Broker Discretionary Voting for the Election of Directors, Except for Companies Registered under the Investment Company Act of 1940, and to Codify Two Previously Published Interpretations that Do Not Permit Broker Discretionary Voting for Material Amendments to Investment Advisory Contracts with an Investment Company, Release No. 34–60215 (July 1, 2009) [74 FR 33293].

[7] *See* letters from American Bar Association ("ABA"), American Business Conference ("ABC"), Ameriprise Financial, Inc. ("Ameriprise"), Association of Corporate Counsel ("ACC"), The Altman Group ("Altman"), BNY Mellon Shareowner Services ("BNY"), Broadridge Financial Solutions, Inc. ("Broadridge"), Independent Steering Committee of Broadridge Investor Communications Solutions ("Broadridge Steering Committee"), California State Teachers Retirement System ("CalSTRS"), Calvert Group Limited ("Calvert"), U.S. Chamber of Commerce ("Chamber"), Computershare Limited ("Computershare"), Corporate Governance, Diversified Global Graphics Group ("DG3"), Edison International ("Edison"), Investment Company Institute ("ICI"), Intel Corporation ("Intel"), IR WebReport.com, Moxy Vote ("Moxy"), National Investor Relations Institute ("NIRI"), Otter Tail Corporation ("Otter Tail"), Registrar and Transfer Company ("R&T"), Sullivan & Cromwell ("S&C"), Society of Corporate Secretaries and Governance Professionals ("SCSGP"), and Securities Transfer Association, Inc. ("STA").

[8] *See, e.g.,* letters from ABA, ABC, ACC, Altman, BNY, Broadridge, Broadridge Steering Committee, CalSTRS, Calvert, Chamber, Computershare, Edison, ICI, Intel, NIRI, Otter Tail, R&T, S&C, SCSGP, and STA.

[9] *See* Internet Availability of Proxy Material, Release No. 34–55146 (Jan. 22, 2007) [72 FR 4148] ("Internet Availability of Proxy Material Adopting Release") and Shareholder Choice Regarding Proxy Materials, Release No. 34–56135 (July 26, 2007) [72 FR 42221].

[10] *See* Broadridge Notice & Access, Statistical Overview of Use with Beneficial Shareholders (as of June 30, 2009) attached to the letter from Broadridge ("Broadridge Statistical Overview"). Broadridge is the largest provider of brokerage processing services with respect to beneficial owners holding through a broker or similar intermediary and has provided detailed statistical information on the use of the notice and access model. The Broadridge Statistical Overview is generally limited to comparisons between issuers that have used the notice-only option for distribution to *some portion* of their beneficial owners and issuers that *exclusively* used the full set

Broadridge and transfer agents who conduct the distribution to registered owners, indicated that issuers have experienced significant cost savings in printing, postage and processing fees.[11]

As we noted in the Proposing Release, while many issuers have experienced significant cost savings using the notice-only option, statistics indicate lower shareholder response rates to proxy solicitations when the notice-only option is used.[12] We are concerned that some investors may be confused when issuers and other soliciting persons distribute proxy materials using the notice-only option and we believe our rules should be amended to provide additional flexibility for issuers and other soliciting persons to better communicate with shareholders to reduce that confusion.

We are adopting amendments today to provide issuers and other soliciting persons with additional flexibility to provide to shareholders a more effective explanation of the importance and effect of the Notice and the reasons for its use, which should better facilitate use of our rules and improve investor understanding. Specifically, the amendments provide additional flexibility regarding the format and content of the Notice, permit issuers and other soliciting persons to better communicate with shareholders by including explanatory materials regarding the reasons for the use of the notice and access rules and the process of receiving and reviewing proxy materials and voting, and revise the timeframe for delivering a Notice to shareholders when a soliciting person other than the issuer relies on the notice-only option.

II. Discussion of the Amendments

A. Revisions to the Notice Requirements and Inclusion of Explanatory Materials

We proposed amendments to Exchange Act Rule 14a–16 to provide issuers and other soliciting persons with additional flexibility to develop a more effective Notice and to provide shareholders with guidance as to how to access the proxy materials online, request a paper copy of the proxy materials, and vote their shares. We are adopting the amendments generally as proposed with some changes as recommended by commenters.

1. Proposed Amendments

Under the amendments we proposed, issuers and other soliciting persons would have additional flexibility in formatting and selecting the language to be used in the Notice. Rather than requiring the soliciting person to include a detailed legend that may seem like boilerplate language to shareholders, we proposed to require that the information appearing on the Notice address certain topics, without specifying the exact language to be used.[13] Further, in order to mitigate confusion about the Notice and to allow issuers and other soliciting persons to better engage shareholders, we proposed to revise Exchange Act Rule 14a–16(f)(2)[14] to permit issuers and other soliciting persons to accompany the Notice with an explanation of the notice and access model, which would be limited to an explanation of the process of receiving and reviewing the proxy materials and voting. Materials designed to persuade shareholders to vote in a particular manner, change the method of delivery of proxy materials, or explain why the person was sending only a Notice to shareholders would not be permitted under the proposed amendments.

