3–1–10 Monday
Vol. 75 No. 39 Mar. 1, 2010

Pages 9085–9326

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register***, www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 75 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

Printed on recycled paper.

Contents

Federal Register

Vol. 75, No. 39

Monday, March 1, 2010

Agricultural Marketing Service
NOTICES
Funds Availability Inviting Applications:
2010 Farmers Market Promotion Program, 9155–9156

Agriculture Department
See Agricultural Marketing Service
See Federal Crop Insurance Corporation
See Foreign Agricultural Service
See Forest Service

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9223–9225

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9222–9223

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Community Development Financial Institutions Fund
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9275–9276

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplement:
Additional Requirements Applicable to Multiyear Contracts (DFARS Case 2008–D023), 9114–9116

Defense Department
See Defense Acquisition Regulations System
See Engineers Corps
See Navy Department
PROPOSED RULES
Information Assurance Scholarship Program, 9142–9146
NOTICES
36(b)(1) Arms Sales Notification, 9182–9184
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Information Regarding Responsibility Matters, 9217–9218
Meetings:
Advisory Council on Dependents Education, 9184–9185
Privacy Act of 1974; System of Records, 9185–9187
Renewal of Department of Defense Federal Advisory Committee; Ocean Research Advisory Panel, 9187–9188

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9189
Applications for New Awards (FY 2010):
National Assistive Technology Public Internet Site, 9189–9192
State Training and Technical Assistance for Assistive Technology Programs, 9193–9196

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program:
Walk-In Coolers and Walk-In Freezers; Date Change, Meeting, 9120
NOTICES
Letter from Secretary of Energy accepting Defense Nuclear Facilities Safety Board Recommendation (2009–2), 9196–9197

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Everglades Restoration Transition Plan (Phase 1), 9188

Environmental Protection Agency
RULES
Approval and Promulgation of Air Quality Implementation Plans:
Illinois; NOx Budget Trading Program, 9103–9105
Approval and Promulgation of Operating Permits Program:
Iowa, 9106–9107
Regulation of Fuels and Fuel Additives:
Federal Volatility Control Program in the Denver–Boulder–Greeley–Ft. Collins–Loveland, Colorado, 1997 8-Hour Ozone Nonattainment Area, 9107–9111
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
Illinois; NOx Budget Trading Program, 9146–9147
Approval and Promulgation of Operating Permits Program:
Iowa, 9147
NOTICES
Adequacy Status of the Hickory–Morganton–Lenoir, North Carolina 1997 PM2.5 Attainment Demonstration, etc. , 9204–9205
Meetings:
Chartered Science Advisory Board Workgroup, 9205–9206
Clean Air Scientific Advisory Committee Carbon Monoxide Review Panel, 9206–9207
Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act (of 2009):
Marin Resource Conservation District, 9207–9208
Proposed Consent Decree:
Clean Air Act Citizen Suit; Request for Public Comment, 9208–9210

Federal Aviation Administration
RULES
Production and Airworthiness Approvals, Part Marking, and Miscellaneous Amendments:
Correction, 9095
Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments, 9095–9100
PROPOSED RULES
Airworthiness Directives:
Boeing Co. Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes, 9137–9140
International Aero Engines AG (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 Turbofan Engines; Correction, 9140–9141

Federal Communications Commission
RULES
FM Table of Allotments:
Markham, Ganado, and Victoria, TX, 9114
Revisions to Rules Authorizing Operation of Low Power Auxiliary Stations in 698–806 MHz Band, etc., 9113–9114
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9210
Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices, 9210–9211

Federal Crop Insurance Corporation
NOTICES
Community Outreach and Assistance Partnership Program, 9149–9155

Federal Emergency Management Agency
RULES
Suspension of Community Eligibility, 9111–9113

Federal Energy Regulatory Commission
NOTICES
Applications:
Tennessee Gas Pipeline Co., 9197
Combined Notice of Filings, 9197–9201
Compliance Filing:
DCP Raptor Pipeline, LLC, 9201
Environmental Impact Statements; Availability, etc.:
Kilarc–Cow Creek Hydroelectric Project, 9201–9202
Filing:
Western Area Power Administration, 9202
Final Environmental Assessment:
Pacific Gas & Electric Co., 9202
Technical Conference:
Electronic Tariff Filings, 9204
Guidance on Preparation of Market-Based Rate Filings and Electric Quarterly Reports by Public Utilities, 9203–9204
Transparency Provisions of Section 23 of the Natural Gas Act, 9202–9203

Federal Motor Carrier Safety Administration
NOTICES
Meetings; Sunshine Act, 9275

Federal Reserve System
RULES
Extensions of Credit by Federal Reserve Banks, 9093–9095
PROPOSED RULES
Electronic Fund Transfers, 9120–9125
Truth in Savings, 9126–9129
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Announcement of Board Approval Under Delegated Authority and Submission to OMB; Correction, 9211–9217

Fish and Wildlife Service
RULES
General Provisions; Revised List of Migratory Birds, 9282–9314
Migratory Bird Permits:
Control of Muscovy Ducks, Revisions to the Waterfowl Permit Exceptions and Waterfowl Sale and Disposal Permits Regulations, 9316–9322
Control of Purple Swamphens, 9314–9316
NOTICES
Endangered and Threatened Wildlife and Plants:
Permit Applications; Availability and Request for Comments, 9248–9250
Receipt of Applications for Permit, 9251–9252

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Human Tissue Intended for Transplantation, 9226–9227
Pretesting of Tobacco Communications, 9225–9226
Determinations of Regulatory Review Periods for Purposes of Patent Extensions:
Firmagon, 9227–9228
Draft Guidance for Industry:
Non-Inferiority Clinical Trials; Availability, 9228–9229
Public Workshop:
Measuring Progress on Food Safety: Current Status and Future Directions, 9232–9233

Foreign Agricultural Service
RULES
Trade Adjustment Assistance for Farmers, 9087–9093

Forest Service
NOTICES
Meetings:
Southwest Idaho Resource Advisory Committee, 9156

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Information Regarding Responsibility Matters, 9217–9218
Availability Record of Decision for the Update to the Master Plan for the Consolidation of the Food and Drug Administration Headquarters:
Federal Research Center at White Oak in Silver Spring, MD, 9218–9219
Environmental Impact Statements; Availability, etc.:
Otay Mesa Land Port of Entry; Intent, 9219–9220

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Program Announcement and Grant Application Instructions Template for Older Americans Act Title IV Discretionary Grant Program, 9220
Meetings:
Advisory Committee on Minority Health, 9220–9221

Homeland Security Department
See Federal Emergency Management Agency
RULES
Privacy Act; Systems of Records, 9085–9086
NOTICES
Privacy Act; Systems of Records, 9233–9238
Privacy Act; Systems of Records:
Immigration and Enforcement Operational Records, 9238–9244

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Fungibility Plan and Follow-Up Reporting to Implement Section 901 on Voucher Funds for Displaced Hurricane Katrina and Rita Families, 9244
Owner of Record and Re-sale Data to Preclude Predatory Lending Practices (Property Flipping) on FHA Insured Mortgages, 9244–9245
Submission Requirements for the Section 202 Supportive Housing for the Elderly, etc., 9245–9246
Cooperative Share Loan Insurance, 9246–9247
Multifamily Default Status Report, 9247
Single Family Mortgage Insurance Premium, Single Family, 9247–9248