2. Comments on the Proposed Amendments

Most commenters supported the additional flexibility provided by the proposed amendments to design and prepare the Notice and provide explanatory materials, and many of these commenters offered additional suggestions for improving the proposals.[15] Several commenters recommended that the design and wording of the Notice should be required to clearly indicate that the Notice is not a proxy card and may not be voted.[16] Other commenters supported a uniform and easily recognizable design for the Notice,[17] requiring intermediaries to forward the Notice in issuer provided envelopes,[18] or requiring that the Notice identify proxy items by topic rather than specific proposals.[19]

Several commenters supported more flexibility than we had proposed for the explanatory materials, such as permitting an issuer to explain the reasons for its use of the notice-only option.[20] Commenters suggested that an issuer's rationale for using the notice-only option would enhance shareholders' understanding of the reasons for receiving the Notice, inform investors of the benefits of using the notice-only option and help to distinguish the Notice from the proxy card, without influencing a shareholder's voting decision.[21] One commenter supported additionally requiring that intermediaries be required to pass explanatory materials on to beneficial owners.[22]

Finally, one commenter noted that if the Commission approved the proposed amendments to the Notice requirements, a technical change is necessary to Exchange Act Rule 14a–16(n).[23] Rule 14a–16(n) addresses the notice and access requirements when an issuer or other soliciting person sends a full set of proxy materials to security holders. The suggested technical change related to references in Rule 14a–16(n)(4) to the disclosure requirements of the Notice in Exchange Act Rule 14a–16(d). Since the proposed amendments revise the disclosure requirements of Rule 14a–16(d), conforming changes should also be made to 14a–16(n)(4).

3. Final Rule

After considering the comments, we are adopting the amendments to our requirements regarding the Notice and the rules about what materials may accompany the initial distribution of the Notice as proposed with some changes as recommended by commenters. The final rule provides issuers and other soliciting persons with additional flexibility in formatting and selecting the language to be used in the Notice, as proposed. The information appearing on the Notice is required to address

delivery option and comparisons between the first and second years of use of the notice-only option. The data does not provide a comparison to an issuer's experience in the year prior to using the notice-only option for distribution.

[11] *See, e.g.,* letters from Broadridge, BNY, and R&T. Some commenters noted that processing fees were reduced on distributions to registered owners, but expressed concern about the processing fees charged by service providers for distributions to beneficial owners. *See, e.g.,* letters from Altman, BNY, ICI, NIRI, Otter Tail, R&T, and STA.

[12] *See* notes 18–20 of the Proposing Release.

[13] As proposed, Exchange Act Rule 14a–16(d) would limit the required legend to the line "Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting To Be Held on [insert meeting date]" and would require the other information currently required in the legend to be included in the Notice, but not as part of a specified legend.

[14] 17 CFR 240.14a–16(f)(2).

[15] *See, e.g.,* letters from ABA, ACC, BNY, Broadridge, Broadridge Steering Committee, Calvert, Chamber, Computershare, Edison, ICI, Intel, Otter Tail, R&T, S&C, SCSGP, and STA.

[16] *See, e.g.,* letters from ABA, Altman, Otter Tail, and Intel. Letters from ABA, Altman and Intel suggested the inclusion of a mandatory legend indicating that a separate proxy card should be used for voting.

[17] *See* letter from Otter Tail.

[18] *See* letter from Edison.

[19] *See* letter from Intel suggesting that the mandated format of the Notice be changed so that matters to be addressed at the annual meeting be identified by topic rather than identifying the specific proposals in order to avoid confusion between the Notice and the proxy card.

[20] *See, e.g.,* letters from ABA, ACC, S&C, and STA.

[21] *See, e.g.,* letters from ABA and ACC.

[22] *See* letter from ABA.

[23] *See* letter from S&C.

certain topics, without specifying the exact language to be used. In response to comments requesting that the rules specifically state that the Notice is not a form of proxy and may not be voted, we are adopting final rules that require an issuer or other soliciting person to indicate that the Notice is not a form for voting. We are not, however, adopting suggested changes to the Notice requirements that would require a prescribed legend that the Notice is not a proxy card. We are also not adopting changes to the Notice that would require a uniform design for the Notice or would require that the Notice identify proxy items by topic rather than specific identification. We believe that the requirement that the Notice indicate that it is not a form for voting and the additional flexibility provided by the revised rules, as well as the guidance regarding the requirements of redesignated Exchange Act Rule 14a–16(d)(6),[24] address the concerns raised by commenters. These changes also provide issuers and other soliciting persons the flexibility to draft the Notice more effectively. We believe that the flexibility should discourage the development of boilerplate disclosure, which is one of the problems our amendments are designed to address.

As noted above, several commenters supported additional flexibility to allow the materials to address the reasons for the use of the notice-only option.[25] Consistent with the proposal, the final rule permits issuers and other soliciting persons to accompany the Notice with an explanation of the notice and access model.[26] As proposed, new Exchange Act Rule 14a–16(f)(2)(iv)[27] allows issuers and other soliciting persons to provide an explanation of the process of receiving and reviewing the proxy materials and voting under the notice and access proxy rules. In a change from the proposal, new Exchange Act Rule 14a–16(f)(2)(iv) also permits an explanation of the reasons for the use of the notice and access rules, as some commenters suggested.

We concur that additional flexibility to explain the reasons for the use of the notice and access rules and the notice-only option may enhance shareholders' understanding of the notice and access model and, therefore, we have expanded the exception to include those topics. Materials designed to persuade shareholders to vote in a particular manner or change the method of the delivery of proxy materials are still not permitted under the revised exception.[28] As also noted above, one commenter suggested that we specifically require that intermediaries and their agents be required to distribute explanatory materials prepared in reliance on the amended rules. Since issuers and other soliciting persons are generally required to reimburse intermediaries for the reasonable expenses incurred in connection with forwarding materials to shareholders, we are not at this time specifically requiring intermediaries and their agents to forward explanatory materials. Of course, to the extent that materials that accompany the Notice are "other soliciting materials" then our current rules[29] would specifically require distribution of the materials.

In response to comments, we are also making a technical change to Exchange Act Rule 14a–16(n). Rule 14a–16(n)(4) details the notice and access disclosures that registrants and other soliciting persons are not required to include in proxy materials when they choose to send a full set of proxy materials to security holders. Since we are amending the notice and access disclosure requirements in Rule 14a–16(d), we are making conforming changes to Rule 14a–16(n)(4). Specifically, we are revising Rule 14a–16(n)(4)(i) to delete the reference to legend requirements that are no longer part of Rule 14a–16(d)(1) and to make reference to new paragraph 14a–16(d)(2) and changing the reference to "(d)(7)" in Rule 14a–16(n)(4)(iii) to "(d)(10)" to track the new numbering in Rule 14a–16(d).

Finally, we are confirming the guidance provided in the Proposing Release that it is not necessary that the Notice directly mirror the proxy card. Rather, Exchange Act Rule 14a–16(d)(6) provides that the Notice must clearly and impartially identify each separate matter intended to be acted on that will be considered at the meeting. We do not believe the Notice has to conform to the specific Exchange Act Rule 14a–4[30] formatting and content requirements for disclosure of matters on the proxy card.

B. Amendment to Notice Deadlines for Soliciting Persons Other Than the Issuer

We proposed to amend Exchange Act Rule 14a–16(*l*)(2)(ii)[31] to improve the workability of the notice and access rules that apply to soliciting persons, other than the issuer, that choose to use the notice-only option.

1. Proposed Amendment

As we noted in the Proposing Release, the current requirement in Exchange Act Rule 14a–16(*l*)(2) that requires soliciting persons to send the Notice to shareholders 10 calendar days after the date that the issuer first sends its proxy materials to shareholders can create potential compliance issues for soliciting persons. The staff review of filings may result in outstanding comments on a soliciting person's preliminary proxy statement more than 10 calendar days after the soliciting person has initially filed. The practical effect of this requirement was to limit that soliciting person's ability to use the notice-only option if the soliciting person was unable to file its definitive proxy statement with the Commission by that time. To improve implementation of the notice and access model, we proposed to amend Exchange Act Rule 14a–16(*l*)(2)(ii) to require soliciting persons relying on this alternative[32] to file a preliminary proxy statement within 10 calendar days after the issuer files its definitive proxy statement and to send its Notice to shareholders no later than the date on which it files its definitive proxy statement with the Commission.

2. Comments on the Proposed Amendment

Comments on the proposal were limited and mixed. One commenter supported the Commission's proposal for a soliciting person to file a preliminary proxy statement within 10 calendar days after the issuer files its definitive proxy statement and send its Notice no later than the date on which it files its definitive proxy statement.[33] Other commenters expressed concern

[24] We are redesignating 17 CFR 240.14a–16(d)(2) through 17 CFR 240.14a–16(d)(8) as 17 CFR 240.14a–16(d)(5) through 17 CFR 240.14a–16(d)(11). Prior to this redesignation, the referenced paragraph was 17 CFR 240.14a–16(d)(3) as indicated in the Proposing Release. After adoption, as noted here, the referenced paragraph is 17 CFR 240.14a–16(d)(6).

[25] *See* note 20 above.

[26] We emphasize that under revised Rule 14a–16(f)(2) only registrants and other soliciting persons, and not other parties, may accompany a Notice with explanatory materials.

[27] This new provision is an additional exception to the general rule in Exchange Act Rule 14a–16(f) that the Notice be sent separately from other types of security holder communications.

[28] While the Notice continues to permit the soliciting person to include their recommendations as provided in redesignated Exchange Act Rule 14a–16(d)(6), as we explained in the Internet Availability of Proxy Material Adopting Release, "The Notice is intended merely to make shareholders aware that these proxy materials are available on an Internet Web site; it is not intended to serve as a stand-alone basis for making a voting decision."

[29] *See* 17 CFR 240.14b–1(b)(2) and 17 CFR 240.14b–2(b)(3).

[30] 17 CFR 240.14a–4.

[31] 17 CFR 240.14a–16(*l*)(2)(ii).

[32] Alternatively, a soliciting person may also send the Notice 40 calendar days before the shareholder meeting to which the proxy materials relate. 17 CFR 14a–16(*l*)(2)(i).

[33] *See* letter from ABA.

that without a specific time requirement for sending the Notice prior to the shareholder meeting, shareholders may not have sufficient time to access and consider the materials provided or obtain paper copies prior to casting their vote.[34]

3. Final Rule

After considering the comments, we are adopting the revisions as proposed to amend Exchange Act Rule 14a–16(*l*)(2)(ii) to require soliciting persons other than the issuer to file a preliminary proxy statement within 10 calendar days after the issuer files its definitive proxy statement and to send its Notice to shareholders no later than the date on which it files its definitive proxy statement with the Commission. We continue to believe that the time period provides sufficient time for a soliciting person to prepare its proxy statement and respond to any staff comments, while still permitting the soliciting person to use the notice and access model. While the rule does not provide for a specific period of time before the meeting by which a soliciting person is required to mail the Notice, the soliciting person should, and generally it would be in their best interest to, make the Notice and proxy materials available to shareholders with sufficient time for shareholders to review the materials and make an informed voting decision.