Indian Affairs Bureau
NOTICES
Plan for the Use and Distribution:
Confederated Tribes of the Warm Springs Reservation of Oregon Judgment Funds in Docket 02–126L Before the United States Federal Court of Claims, 9250–9251

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

Internal Revenue Service
RULES
Reduced 2009 Estimated Income Tax Payments for Individuals with Small Business Income, 9101–9102
PROPOSED RULES
Information Reporting for Payments Made in Settlement of Payment Card and Third Party Network Transactions; Hearing, 9142
Reduced 2009 Estimated Income Tax Payments for Individuals with Small Business Income, 9141–9142
Regulations Under I.R.C. Section 7430 Relating to Awards of Administrative Costs and Attorneys Fees:
Hearing Cancellation, 9142

International Trade Administration
NOTICES
Advance Notification of Sunset Reviews:
Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation, 9156–9157
Extension of Time Limit for Final Results of 2007–2008 Antidumping Duty Administrative Reviews:
Certain Helical Spring Lock Washers from People's Republic of China, 9159–9160
Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review:
Chlorinated Isocyanurates from the People's Republic of China, 9160
Initiation of Five-Year (Sunset) Review, 9160–9161
Opportunity to Request Administrative Review:
Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation, 9162–9163
Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination:
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China, 9163–9181
Secretarial China Clean Energy Business Development Mission: Application Deadline Extended, 9181
Secretarial Indonesia Clean Energy Business Development Mission: Application Deadline Extended, 9181–9182

International Trade Commission
NOTICES
Institution of Five-Year Reviews Concerning Antidumping Duty Orders:
Magnesium from China and Russia, 9252–9255

Justice Department
RULES
Delegations of Authority:
Recovery of Cost of Hospital and Medical Care and Treatment Furnished by United States, 9102–9103
NOTICES
Lodging of Consent Decree Under Clean Air Act, 9255
Lodging of Modification of Consent Decree under the Comprehensive Environmental Response, Compensation, and Liability Act, 9255–9256

Land Management Bureau
NOTICES
Meetings:
BLM–Alaska Resource Advisory Council, 9250
Relocation/Change of Street Address for New Mexico State Office, 9252

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Information Regarding Responsibility Matters, 9217–9218

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 9230–9231
National Cancer Institute, 9231–9232
National Institute of Diabetes and Digestive and Kidney Diseases, 9231
Office of Dietary Supplements (ODS) 2010–2014 Strategic Plan, 9232

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico:
Amendment 29 Supplement, 9116–9119

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Alaska Region Scale and Catch Weighing Requirements, 9157–9158
Identification of Northeast Regional Ocean Council Information Network using Social Network Analysis, 9158
Atlantic Coastal Fisheries Cooperative Management Act Provisions:
Coastal Sharks Fishery, 9158–9159
Issuance of Permit:
Marine Mammals, 9161

National Science Foundation
NOTICES
Buy American Waiver under the American Recovery and Reinvestment Act of (2009), 9256–9257

Navy Department
NOTICES
Meetings:
Chief of Naval Operations (CNO) Executive Panel; Cancellation, 9188–9189

Pipeline and Hazardous Materials Safety Administration
PROPOSED RULES
Hazardous Materials:
Transportation of Lithium Batteries; Meeting, 9147–9148

Presidential Documents
PROCLAMATIONS
Special Observances:
American Red Cross Month (Proc. 8478), 9323–9326

Securities and Exchange Commission
RULES
Proxy Disclosure Enhancements:
Correction, 9100–9101
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Financial Industry Regulatory Authority, Inc., 9262–9265
NASDAQ OMX PHLX, Inc., 9273–9274
New York Stock Exchange LLC, 9272–9273
NYSE Amex LLC, 9265–9272

Small Business Administration
PROPOSED RULES
Small Business, Small Disadvantaged Business, HUBZone, and Service-Disabled Veteran-Owned Protest and Appeal Regulations, 9129–9137
NOTICES
SBA Lender Risk Rating System, 9257–9262

Substance Abuse and Mental Health Services Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9221–9222
Laboratories That Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, 9229–9230

Surface Transportation Board
NOTICES
Releases of Waybill Data, 9275

Thrift Supervision Office
NOTICES
Approval of Converstion Application:
Harvard Illinois Bancorp, Inc., Harvard, IL, 9276

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Treasury Department
See Community Development Financial Institutions Fund
See Internal Revenue Service
See Thrift Supervision Office

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for CHAMPVA Benefits, 9276–9277
Nation-wide Customer Satisfaction Surveys, 9277
Regulation for Reconsideration of Denied Claims, 9278–9279
Survey of Satisfaction with the Disability Evaluation System, 9279
VA National Rehabilitation Special Events, Event Registration Applications, 9277–9278

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 9282–9322

Part III
Presidential Documents, 9323–9326

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

8478.....9325

6 CFR

5.....9085

7 CFR

1580.....9087

10 CFR

Proposed Rules:

431.....9120

12 CFR

201.....9093

Proposed Rules:

205.....9120

230.....9126

13 CFR

Proposed Rules:

121.....9129

124.....9129

125.....9129

126.....9129

134.....9129

14 CFR

1.....9095

21.....9095

43.....9095

45.....9095

97 (2 documents) 9095, 9098

Proposed Rules:

39 (2 documents) 9137, 9140

17 CFR

249.....9100

26 CFR

1.....9101

Proposed Rules:

1 (2 documents) 9141, 9142

31.....9142

301 (2 documents) 9142

28 CFR

43.....9102

32 CFR

Proposed Rules:

240.....9142

40 CFR

52.....9103

70.....9106

80.....9107

Proposed Rules:

52.....9146

70.....9147

44 CFR

64.....9111

47 CFR

15.....9113

73.....9114

74.....9113

48 CFR

217.....9114

49 CFR

Proposed Rules:

172.....9147

173.....9147

175.....9147

50 CFR

10.....9282

21 (2 documents) 9314, 9316

622.....9116

Rules and Regulations

Federal Register
Vol. 75, No. 39
Monday, March 1, 2010

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2010–0005]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Immigration and Customs Enforcement—012 Visa Security Program Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: Following a Notice of Proposed Rulemaking (NPRM) and public comment, this rule amends the Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE)'s regulations by exempting a new system of records from several provisions of the Privacy Act. The Visa Security Program Records system (DHS/ICE–012) includes records used as part of a visa vetting program known as the Visa Security Program Tracking System (VSPTS-Net) in support of Section 428 of the Homeland Security Act of 2002. Under the Visa Security Program, ICE conducts security reviews of visa applicants. DHS ICE is exempting DHS/ICE–012 from provisions of the Privacy Act to the extent necessary to protect the integrity of the law enforcement information that may be included in the system of records.

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

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues, please contact: Lyn Rahilly (202–732–3300), Privacy Officer, U.S. Immigration and Customs Enforcement, *ICEPrivacy@dhs.gov;* or Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Privacy Act of 1974 (Privacy Act), 5 U.S.C. 552a, governs the means by which the U.S. Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. *See* 5 U.S.C. 552a(a)(5).

An individual may request access to records containing information about him or herself. 5 U.S.C. 552a(b), (d). However, the Privacy Act authorizes Government agencies to exempt systems of records from access by individuals under certain circumstances, such as where the access or disclosure of such information would impede national security or law enforcement efforts. Exemptions from Privacy Act provisions must be established by regulation. 5 U.S.C. 552a(j), (k).