C. Additional Comments on the Proposed Amendments and Actions Taken by the Commission

Some commenters indicated their belief that the proposed amendments would result in only modest improvements.[35] A number of commenters recommended revising the notice and access model to permit issuers to send a proxy card and business reply envelope, either with or without a short summary proxy statement accompanying the Notice in order to increase voting rates and facilitate shareholder participation.[36] Other commenters expressed support for reducing the amount of time required for sending the Notice prior to the meeting from 40 days to 30 days.[37] Still other commenters expressed concern regarding the notice and access processing fee structure, the lack of competition for proxy service providers and issuers' inability to negotiate the fees which results in limitations on the amount of the cost savings from switching to the notice and access model.[38] We are not addressing these issues at this time, as the Commission is still considering these and other ways to further encourage informed shareholder participation.

Many commenters suggested that the Commission should do more to improve not only the notice and access model, but also the proxy process generally.[39] While supporting the proposal, a number of commenters suggested that the Notice and lack of explanatory materials accompanying the Notice were not the primary reasons for reduced retail voting and advocated for more sweeping changes.[40] A few commenters did not directly address the proposed amendments, but made broader appeals regarding the proxy process or provided alternative insights,[41] and one commenter suggested that use of the notice and access model undermines investor protection and should be repealed.[42]

While we are not in this release addressing the broader concerns with the proxy system or the notice and access model raised by commenters that went beyond the scope of the proposals, we are continuing to consider these and other concerns relating to the proxy process that have been raised. At the direction of the Chairman, the Commission's staff is conducting a comprehensive review of the mechanics by which proxies are voted and the way in which information is conveyed to shareholders and is preparing a concept release to seek public comment on these issues.[43] In that review, the Commission's staff will continue to monitor shareholder activity under, and the effects of, the notice and access model. In addition, the Commission's staff is undertaking educational efforts to increase understanding of proxy mechanics generally and the notice and access model of delivery of proxy materials.[44]

D. Technical Amendments Relating to Registered Investment Companies

We are also adopting, as proposed, technical amendments to our rules for registered investment companies. Exchange Act Rule 14a–16(f)(2)(iii) currently permits a registered investment company to accompany the Notice with a prospectus or report to shareholders.[45] The Commission recently adopted rule amendments that permit mutual funds[46] to satisfy their prospectus delivery obligations by sending or giving investors key information in the form of a summary prospectus.[47] Consistent with permitting mutual funds to use a summary prospectus to satisfy their delivery obligations, we are revising our rules to permit mutual funds to accompany the Notice with a summary prospectus.[48] Commenters that addressed this issue supported the technical amendments.[49]

III. Paperwork Reduction Act

A. Background

Certain provisions of the amendments contain a "collection of information" within the meaning of the Paperwork Reduction Act of 1995.[50] The Commission published a notice requesting comment on the collection of information requirements in the Proposing Release for the amendments,

[34] *See, e.g.,* letters from Ameriprise, SCSGP, and S&C.

[35] *See, e.g.,* letters from ABC and R&T.

[36] *See, e.g.,* letters from Altman, Chamber, Computershare, Edison, ICI, Intel, R&T, SCSGP, and STA.

[37] *See, e.g.,* letters from ABA, ACC, Altman, Broadridge Steering Committee, Calvert, Chamber, Computershare, ICI, Intel, NIRI, Otter Tail, R&T, and SCSGP.

[38] *See, e.g.,* letters from Altman, DG3, Otter Tail, NIRI, R&T, SCSGP, and STA.

[39] *See, e.g.,* letters from ABA, ABC, Altman, BNY, Broadridge, Broadridge Steering Committee, Chamber, Computershare, Edison, ICI, Intel, NIRI, Otter Tail, R&T, S&C, and SCSGP.

[40] *See, e.g.,* letters from ABC, Altman, ICI, NIRI, R&T, and STA.

[41] *See, e.g.,* letters from Corporate Governance, DG3, and Moxy.

[42] *See* letter from IRWebReport.com.

[43] *See* Speech by Chairman Mary Schapiro to the Practising Law Institute's 41st Annual Institute on Securities Regulation (Nov. 4, 2009) at *http://sec.gov/news/speech/2009/spch110409mls.htm.*

[44] Information about the Commission's educational efforts can be found at: *http://www.sec.gov/spotlight/proxymatters.shtml.*

[45] 17 CFR 240.14a–16(f)(2)(iii). Unless otherwise specified or the context otherwise requires, the term "prospectus" means a prospectus meeting the requirements of Section 10(a) of the Securities Act [15 U.S.C. 77j(a)]. *See* 17 CFR 240.0–1(d).

[46] We use the term "mutual fund" to mean a registered investment company that is an open-end management company as defined in Section 5(a)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a–5(a)(1)].

[47] *See* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Release No. 33–8998 (Jan. 13, 2009) [74 FR 4546]. Although the summary prospectus is not a Section 10(a) prospectus, it may be used to satisfy any prospectus delivery obligations under Section 5(b)(2) of the Securities Act [15 U.S.C. 77e(b)(2)]. 17 CFR 230.498(c).

[48] *See* amendment to Exchange Act Rule 14a–16(f)(2)(iii). We are also adopting a conforming amendment to Rule 498 under the Securities Act [17 CFR 230.498], which permits mutual funds to use a summary prospectus to satisfy their prospectus delivery obligations. Rule 498(f)(2) provides that a mutual fund's summary prospectus shall be given greater prominence than any accompanying materials. We are amending Rule 498(f)(2) to provide that a summary prospectus need not be given greater prominence than an accompanying Notice.

[49] *See, e.g.,* letters from ABA, Calvert, and ICI.

[50] 44 U.S.C. 3501 *et seq.;* 5 CFR 1320.11.

and we are submitting these requirements to the Office of Management and Budget for review in accordance with the PRA.[51] An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. Compliance with the rules as they are amended is mandatory; however, certain information collections under these rules are required and some are voluntary. Responses to the information collections will not be kept confidential and there is no mandatory retention period for the information disclosed.

B. Summary of the Final Rules

As discussed in more detail below, the amendments that we are adopting provide additional flexibility regarding the format of the Notice that is sent to shareholders, permit issuers and other soliciting persons to better communicate with shareholders by including explanatory materials regarding the reasons for the use of the notice and access rules and the process of receiving and reviewing proxy materials and voting, and revise the timeframe for delivering a Notice to shareholders when a soliciting person other than the issuer relies on the notice-only option.

In the Proposing Release, we requested comment on the PRA analysis. We received no comments that addressed our burden estimates for the proposed amendments.

1. Regulation 14A and 14C

The titles for the collections of information for operating companies are:

- Regulation 14A (OMB Control No. 3235–0059); and
- Regulation 14C (OMB Control No. 3235–0057).

We previously revised these collections of information in the release that proposed the notice and access model as a voluntary model for disseminating proxy materials[52] and the release in which we adopted amendments requiring issuers and other soliciting persons to follow the model.[53] We submitted the revisions in those releases and are submitting the amendments to OMB for review in accordance with the PRA.

We have made some additional changes to the amendments, but we do not expect those changes to affect our estimates.[54] The following table summarizes for purposes of the PRA the burden estimates for Schedules 14A and 14C reflecting amendments that permit, but do not require, an issuer or other soliciting person to include explanatory materials with the Notice, which are the only amendments in the release affecting our burden estimates:

TABLE 1—CALCULATION OF INCREMENTAL PAPERWORK REDUCTION ACT BURDEN ESTIMATES FOR PROXY AND INFORMATION STATEMENTS

Form	Annual responses	Incremental hours/form	Incremental burden	75% Issuer	25% Professional	$400 Professional cost
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.75	(E)=(C)*0.25	(F)=(E)*$400
Schedule 14A	7300	0.5	3650	2737.5	912.5	$365,000
Schedule 14C	680	0.5	340	255	85	34,000
Total	7980		3990	2992.5	997.5	399,000

2. Rule 20a–1

Certain provisions of the current notice and access model contain "collection of information" requirements within the meaning of the PRA, including preparation of Notices, maintaining Web sites, maintaining records of shareholder preferences, and responding to requests for copies. Those provisions increase the current burden for the existing collection of information entitled "Rule 20a–1 under the Investment Company Act of 1940,[55] Solicitation of Proxies, Consents and Authorizations" (OMB Control No. 3235–0158). Rule 20a–1 under the Investment Company Act[56] requires that the solicitation of a proxy, consent, or authorization with respect to a security issued by an investment company be in compliance with Regulation 14A,[57] Schedule 14A,[58] and all other rules and regulations adopted under Section 14(a) of the Exchange Act.[59] It also requires a fund's investment adviser, or a prospective adviser, to transmit to the person making a proxy solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation. The notice and access model requires all registered investment companies to post their proxy materials on an Internet Web site and furnish Notice of the materials' availability to shareholders.[60] The Notices, the proxy materials posted on the Web site, and copies of the proxy materials sent in response to shareholder requests are not kept confidential.

The following discussion summarizes the burden estimates for Rule 20a–1 that we provided in the Proposing Release. For purposes of the PRA, we estimate that the total annual reporting burden for Rule 20a–1 increased by approximately 1,378 hours and that the annual cost increased by approximately $735,000 for the services of outside professionals to comply with the disclosure provisions of the existing notice and access model. In addition, for purposes of the PRA, we estimate that a typical investment company issuer spends an additional five hours per year, or a total of 6,125 hours, to maintain these records as to which of its shareholders have made an election to receive proxy materials in paper or by e-mail. Further, we estimate that the additional burden to prepare an intermediary's Notice is approximately one hour, or a total annual burden of 1,225 hours for all investment company

[51] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[52] *See* Internet Availability of Proxy Materials, Release No. 34–52926 (Dec. 8, 2005) [70 FR 74597].

[53] *See* the Internet Availability of Proxy Material Adopting Release at note 9 above.

[54] While the revised amendments additionally permit an explanation of the reasons for an issuer's use of the notice and access rules, we expect the additional explanation to be part of the same drafting process and to be limited to a few lines of text. Likewise, the required clarification that the Notice is not a form for voting should not add materially to the time to prepare the disclosure. We therefore believe the changes do not affect our burden estimates.