On September 30, 2009, DHS ICE published a system of records in the **Federal Register** (74 FR 50228) establishing a new Privacy Act system of records entitled Visa Security Program Records (DHS/ICE–012). The Visa Security Program Records system maintains records for the Visa Security Program Tracking System which carries out the requirement of section 428 of the Homeland Security Act of 2002 and provides for DHS ICE's assumption of visa security reviews.

In conjunction with the establishment and publication for the Visa Security Program Records system of records on September 30, 2009, DHS ICE initiated a proposed rulemaking in the **Federal Register** (74 FR 50148) to exempt this system of records from a number of provisions of the Privacy Act because this system of records may contain law enforcement sensitive records as well as records of information recompiled from, or created from, information contained in other systems of records which are exempt from certain provisions of the Privacy Act. With the publication of this final rule, in accordance with 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2), DHS ICE is exempting the Visa Security Program Records system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), and (e)(4)(H), (e)(5), and (e)(8); (f); and (g).

Discussion of Comments

DHS ICE received three comments on the proposed rule from the public. Some of the comments were in support of the exemptions claimed by DHS ICE. One comment dealt with the ability to access and correct personal information contained within the Visa Security Program Tracking System.

One commenter raised the concern that individuals who are the subjects of visa security reviews may not be able to access and amend their own records due to the proposed exemption of the Visa Security Program Records from 5 U.S.C. 552a(d), which grants the right to individuals to access and amend their records. The commenter acknowledges that providing such access and amendment rights during a visa review could disrupt the visa security process, but questions whether it is necessary to prohibit access and amendment after the visa review has concluded.

DHS ICE recognizes that although there is a need for the exemptions provided for in this document, there may be instances where such exemptions can be waived. There may be times when the Privacy Act exemptions claimed here are not necessary to further a governmental interest. In appropriate circumstances, where compliance would not appear to interfere with, or adversely affect, the law enforcement and national security purposes of the system and the overall law enforcement and security process, the applicable exemptions may be waived. In the case of access and amendment requests from the Visa Security Program Records system, each access request will be evaluated on a case-by-case basis and if no harm to law enforcement interests or national security would ensue from disclosure, the exemption will be waived and the records (or portions of the records) will be disclosed.

In addition, as discussed in the Visa Security Program Tracking System Privacy Impact Assessment, information in the Visa Security Program Records system that consists of or is solely derived from a State Department visa record is subject to statutory

confidentiality requirements pursuant to the Immigration and Nationality Act Section 222(f). Section 222(f) prohibits the visa applicant from accessing or amending certain information in their visa records, including visa records that have been reincorporated into this system of records.

The two remaining commenters expressed support of the exemptions proposed for the Visa Security Program Records system or for the Visa Security Program as a whole.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.;* 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. At the end of Appendix C to Part 5, add the following new paragraph 47 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

47. The Visa Security Program Records (VSPR) system of records consists of electronic and paper records and will be used by the Department of Homeland Security (DHS) U.S. Immigration and Customs Enforcement (ICE). VSPR consists of information created in support of the Visa Security Program, the purpose of which is to identify persons who may be ineligible for a U.S. visa because of criminal history, terrorism association, or other factors and convey that information to the State Department, which decides whether to issue the visa. VSPR contains records on visa applicants for whom a visa security review is conducted. VSPR contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, Tribal, foreign, or international government agencies. Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), and (e)(4)(H), (e)(5) and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the individual to the existence of an investigation in the form of a visa security review predicated on classified, national security, law enforcement, foreign government, or other sensitive information. Disclosure of the accounting would therefore present a serious impediment to ICE's Visa Security Program, immigration enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, thereby undermining the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could alert the individual to the existence of an investigation in the form of a visa security review predicated on classified, national security, law enforcement, foreign government, or other sensitive information. Revealing the existence of an otherwise confidential investigation could also provide the visa applicant an opportunity to conceal adverse information or take other actions that could thwart investigative efforts; and reveal the identity of other individuals with information pertinent to the visa security review, thereby providing an opportunity for the applicant to interfere with the collection of adverse or other relevant information from such individuals. Access to the records would therefore present a serious impediment to the enforcement of Federal immigration laws, law enforcement efforts and/or efforts to preserve national security. Amendment of the records could interfere with ICE's ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose classified and other security-sensitive information that could be detrimental to national or homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations of visa applications, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interest of effective enforcement of Federal immigration laws, it is appropriate to retain all information that may be relevant to the determination whether an individual is eligible for a U.S. visa.

(d) From subsection (e)(2) (Collection of Information From Individuals) because requiring that information be collected from the visa applicant would alert the subject to the fact of an investigation in the form of a visa security review, and to the existence of adverse information about the individual, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede immigration enforcement activities in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the visa applicant to conceal adverse information, or take other actions that could thwart investigative efforts; Reveal the identity of other individuals with information pertinent to the visa security review, thereby providing an opportunity for the applicant to interfere with the collection of adverse or other relevant information from such individuals; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative and immigration enforcement efforts as described above.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: February 4, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–4160 Filed 2–26–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1580

RIN 0551–AA80

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule immediately implements the Trade Adjustment Assistance (TAA) for Farmers program as reauthorized by the American Recovery and Reinvestment Act of 2009 (ARRA) and provides for the opening of a 30-day comment period. The ARRA modified the TAA for Farmers program as established by Subtitle C of Title I of the Trade Act of 2002, which amended the Trade Act of 1974. The rule establishes the procedures by which producers of raw agricultural commodities can petition for certification, apply for technical assistance, and receive cash benefits for the development and implementation of approved business adjustment plans. The Foreign Agricultural Service (FAS) is issuing this interim rule and providing for the opening of an interim rule comment period to ensure that an adequate opportunity to comment is provided all interested parties. After closure of the interim rule comment period and after consideration is provided to all comments received during the interim rule comment period, this rule will be adopted as final with or without change by publication in the **Federal Register**.

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

Comment Date: Comments should be received on or before March 31, 2010, to be assured consideration.

ADDRESSES: Comments should be mailed or delivered to The Trade Adjustment Assistance for Farmers Staff, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021, Washington, DC 20250–1021. Comments can also be e-mailed to *tradeadjustment@fas.usda.gov.* Comments received may be inspected between 10 a.m. and 4 p.m. in Suite 100, 1250 Maryland Avenue, SW., Washington, DC 20034.

FOR FURTHER INFORMATION CONTACT: The Trade Adjustment Assistance for Farmers Staff, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021; or by e-mail at *tradeadjustment@fas.usda.gov;* or by telephone at (202) 720–0638; or by fax at (202) 720–8461.

SUPPLEMENTARY INFORMATION:

Background

The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) reauthorizes and modifies the Trade Adjustment Assistance (TAA) for Farmers program and provides both technical assistance and cash benefits to producers as established by Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210), which amended the Trade Act of 1974. The statute authorizes an appropriation of not more than $90 million per year for the 2009 and 2010 fiscal years, and $22.5 million for the period beginning October 1, 2010 and ending December 31, 2010 to carry out the program; including the U. S. Department of Agriculture (USDA) salaries and expenses.

Under this rule, a group of producers may petition the Administrator (FAS) for trade adjustment assistance during the petition period announced in the **Federal Register**. Petitioners must submit data on either the national average price, or quantity of production, or value of production, or cash receipts for the agricultural commodity for the most recent marketing year for which data are available and the three preceding marketing years. FAS will first review the petition for appropriateness, completeness, and timeliness, before publishing a notice in the **Federal Register** that it has been accepted. The Economic Research Service (ERS) will then conduct a market study to verify the decline in the national average price, or quantity of production, or value of production, or cash receipts for the petitioned commodity, and to assess possible causes, taking into due account any special factors which may have affected prices, including imports, exports, production, changes in consumer preferences, weather conditions, diseases, and other relevant issues. ERS will report its findings to the Administrator (FAS) who will review and determine whether or not to certify the petitioning group's eligibility for trade adjustment assistance.

Upon certification of the petition, producers have 90 days to contact the Farm Service Agency (FSA) to apply for assistance. As soon as producers are found eligible, they may receive; (1) Training specifically tailored to their needs by the National Institute of Food and Agriculture (NIFA); and under certain circumstances (2) travel and per diem payments to help offset costs incurred to attend initial training. Depending on the commodity and the region, the training package may include technical publications in print or on-line, group seminars and presentations, one-on-one meetings, and assistance in the development of business adjustment plans. Producers who satisfy personal and farm income limits; complete the designated technical training; and develop and implement approved business plans are eligible for TAA for Farmers cash benefits. During the 36-month period following certification of the petition by the Administrator (FAS), a producer may receive not more than $12,000 for the development and implementation of business plans approved under the TAA for Farmers program. If the funding authorized by Congress is insufficient to pay 100 percent of all TAA for Farmers obligations during the fiscal year, the payments provided for business plan development and implementation will be reduced proportionately, as determined by the Administrator (FAS).

Discussion of Comments

FAS received sixteen comments on the proposed rule (74 FR 42799, August 25, 2009) during the proposed rule comment period which ran from August 25, 2009 through September 24, 2009. The comments focused on the following areas:

Payment Limitations and Adjusted Gross Income

Three respondents expressed concern with limitations currently capped at $65,000 per year for counter-cyclical and Average Crop Revenue Election (ACRE) payments, and recommended removing these limits for cash payments under the TAA for Farmers program. Respondents also recommended removing the average Adjusted Gross Income (AGI) requirement. Section 296 of the Trade Act of 1974, as amended, specifically mandates limitations on assistance based on individual counter-cyclical, ACRE, and average AGI requirements as they are defined in the Food Security Act of 1985 (the 1985 Act). Therefore, these regulatory limits are being retained. FAS further refined these provisions by inserting language that clarifies the differences that exist in counter-cyclical, ACRE, and average AGI requirements for certified petitions for the 2008 crop year, and certified petitions for subsequent crop years.

The interim rule incorporates revisions to § 1580.301(d)(1) and (2) as contained in the proposed rule. The revision is for clarity and is consistent with the statutory authority for TAA for

Farmers. The statute provides that producers must demonstrate compliance that their average AGI does not exceed limits set forth in the 1985 Act. The average AGI provisions of the 1985 Act which are administered by the Commodity Credit Corporation pursuant to the regulations in 7 CFR part 1400 provide an average AGI limit of $2.5 million for 2008 crop programs and, for 2009 and subsequent crops, limits of $500,000 for nonfarm average AGI and $750,000 farm average AGI. The proposed rule addressed the average AGI limits for 2009 and subsequent crops but did not include any reference to the $2.5 million average AGI limit applicable to 2008 crops. The interim rule at § 1580.301(d)(1) and (2) is amended so that the average AGI limits are specified for all crop years that might be certified for TAA for Farmers.

For purposes of clarity, the interim rule incorporates revisions to the payment limitation provisions in § 1580.301(e) as contained in the proposed rule. The statutory authority for TAA for Farmers provides that the total amount of payments made to a producer during any crop year may not exceed the limitations applicable to counter-cyclical payments and ACRE payments. For 2008 and 2009 and subsequent crop years, the payment limitation is $65,000. However, the proposed rule was not clear that the ACRE limitation is only effective for the 2009 and subsequent crop commodities. The interim rule is therefore amended at § 1580.301(e) to identify the payment limitation regulations applicable to the 2008 crop separately from regulations applicable to 2009 and subsequent crop commodities.

Specialty Crops

One respondent inquired if this program is specific to specialty crops and if processors are eligible for program benefits. The purpose of TAA for Farmers is to assist producers of raw agricultural commodities, aquaculture products, or wild-caught aquatic species, adjust to imports by providing technical assistance and cash benefits, and preparing and implementing business adjustment plans. The interim rule leaves unchanged the eligibility requirements to exclude processors since the statute specifically limits program benefits to producers of raw agricultural commodities.

Length of Intensive Training

One respondent suggested that the Intensive Technical Assistance offered by NIFA be a minimum of 16 hours to accommodate the needs that would vary from applicant to applicant. The respondent felt that training must be at least 16 hours so that important information is covered that helps producers make the required adjustments in their agricultural businesses. The interim rule leaves the Intensive Technical Assistance training unchanged to provide the Administrator flexibility in developing a series of comprehensive courses to meet the needs of an individual producer and their particular circumstances.

Further Revisions

In addition to the changes made in response to the comments listed above, FAS made additional changes in the interim rule by adding three new definitions that were not included in the proposed rule, namely "County price maintained by the Secretary," "Deputy Administrator," and "NIFA."

The definition of "County price maintained by the Secretary" was added for consistency with the statute that provides for use of such price by producers to establish their eligibility, and to clarify that a maintained price might be obtained from any USDA agency that records commodity prices for the purpose of program administration. The proposed rule provided for use of prices "maintained by FSA," but the new definition and revised rule allows for the use of prices maintained by other USDA agencies in addition to prices maintained by FSA. This definition is consistent with the interim rule provision at § 1580.301(c)(3)(ii), under which a producer may establish benefit eligibility if there has been a decrease in the commodity price based on the county price, maintained by the Secretary on the date the petition was filed, compared to the county price for the 3 preceding marketing years.

The interim rule incorporates a definition of "Deputy Administrator," and adds a new provision at § 1580.501(e) that provides authority for the Deputy Administrator of FSA to waive or modify non-statutory deadlines or other requirements where lateness to meet requirements by applicants does not adversely affect the operation of the program. This definition and authority were included in the interim rule governing the previous TAA program and are included in this interim rule to provide FSA flexibility in administering the application and payment processes for TAA for Farmers applicants.

The interim rule incorporates a definition of "NIFA," the National Institute of Food and Agriculture which was previously known as the Cooperative State Research, Education, and Extension Service (CSREES). This agency was renamed effective October 1, 2009 and the definition is included for clarity because the name change is thought not to be commonly known by prospective program applicants. The definition of CSREES has been deleted because the name of the agency has been changed.

Upon further consideration of the proposed rule, FAS also made some other revisions and clarifications in the interim rule. The definition of "Average price received by the producer" was modified to remove the requirement that prices received by the producer be "not weighted by production." This change was made to reflect the likelihood that prices received by the producer at the point of first sale would be established based on current production levels, and thus would be weighted.

In §§ 1580.201(d) and 1580.203(a) the word "accepted" was changed to "filed" to conform to the term usage in the statute.

Clarification was made to § 1580.301(c)(3)(ii) to define the date on which a petition is filed as the date on which the Administrator (FAS) accepts a petition for consideration as published in the **Federal Register**, and add a provision that if county prices are not available from within USDA, prices from other verifiable sources may be used.