[55] 15 U.S.C. 80a–1 *et seq.*

[56] 17 CFR 270.20a–1.

[57] 17 CFR 240.14a–1 *et seq.*

[58] 17 CFR 240.14a–101.

[59] 15 U.S.C. 78n(a).

[60] *See* the Internet Availability of Proxy Material Adopting Release at note 9 above.

proxy solicitations. Finally, like investment company issuers, we estimate that the requirement to maintain records to keep track of which beneficial owners have made a permanent election to receive proxy materials in paper or by e-mail results in an additional annual burden of five hours, or a total of 6,125 hours, for intermediaries. We received no comments on the estimates and are making no adjustments. In total, we estimate that the annual PRA reporting burden for current Rule 20a–1 increased by 14,853 hours and $735,000 in professional costs to reflect compliance with the existing notice and access model.

With respect to the amendments in this release, we have made some additional clarifying changes, but we do not expect those changes to affect our estimates. We estimate that the amendments that permit, but do not require, an issuer or other soliciting person to include explanatory materials with the Notice, increase the PRA burden estimates under Rule 20a–1 by approximately 459 hours and $61,250 in professional costs.[61]

IV. Cost-Benefit Analysis

A. Introduction

We are adopting amendments designed to improve implementation of the notice and access model by revising the legend requirements in the rule to make them more flexible, permitting the Notice to be accompanied by explanatory materials regarding the reasons for the use of the notice and access rules and the process of receiving and reviewing the proxy materials and voting, and revising the timeframe for delivering a Notice to shareholders when a soliciting person other than the issuer relies on the notice-only option.[62] We received no comments on the costs and benefits of the amendments.

We expect the amendments to:

- Facilitate participation by shareholders who may be confused by the operation of the notice and access model;
- Provide additional flexibility in describing the notice and access model; and
- Facilitate participation by some soliciting persons who may currently be effectively precluded from using the notice-only option.

B. Benefits

As discussed above, by permitting some additional flexibility in designing the Notice and permitting explanatory materials regarding the reasons for the use of the notice and access rules and the process of receiving and reviewing the proxy materials and voting to accompany the Notice, the amendments are intended to reduce regulatory impediments and improve understanding of the notice and access model for participating shareholders. Improved understanding of the model through an explanation of the reasons for the use of the Notice and the process of receiving and reviewing proxy materials and voting should reduce confusion and may thereby improve the efficiency and effectiveness of the proxy voting system. The benefits may be limited if issuers send notices to shareholders that are less likely to respond. Some commenters noted lower shareholder response rates under the notice and access model.[63]

Revising one of the two alternative Notice deadlines applicable to soliciting persons other than issuers is intended to facilitate use of the notice-only option by soliciting persons who may otherwise be precluded from using the notice-only option because of their inability to meet the deadline for sending the Notice. This would help lower costs for those persons by reducing impediments for certain soliciting persons to participate in the proxy process through use of the notice-only option.

C. Costs

Eliminating the specific limitations of the legend requirement may result in some soliciting persons providing a more confusing Notice. This may increase the cost of shareholder participation in the proxy process, and to the extent that it affects participation, could distort votes and outcomes. In addition, an issuer or other soliciting person that chooses to include explanatory materials in the same mailing with the Notice will incur the cost of preparing that information.[64] For purposes of the PRA, we estimate that the amendments will cause an aggregate annual increase in the compliance burden for operating and investment company issuers and other soliciting persons preparing explanatory materials of approximately 3,450 hours of in-house personnel time and approximately $460,000 for the services of outside professionals.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a) of the Exchange Act[65] requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 2(b) of the Securities Act,[66] Section 3(f) of the Exchange Act[67] and Section 2(c) of the Investment Company Act[68] require the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to also consider whether the action would promote efficiency, competition, and capital formation.

The amendments that we are adopting permit additional flexibility in designing the Notice, permit issuers and other soliciting persons to better communicate with shareholders by accompanying the Notice with explanatory materials regarding the reasons for the use of the notice and access rules and the process of receiving and reviewing the proxy materials and voting, and revise the timeframe for delivering a Notice to shareholders when a soliciting person other than the issuer relies on the notice-only option. The amendments are designed to reduce regulatory impediments and thereby increase shareholder participation, improve implementation of the notice and access model, and enhance investor understanding of the operation of the notice and access model. These changes are intended to improve the efficiency and effectiveness of the proxy process.

No commenters suggested, and we do not anticipate, any effect on competition

[61] *See* the Proposing Release for calculations underlying the burden estimates.

[62] We do not expect our proposed conforming amendment, which would permit mutual funds to accompany the Notice with a summary prospectus, to have a substantive impact on a mutual fund's decision otherwise permitted under Rule 498 of the Securities Act to provide a summary prospectus instead of a statutory prospectus to its shareholders. No commenters suggested it would have a substantial impact.

[63] *See, e.g.,* Broadridge, BNY, Computershare, and R&T.

[64] Since intermediaries and their agents already have systems to prepare and deliver proxy materials and the nature of the proposed changes are relatively small, we do not expect the intermediaries' role in sending explanatory material to beneficial owners to affect their costs associated with the rule. In any event, since soliciting persons reimburse intermediaries for their reasonable expenses of forwarding proxy materials, we do not expect intermediaries to incur costs associated with the rule.

[65] 15 U.S.C. 78w(a).

[66] 15 U.S.C. 77b(b).

[67] 15 U.S.C. 78c(f).

[68] 15 U.S.C. 80a–2(c).

or capital formation as a result of these revisions.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to revisions to Exchange Act Rule 14a–16 and related changes that would permit some additional flexibility in designing the Notice, permit issuers and other soliciting persons to better communicate with shareholders by accompanying the Notice with explanatory materials regarding the reasons for the use of the notice and access rules and the process of receiving and reviewing the proxy materials and voting, and revise the timeframe for delivering a Notice to shareholders when a soliciting person other than the issuer relies on the notice-only option. An Initial Regulatory Flexibility Analysis (IRFA) was prepared in accordance with the Regulatory Flexibility Act in conjunction with the Proposing Release. The Proposing Release included, and solicited comment on, the IRFA.

A. Reasons for, and Objectives of, the Amendments

The amendments are designed to improve implementation of the notice and access model. Based on our monitoring of the effects of the notice and access model on the proxy solicitation process and the experiences that issuers and shareholders have had with the notice and access model to date, we believe that these revisions will improve the operation of the model without adversely affecting soliciting persons' or shareholders' abilities to participate effectively in the proxy process.

Improved notice design and shareholder education should help to mitigate the difference in shareholder participation in the proxy voting process observed in the use of the notice and access model to the extent the difference was caused by the restrictions in our regulations. The amendment to the timing requirements for soliciting persons other than the issuer to file their preliminary proxy statements is designed to better enable soliciting persons other than the issuer to use the notice-only option.

B. Significant Issues Raised by Commenters

We did not receive comments specifically addressing the impact of the proposed amendments on small entities.

C. Small Entities Subject to the Amendments

The amendments affect issuers that are small entities. Exchange Act Rule 0–10(a) [69] defines an issuer to be a "small business" or "small organization" for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 public companies, other than investment companies, that may be considered small entities.

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[70] Approximately 168 registered investment companies meet this definition. Moreover, approximately 33 business development companies may be considered small entities.

Paragraph (c)(1) of Rule 0–10 under the Exchange Act [71] states that the term "small business" or "small organization," when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Exchange Act Rule 17a–5(d); [72] and is not affiliated with any person (other than a natural person) that is not a small business or small organization. The Commission has estimated that there were approximately 910 broker-dealers that qualified as small entities as defined above.[73] Small Business Administration regulations define "small entities" to include banks and savings associations with total assets of $165 million or less.[74] The Commission estimates that the amendments might apply to approximately 9,475 banks, approximately 5,816 of which could be considered small banks with assets of $165 million or less.[75]

D. Reporting, Recordkeeping and Other Compliance Requirements

The amendments revise the timeframe for delivering a Notice to shareholders when a soliciting person other than the issuer relies on the notice-only option, require clarification that the Notice is not a form for voting and permit, but do not require, issuers or other soliciting persons to include additional, explanatory material in their Notice.

E. Agency Action To Minimize Effect on Small Entities

The purpose of the amendments is to improve the implementation of the notice and access model based on our experience with the model to date. The amendments are intended to improve the operation of the notice and access model by providing additional flexibility in designing the Notice, permitting issuers and other soliciting persons to better communicate with shareholders by accompanying the Notice with explanatory materials regarding the reasons for the use of the notice and access rules and the process of receiving and reviewing the proxy materials and voting, and revising the timeframe for delivering a Notice to shareholders when a soliciting person other than the issuer relies on the notice-only option.

We considered the use of performance standards rather than design standards in the amendments. The amendments contain both performance standards and design standards. We are revising existing design standards, such as the deadline applicable to soliciting persons other than the issuer. However, we are imposing performance standards to provide issuers, other soliciting persons and intermediaries with the flexibility to devise the means through which they can comply with such standards. For example, the amendments regarding explanatory materials do not dictate wording of such information, but allow flexibility in how to communicate the information.

We considered different compliance standards for the small entities that will be affected by the amendments. In the Proposing Release, we solicited comment regarding the possibility of different standards for small entities. We did not receive comment on this particular issue. We are not aware of

[69] 17 CFR 240.0–10(a).

[70] 17 CFR 270.0–10.

[71] 17 CFR 240.0–10(c)(1).

[72] 17 CFR 240.17a–5(d).

[73] These numbers are based on a review by the Commission's Office of Economic Analysis of 2005 FOCUS Report filings reflecting registered broker-dealers. This number does not include broker-dealers that are delinquent in FOCUS Report filings.

[74] 13 CFR 121.201.

[75] We note that while not subject to the amendments, the amendments may affect these entities because they are intermediaries that are required under the Commission's proxy rules to forward proxy materials, including the Notice or any explanatory materials, on to shareholders who beneficially own their shares through the intermediaries. An intermediary is not required to forward proxy materials to beneficial owners unless the issuer or other soliciting person provides assurance of reimbursement of the intermediary's reasonable expenses incurred in connection with forwarding those materials. 17 CFR 240.14b–2(c)(2)(i). Therefore, any costs imposed on intermediaries by the rules will be borne by the issuer or other soliciting person.

any different standards that would be consistent with the purposes of the amendments.