Upon further consideration of the proposed rule, FAS also decided not to conduct hearings with respect to appeals of adverse determinations. This change was made to minimize the potential burden upon the applicant and expedite FAS' review in making a final determination.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866 and, therefore, it has been reviewed by OMB. A cost-benefit assessment for the proposed rule has been prepared and is available from the information contact cited above.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to prepare an analysis of the economic impact of any rule that is subject to notice and comment rulemaking, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA does not apply to interim rules. As such, neither a regulatory flexibility analysis nor a certification is required at this time. FAS will prepare and publish its regulatory flexibility analysis or certification when this rule is finalized.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FAS has previously received approval from the OMB with respect to the information collection required to support this program. The information collection is described below:

Title: Trade Adjustment Assistance for Farmers.

OMB Control Number: 0551–0040.

Executive Order 12988

This rule has been reviewed under Executive Order 12988. The provisions of this rule would not have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The rule would not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

National Environmental Policy Act

The Administrator (FAS) has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Executive Orders 12372, 13083 and 13084, and the Unfunded Mandates Reform Act (Pub. L. 104–4)

These Executive Orders and Public Law 104–4 require consultation with State and local officials and Indian tribal governments. This rule does not impose an unfunded mandate or any other requirement on State, local or tribal governments. Accordingly, these programs are not subject to the provisions of Executive Order 12372, Executive Order 13083, and Executive Order 13084, or the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

List of Subjects in 7 CFR Part 1580

Agricultural commodity imports; Reporting and recordkeeping requirements; and trade adjustment assistance.

■ For reasons set out in the preamble, 7 CFR part 1580 is revised to read as follows:

Title 7—Agriculture

PART 1580—TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Sec.

1580.101 General statement.
1580.102 Definitions.
1580.201 Petitions for trade adjustment assistance.
1580.202 Hearings, petition reviews, and amendments.
1580.203 Determination of eligibility and certification by the Administrator (FAS).
1580.301 Application for trade adjustment assistance.
1580.302 Technical assistance and services.
1580.303 Adjustment assistance payments.
1580.401 Subsequent year petition recertification.
1580.501 Administration.
1580.502 Maintenance of records, audits, and compliance.
1580.503 Recovery of overpayments.
1580.504 Debarment, suspension, and penalties.
1580.505 Appeals.
1580.506 Judicial review.
1580.602 Paperwork Reduction Act assigned number.

Authority: 19 U.S.C. 2401.

§ 1580.101 General statement.

This part provides regulations for the Trade Adjustment Assistance (TAA) for Farmers program as authorized by the Trade Act of 1974, amended by Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210), and re-authorized and modified by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). The regulations establish procedures by which a group of producers of raw agricultural commodities or fishermen (jointly referred to as "producers") can petition for certification of eligibility and through which individual producers covered by a certified petition can apply for technical assistance and cash benefits for the development and implementation of approved business adjustment plans.

§ 1580.102 Definitions.

As used in the part, the following terms mean:

Agricultural commodity means any commodity in its raw or natural state; found in chapters 1, 3, 4, 5, 6, 7, 8, 10, 12, 14, 23, 24, 41, 51, and 52 of the Harmonized Tariff Schedule of the United States (HTS).

Articles like or *directly competitive* generally means products falling under the same HTS number used to identify the agricultural commodity in the petition. A "like" product means substantially identical in inherent or intrinsic characteristics, and the term "directly competitive" means articles that are substantially equivalent for commercial purposes (*i.e.,* adapted to the same uses and essentially interchangeable therefore). For fishery products, competition could be either from farm-raised or wild-caught products.

Authorized representative means an entity that represents a group of agricultural commodity producers or fishermen.

Average price received by the producer means the average of the 3 marketing year prices per unit received by the producer from the first level of sales for the commodity.

Cash receipts mean the value of commodity marketings during the calendar year, irrespective of the year of production, as calculated by the Economic Research Service of the USDA.

Certification of eligibility means the date on which the Administrator (FAS) announces in the **Federal Register** or by Department news release, whichever comes first, a certification of eligibility to apply for trade adjustment assistance.

Contributed importantly means a cause which is important, but not necessarily more important than any other cause.

County price maintained by the Secretary means a daily price obtained from a USDA agency for the commodity and producer location, except that weekly or monthly prices may be used if daily prices are unavailable.

Department means the U.S. Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs of the Farm Service Agency (FSA).

Family member means an individual to whom a producer is related as spouse, lineal ancestor, lineal descendent, or sibling, including:

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Children, including legally adopted children;

(5) Grandchildren;

(6) Great grandchildren;

(7) Sibling of the family member in the farming operation; and

(8) Spouse of a person listed in paragraphs (1) through (7) of this definition.

Filing period means the dates during which petitions may be submitted, as published in the **Federal Register.**

FSA means the Farm Service Agency of the U.S. Department of Agriculture.

Group means three or more producers who are not members of the same family.

Impacted area means one or more States of the United States.

Marketing year means the marketing season or year designated by the Administrator (FAS) with respect to an agricultural commodity. In the case of an agricultural commodity that does not have a designated marketing year, a calendar year will be used.

National average price means the average price paid to producers for an agricultural commodity in a marketing year as determined by the National Agricultural Statistics Service (NASS) of the U.S. Department of Agriculture, or the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, when available, or when unavailable, as determined by the Administrator (FAS).

NIFA means the National Institute of Food and Agriculture, the Federal agency within the U.S. Department of Agriculture which administers the Federal agricultural extension programs.

Producer means a person who shares in the risk of producing an agricultural commodity and is entitled to a share of the commodity for marketing; including an operator, a sharecropper, or a person who owns or rents the land on which the commodity is produced; or a person who reports gain or loss from the trade or business of fishing on the person's annual Federal income tax return for the taxable year that most closely corresponds to the marketing year with respect to which a petition is filed.

Raw or *natural state* means unaltered by any process other than cleaning, grading, coating, sorting, trimming, mixing, conditioning, drying, dehulling, shelling, chilling, cooling, blanching, irradiating, or fumigating.

State Cooperative Extension Service means an organization established at the land-grant college or university under the Smith-Lever Act of May 8, 1914, as amended (7 U.S.C. 341–349); section 209(b) of the Act of October 26, 1974, as amended (D.C. Code, through section 31–1719(b)); or section 1444 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221).

United States means the 50 States of the United States, the District of Columbia, and Puerto Rico.

Value of production means the value of commodities produced during the crop year calculated as production times the marketing year average price. This may be equal to cash receipts when the crop year for the commodity runs from January through December.

§ 1580.201 Petitions for trade adjustment assistance.

(a) A group of producers in the United States or its authorized representative may file a petition for trade adjustment assistance.

(b) Filings may be written or electronic, as provided for by the Administrator (FAS), and submitted to FAS no later than the last day of the filing period announced in the **Federal Register**. Petitions received after this date will be returned to the sender.

(c) Petitions shall include the following information.

(1) Name, business address, phone number, and e-mail address (if available) of each producer in the group, or its authorized representative. The petition shall identify a contact person for the group.

(2) The agricultural commodity and its Harmonized Tariff Schedule of the United States (HTS) number.

(3) The production area represented by the group or its authorized representative. The petition shall indicate if the group is filing on behalf of all producers in the United States, or if it is filing solely on behalf of all producers in a specifically identified impacted area. In the latter case, at least one member of the group must reside in each State within the impacted area.

(4) The beginning and ending dates for the marketing year upon which the petition is based. A petition may be filed for only the most recent full marketing year for which data are available for national average prices, or quantity of production, or value of production, or cash receipts.

(5) A justification statement explaining why the petitioners should be considered eligible for adjustment assistance.

(6) Supporting information justifying the basis of the petition, including required data for the petitioned marketing year and the previous 3 marketing years.

(i) Whenever possible, the petitioners shall use national average data compiled by the National Agricultural Statistics Service (NASS) or the National Marine Fisheries Service (NMFS), to determine national average prices, or quantity of production, or value of production, or cash receipts. If NASS or NMFS has not compiled such data for the commodity, the petitioners shall provide alternative data for the marketing year under review and for the previous 3 marketing years, and identify the source of the data. In such cases the Administrator (FAS) shall determine if the alternative data is acceptable.

(ii) If the petition is filed on behalf of producers in a specifically identified impacted area, the petitioners shall provide the national average prices or county prices if applicable, or quantity of production or value of production, or cash receipts for the petitioned commodity in the impacted area for the marketing year under review and for the previous 3 marketing years, and identification of the data source.

(iii) The Administrator (FAS) may request petitioners to provide records to support their data.

(d) Once the petition is received, the Administrator (FAS) shall determine if it meets the requirements of § 1580.201(c) of this part, and if so, publish notice in the **Federal Register** that a petition has been filed and that an investigation is being initiated. The notice shall identify the agricultural commodity, including any like or directly competitive commodities, the marketing year being investigated, the data being used, and the production area covered by the petition. The notice may also announce the scheduling of a public hearing, if requested by the petitioner. If the petition does not meet the requirements of § 1580.201(c) of this part, the Administrator (FAS) shall notify as soon as practicable the contact person or the authorized representative for the group of the deficiencies.

§ 1580.202 Hearings, petition reviews, and amendments.

(a) If the petitioner, or any other person found by the Administrator (FAS) to have a substantial interest in the proceedings, submits not later than 10 days after the date of publication of notice in the **Federal Register** under § 1580.201(d) of this part, a request in writing for a hearing, the Administrator (FAS) shall provide for a public hearing and afford such interested person an opportunity to be present, to produce evidence, and to be heard.

(b) If the petitioner or any other person having an interest in the proceedings takes issue with any of the information published in the **Federal Register** concerning the petition, such person may submit to the Administrator (FAS) their comments in writing or electronically for consideration by the Administrator (FAS) not later than 10 days after the date of publication of notice in the **Federal Register** under § 1580.201(d) of this part.

(c) A producer or group of producers that resides outside of the State or region identified in the petition filed under paragraph (a) of this section, may file a request to become a party to that petition not later than 15 days after the date that the notice is published in the **Federal Register** under § 1580.201(d) of this part. The Administrator (FAS) may amend the original petition to expand the impacted area and include the additional filer, or consider it a separate filing.

(d) The Administrator (FAS) shall publish in the **Federal Register** as soon as practicable any changes to the original notice resulting from any actions taken under this section.

§ 1580.203 Determination of eligibility and certification by the Administrator (FAS).

(a) As soon as practicable after the petition has been filed, but in any event not later than 40 days after that date, the Administrator (FAS) shall certify a group of producers as eligible to apply for adjustment assistance under this chapter if the Administrator (FAS) determines:

(1) At least one of the following:

(i) The national average price of the agricultural commodity produced by the group during the most recent marketing year for which data are available is less than 85 percent of the average of the national average price for the commodity in the 3 marketing years preceding such marketing year; or

(ii) The quantity of production of the agricultural commodity produced by the group during such marketing year is less than 85 percent of the average of the quantity of production of the commodity produced by the group in the 3 marketing years preceding such marketing year; or

(iii) The value of production of the agricultural commodity produced by the group during such marketing year is less than 85 percent of the average value of production of the commodity produced by the group in the 3 marketing years preceding such marketing year; or

(iv) The cash receipts for the agricultural commodity produced by the group during such marketing year are less than 85 percent of the average of the cash receipts for the commodity produced by the group in the 3 marketing years preceding such marketing year;

(2) The volume of imports of articles like or directly competitive with the agricultural commodity produced by the group in the marketing year with respect to which the group files the petition increased compared to the average volume of such imports during the 3 marketing years preceding such marketing year; and

(3) The increase in such imports contributed importantly to the decrease in the national average price, or quantity of production, or value of production, or cash receipts for, the agricultural commodity.

(b) In any case in which there are separate classes of goods within an agricultural commodity, the Administrator (FAS) shall treat each class as a separate commodity in determining:

(1) Group eligibility;

(2) The national average price, or quantity of production, or value of production, or cash receipts; and

(3) The volume of imports.

(c) Upon making a determination, whether affirmative or negative, the Administrator (FAS) shall promptly publish in the **Federal Register** a summary of the determination, together with the reasons for making the determination.

(d) In addition, the Administrator (FAS) shall notify producers covered by a certification how to apply for adjustment assistance. Notification methods may include direct mailings to known producers, messages to directly affected producer groups and organizations, electronic communications, Web site notices on the Internet, use of broadcast print media, and transmittal through local USDA offices.

(e) Whenever a group of agricultural producers is certified as eligible to apply for assistance, the Administrator (FAS) shall notify NIFA, the Agricultural Marketing Service, and FSA who will assist in informing other producers about the TAA for Farmers program and how they may apply for trade adjustment assistance.

§ 1580.301 Application for trade adjustment assistance.

(a) Only producers covered by a certification of eligibility under § 1580.203 of this title, may apply for adjustment assistance.

(b) An eligible producer may submit an application for adjustment assistance by submitting to FSA a designated application form at any time after the certification date but not later than 90 days after the certification date. If the 90-day application period ends on a weekend or legal holiday, the producer may apply the following business day.

(c) When submitting an application, the producer shall provide sufficient documentation to establish that:

(1) The producer produced the agricultural commodity in the marketing year for which the petition is filed and in at least 1 of the 3 marketing years preceding that marketing year;

(2) There has been a decrease in the quantity of the agricultural commodity produced by the producer in the marketing year for which the petition is certified from the most recent prior marketing year preceding that marketing year for which data is available; or

(3) There has been a decrease in the price of the agricultural commodity based on:

(i) The price received for the agricultural commodity by the producer during the marketing year with respect to which the petition is filed from the average price for the commodity received by the producer in the 3 marketing years preceding that marketing year; or

(ii) The effective posted county price maintained by the Secretary for the agricultural commodity on the date on which the Administrator (FAS) accepts a petition for consideration as published in the **Federal Register** from the average effective posted county level price for the commodity in the 3 marketing years preceding that date. If USDA prices are not available, prices from verifiable sources, including universities, cooperatives, or local markets, may be used.

(4) If a petition is certified with respect to a commodity not produced by the producer every year, the producer may establish the average price received by the producer for the commodity in the 3 marketing years preceding the year in which the petition is filed by using annual price data for the 3 most recent marketing years in which the producer produced the commodity.

(5) The producer must certify that the producer has not received cash benefits under the Trade Adjustment Assistance for Workers or Trade Adjustment Assistance for Firms programs; or TAA for Farmers benefits based on the production of an agricultural commodity covered by another TAA for Farmers petition.

(d) The producer must certify that:

(1) For petitions certified for 2008 crops, their compliance with person determinations set forth in part 1400 of this title, subpart B and average adjusted gross income limitation requirements set forth in subpart G, effective July 18, 1996.