VII. Statutory Authority and Text of the Amendments

The amendments described in this release are being adopted under the authority set forth in Sections 6, 7, 10, and 19 of the Securities Act of 1933, as amended, Sections 3(b), 13, 14, 15, and 23(a) of the Securities Exchange Act of 1934, as amended, and Sections 8, 20(a), 24(a), 24(g), 30, and 38 of the Investment Company Act of 1940, as amended.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, the Commission amends Title 17, Chapter II of the Code of Federal Regulation as follows.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 2. Amend § 230.498 by revising paragraph (f)(2) to read as follows:

§ 230.498 Summary Prospectuses for open-end management investment companies.

* * * * *

(f) * * *

(2) *Greater prominence.* If paragraph (c) or (d) of this section is relied on with respect to a Fund, the Fund's Summary Prospectus shall be given greater prominence than any materials that accompany the Fund's Summary Prospectus, with the exception of other Summary Prospectuses, Statutory Prospectuses, or a Notice of Internet Availability of Proxy Materials under § 240.14a–16 of this chapter.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350 and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

■ 4. Amend § 240.14a–16 by:
■ a. Revising paragraph (d)(1).
■ b. Redesignating paragraphs (d)(2) through (d)(8) as paragraphs (d)(5) through (d)(11);
■ c. Adding new paragraphs (d)(2) through (d)(4);
■ d. Removing the word "and" at the end of paragraph (f)(2)(ii);
■ e. Revising paragraph (f)(2)(iii);
■ f. Adding paragraph (f)(2)(iv);
■ g. Revising paragraph (*l*)(2)(ii);
■ h. Revising paragraph (n)(4)(i); and
■ i. In paragraph (n)(4)(iii) removing the reference to "(d)(7)" and adding in its place "(d)(10)".

The revisions and additions read as follows:

§ 240.14a–16 Internet availability of proxy materials.

* * * * *

(d) * * *

(1) A prominent legend in bold-face type that states "Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting To Be Held on [insert meeting date]";

(2) An indication that the communication is not a form for voting and presents only an overview of the more complete proxy materials, which contain important information and are available on the Internet or by mail, and encouraging a security holder to access and review the proxy materials before voting;

(3) The Internet Web site address where the proxy materials are available;

(4) Instructions regarding how a security holder may request a paper or e-mail copy of the proxy materials at no charge, including the date by which they should make the request to facilitate timely delivery, and an indication that they will not otherwise receive a paper or e-mail copy;

* * * * *

(f) * * *

(2) * * *

(iii) In the case of an investment company registered under the Investment Company Act of 1940, the company's prospectus, a summary prospectus that satisfies the requirements of § 230.498(b) of this chapter, or a report that is required to be transmitted to stockholders by section 30(e) of the Investment Company Act (15 U.S.C. 80a–29(e)) and the rules thereunder; and

(iv) An explanation of the reasons for a registrant's use of the rules detailed in this section and the process of receiving and reviewing the proxy materials and voting as detailed in this section.

* * * * *

(*l*) * * *

(2) * * *

(ii) The date on which it files its definitive proxy statement with the Commission, provided its preliminary proxy statement is filed no later than 10 calendar days after the date that the registrant files its definitive proxy statement.

* * * * *

(n) * * *

(4) * * *

(i) Instructions regarding the nature of the communication pursuant to paragraph (d)(2) of this section;

* * * * *

By the Commission.

Dated: February 22, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–3891 Filed 2–25–10; 8:45 am]

BILLING CODE 8011–01–P

Federal Register

Friday,
February 26, 2010

Part IV

Financial Crisis Inquiry Commission

Notice of Open Meeting; Notice

FINANCIAL CRISIS INQUIRY COMMISSION

Notice of Open Meeting

SUMMARY: The Financial Crisis Inquiry Commission (FCIC) announces that it will hold a forum that will bring together experts who have researched the financial crisis. The economists will present working papers to the Commissioners on the key issues and events leading up to the crisis and its underlying causes. The presentations will be followed by discussion with the Commissioners. The forum will also be webcast live at *http://www.FCIC.gov.*

DATES: The forum will be held on Friday, February 26, 2010, from 1 p.m. to 6 p.m. and Saturday, February 27, 2010, from 8 a.m. to 2:45 p.m.

ADDRESSES: The forum will be held at: American University Washington College of Law, Room 603, 4801 Massachusetts Avenue, NW., Washington, DC 20016.

FOR FURTHER INFORMATION CONTACT: Gretchen Newsom, The Financial Crisis Inquiry Commission, 1717 Pennsylvania Avenue, Suite 800, Washington, DC 20006, 202–292–2799; 202–632–1604 fax.

SUPPLEMENTARY INFORMATION: The purpose of the Financial Crisis Inquiry Commission is to examine the causes, domestic and global, of the current financial and economic crisis in the United States, per the requirements of the Fraud Enforcement and Recovery Act of 2009 ("FERN"), Section 5, Public Law 111–21, 123 Stat. 1617 (2009).

Public Participation

The meeting is open to the public. The Chairman of the Commission will lead the forum for the orderly conduct of business.

Dated: February 25, 2010.

Gretchen Kinney Newsom,

Certifying Official and Special Assistant to the Chairman, Financial Crisis Inquiry Commission.

[FR Doc. 2010–4218 Filed 2–25–10; 11:15 am]

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