(2) For petitions certified for 2009 and subsequent crops, their average gross nonfarm income and average adjusted gross farm income meet requirements set forth in part 1400 of this title, subpart F, and payment limitation requirements set forth in part 1400 of this title, subparts A and B, effective December 29, 2008; and,

(e) The total amount of payments made to a producer for which the application was approved may not exceed the limitations on payments applicable to:

(1) For petitions certified for 2008 crops, counter-cyclical payments, set forth in part 1400 of this title, subpart A, effective July 18, 1996.

(2) For petitions certified for 2009 and subsequent crops, the counter-cyclical payments, including the Average Crop Revenue Election (ACRE) set forth in

part 1400 of this title, subparts A and B, effective December 29, 2008; and

(f) If requested by FSA, a producer must provide documentation regarding average adjusted gross income and payment limitations.

§ 1580.302 Technical assistance and services.

(a) *Initial Technical Assistance:* A producer covered by a certification who has been determined by FSA to meet the requirements of § 1580.301 of this part, is eligible to receive Initial Technical Assistance through NIFA to be completed within 180 days of petition certification. Such assistance shall include information regarding:

(1) Improving the yield and marketing of that agricultural commodity, and

(2) The feasibility and desirability, of substituting one or more agricultural commodities for that agricultural commodity.

(b) *Intensive Technical Assistance:* Upon completion of Initial Technical Assistance, a producer is eligible to participate in Intensive Technical Assistance. Intensive Technical Assistance shall consist of:

(1) A series of courses to further assist the producer in improving the competitiveness of producing the agricultural commodity certified under § 1580.203 of this part, or another agricultural commodity, and

(2) Assistance in developing an initial business plan based on the courses completed under paragraph (a) of this section.

(c) *During Intensive Technical Assistance:* NIFA shall deliver and the producer shall be required to attend a series of Intensive Technical Assistance workshops relevant to the circumstances of the producer.

(d) *Initial Business Plan:* Upon completion of the Initial and Intensive Technical Assistance, the producer shall be required to develop an Initial Business Plan recommended by NIFA and approved by the Administrator (FAS) before receiving an adjustment assistance payment. The Initial Business Plan will:

(1) Reflect the skills gained by the producer through the courses described in paragraph (c) of this section; and

(2) Demonstrate how the producer will apply those skills to the circumstances of the producer.

(e) Upon approval of the Initial Business Plan, the producer will receive an amount not to exceed $4,000 to implement the Initial Business Plan or develop a Long-Term Business Adjustment Plan.

(f) A producer who completes the Intensive Technical Assistance and whose Initial Business Plan has been approved shall be eligible, in addition to the amount under paragraph (e) of this section, for assistance in developing a Long-Term Business Adjustment Plan.

(g) *Long-Term Business Adjustment Plan:* The Long-Term Business Adjustment Plan shall:

(1) Include steps reasonably calculated to materially contribute to the economic adjustment of the producer to changing market conditions;

(2) Take into consideration the interests of the workers employed by the producer; and

(3) Demonstrate that the producer will have sufficient resources to implement the business plan.

(h) Upon recommendation by NIFA and approval of the producer's Long-Term Business Adjustment Plan by the Administrator (FAS), the producer shall be entitled to receive an amount not to exceed $8,000 to implement their Long-Term Business Adjustment Plan.

(i) The Initial Business Plan and Long-Term Business Adjustment Plan must be completed and approved within 36 months after a petition is certified.

(j) A producer shall not receive a combined total of more than $12,000 for the Initial Business Plan and the Long Term Business Adjustment Plan in the 36-month period following petition certification.

(k) The Administrator (FAS) may authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses incurred by a producer in connection with the initial technical assistance, if such initial technical assistance is provided at facilities that are not within normal commuting distance of the regular place of residence of the producer. NIFA and FSA will work with the producer and the Administrator (FAS) to facilitate application for and proper payment of reasonable allowable supplemental expenses. The Administrator (FAS) will not authorize payments to a producer:

(1) For subsistence expenses that exceed the lesser of:

(i) The actual per diem expenses for subsistence incurred by a producer; or

(ii) The prevailing per diem allowance rate authorized under Federal travel regulations; or

(2) For travel expenses that exceed the prevailing mileage rate authorized under the Federal travel regulations.

§ 1580.303 Adjustment assistance payments.

(a) If the Administrator (FAS) determines that insufficient appropriated fiscal year funds are available to provide maximum cash benefits to all eligible applicants, after having deducted estimated transportation and substance payments and administrative and technical assistance costs, the Administrator (FAS) shall prorate cash payments to producers for the approved initial and long-term business plans.

(b) Any producer who may be entitled to a payment may assign their rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

(c) In the case of death, incompetency, disappearance, or dissolution of a producer that is eligible to receive benefits in accordance with this part, such producer or producers specified in 7 CFR part 707 may receive such benefits.

§ 1580.401 Subsequent year petition recertification.

(a) Prior to the anniversary of the petition certification date:

(1) Groups or authorized representatives that provided the data to justify their initial petition shall provide the Administrator (FAS) data for the most recent marketing year, and

(2) The Administrator (FAS) shall make a determination with respect to the re-certification of petitions for the subsequent year by applying criteria as set forth in § 1580.203 of this part for the most recent marketing year.

(b) The Administrator (FAS) will promptly publish in the **Federal Register** the determination with the reasons for the determination.

(c) If a petition is re-certified, only eligible producers who did not receive training and cash benefits under this program may apply.

§ 1580.501 Administration.

(a) The petition process will be administered by FAS. FAS will publish in the **Federal Register** the filing dates for commodity groups to file petitions.

(b) FSA will administer the producer application and payment process.

(c) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(d) The technical assistance process and the recommendation for approval of all producer business plans will be under the general supervision of NIFA. NIFA may award the technical assistance and services to a state cooperative extension service.

(e) The Deputy Administrator may, in consultation with the Administrator, FAS, authorize the State and County committees to waive or modify non-statutory deadlines or other program requirements in cases where lateness or

failure to meet such other requirements by applicants does not adversely affect the operation of the program.

§ 1580.502 Maintenance of records, audits, and compliance.

(a) Producers making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested. Such records and accounts must be retained for 2 years after the date of the final payment to the producer under this program.

(b) At all times during regular business hours, authorized representatives of the U.S. Department of Agriculture or any agency thereof, the Comptroller General of the United States shall have access to the premises of the producer in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit, income tax forms may be requested and if requested, must be supplied. If a producer has submitted information to FSA, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such producer shall provide FSA a copy of any amended form filed with the Internal Revenue Service within 30 days of the filing.

(d) If requested in writing by the U.S. Department of Agriculture or any agency thereof, or the Comptroller General of the United States, the producer shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in § 1580.301(c) of this part, within 30 days. Acceptable production documentation may be submitted by facsimile, in person, or by mail and may include copies of receipts, ledgers, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, fish tickets, landing reports, and contemporaneous diaries that are determined acceptable. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this part's requirements, will result in ineligibility for all program benefits subject to this part for the year or years subject to the request.

§ 1580.503 Recovery of overpayments.

(a) If the Administrator (FAS) determines that any producer has received any payment under this program to which the producer was not entitled, or has expended funds received under this program for purpose that was not approved by the Administrator (FAS) such producer will be liable to repay such amount. The Administrator (FAS) may waive such repayment if it is determined that:

(1) The payment was made without fault on the part of the producer; and

(2) Requiring such repayment would be contrary to equity and good conscience.

(b) Unless an overpayment is otherwise recovered, or waived under paragraph (a) of this section, the Administrator (FAS), shall recover the overpayment as a debt following the procedures in 7 CFR part 3. The requirement for demand and notice and opportunity for a hearing under the debt collection procedures in 7 CFR part 3 shall satisfy the notice and hearing requirements under 19 U.S.C. 2401f(c), and the appeal procedures in § 1580.505 of this part shall not apply to collection of overpayments

§ 1580.504 Debarment, suspension, and penalties.

(a) *Generally.* The regulations governing Governmentwide Debarment and Suspension (Nonprocurement), 7 CFR part 3017, and Government Requirements for Drug-Free Workplace (Financial Assistance), 7 CFR part 3021, apply to this part.

(b) *Additional specific suspension and debarment provision for this program.* In addition to any other debarment or suspension of a producer under paragraph (a) of this section, in connection with this program, if the Administrator (FAS) or a court of competent jurisdiction, determines that a producer:

(1) Knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) Knowingly has failed, or caused another to fail, to disclose a material fact; and, as a result of such false statement or representation, or of such nondisclosure, such producer has received any payment under this program to which the producer was not entitled, the Administrator (FAS) shall suspend and debar such producer from any future payments under this program, as provided in 19 U.S.C. 2401f(b).

(c) *Criminal penalty.* Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other producer any payments authorized to be furnished under this program shall be fined not more that $10,000 or imprisoned for not more than 1 year, or both.

§ 1580.505 Appeals.

(a) A producer adversely affected by a determination with respect to their application for trade adjustment assistance under § 1580.301 of this part or with respect to the receipt of technical assistance or payments under § 1580.302 of this part may file a notice of appeal within 30 days of the date that the notification of the adverse determination was sent.

(b) A producer may not seek judicial review of any adverse decision under this paragraph without receiving a final determination pursuant to this paragraph.

§ 1580.506 Judicial review.

Any producer aggrieved by a final agency determination under this part may appeal to the U.S. Court of International Trade for a review of such determination in accordance with its rules and procedures.

§ 1580.602 Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and been assigned OMB control number 0551–0040.

Dated: February 22, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–3984 Filed 2–26–10; 8:45 am]

BILLING CODE 3410–10–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the primary credit rate at each Federal Reserve Bank.

The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective March 1, 2010. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202–452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202–263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

Like the closure of a number of extraordinary credit programs earlier this month, the changes to the primary and secondary credit rates discussed below are intended as a further normalization of the Federal Reserve's lending facilities. The modifications are not expected to lead to tighter financial conditions for households and businesses and do not signal any change in the outlook for the economy or for monetary policy, which remains about as it was at the January meeting of the Federal Open Market Committee (FOMC). At that meeting, the Committee left its target range for the federal funds rate at 0 to ¼ percent and said it anticipates that economic conditions are likely to warrant exceptionally low levels of the federal funds rate for an extended period.

The Board approved requests by the Reserve Banks to increase by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from ½ percent to ¾ percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically increased from 1.00 percent to 1.25 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The Board's action widens the spread between the primary credit rate and the top of the FOMC's 0 to ¼ percent target range for the federal funds rate to ½ percentage point. As indicated in the Board's press release announcing this action, the changes to the primary credit discount window facility are intended as a further normalization of the Federal Reserve's lending facilities in light of continued improvement in financial market conditions. In addition, the Board announced that effective on March 18, the typical maximum maturity for primary credit loans will be reduced from 28 days to overnight.[1] A press release announcing these actions noted that:

> The increase in the spread and reduction in maximum maturity will encourage depository institutions to rely on private funding markets for short-term credit and to use the Federal Reserve's primary credit facility only as a backup source of funds. The Federal Reserve will assess over time whether further increases in the spread are appropriate in view of experience with the ½ percentage point spread.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

[1] The maximum maturity of primary credit loans was extended from overnight to 30 days on August 17, 2007, and further extended to 90 days on March 16, 2008. The Federal Reserve began the process of normalizing the terms on primary credit by reducing the typical maximum maturity to 28 days effective January 14, 2010.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.,* 347a, 347b, 347c, 348 *et seq.,* 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	0.75	February 19, 2010.
New York	0.75	February 19, 2010.
Philadelphia	0.75	February 19, 2010.
Cleveland	0.75	February 19, 2010.
Richmond	0.75	February 19, 2010.
Atlanta	0.75	February 19, 2010.
Chicago	0.75	February 19, 2010.
St. Louis	0.75	February 19, 2010.
Minneapolis	0.75	February 19, 2010.
Kansas City	0.75	February 19, 2010.
Dallas	0.75	February 19, 2010.
San Francisco	0.75	February 19, 2010.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	1.25	February 19, 2010.
New York	1.25	February 19, 2010.
Philadelphia	1.25	February 19, 2010.
Cleveland	1.25	February 19, 2010.
Richmond	1.25	February 19, 2010.
Atlanta	1.25	February 19, 2010.
Chicago	1.25	February 19, 2010.
St. Louis	1.25	February 19, 2010.
Minneapolis	1.25	February 19, 2010
Kansas City	1.25	February 19, 2010.
Dallas	1.25	February 19, 2010.
San Francisco	1.25	February 19, 2010.

* * * * *

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

By order of the Board of Governors of the Federal Reserve System, February 23, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–4086 Filed 2–26–10; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 43, and 45

[Docket No. FAA–2006–25877; Amendment Nos. 21–92A and 43–43A]

RIN 2120–AJ44

Production and Airworthiness Approval, Part Marking, and Miscellaneous Amendments; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is making certain corrections to the Certification Procedures and Identification Requirements for Aeronautical Products and Articles final rule published on October 16, 2009 (74 FR 53368). The purpose of that final rule was to update and standardize those requirements for production approval holders (PAHs), revise export airworthiness approval requirements to facilitate global manufacturing, move all part marking requirements from part 21 to part 45, and amend the identification requirements for products and articles. In the amendatory language and the preamble, we inadvertently referred to incorrect paragraphs and text. This document corrects those errors.

DATES: These corrections, including a correction to the effective date of the October 16, 2009, final rule, will become effective on April 14, 2010.

FOR FURTHER INFORMATION CONTACT: Barbara Capron and/or Robert Cook, Production Certification Branch, AIR–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–6360 or (202) 385–6358; e-mail: *barbara.capron@faa.gov* or *robert.cook@faa.gov.* For legal questions concerning this rule, contact Angela Washington, AGC–210, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7556; e-mail: *angela.washington@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 16, 2009 (74 FR 53368), we published a final rule that standardized, revised, and relocated certification procedures and identification requirements in Title 14, Code of Federal Regulations (14 CFR), parts 1, 21, 43, and 45. The rule was necessary to further promote safety by ensuring that aircraft and products and articles designed specifically for use in aircraft, wherever manufactured, meet appropriate minimum standards for design and construction.

In §§ 21.9(b) and (c) of the final rule, we inadvertently referred to paragraphs (a)(1) through (a)(4), when we should have referred to paragraphs (a)(1) and (a)(2). When we added text to reserved § 21.122, in paragraph (a) we inadvertently stated "An applicant may obtain a production certificate for" when we should have stated "A type certificate holder may utilize". In § 21.621, we also inadvertently referred to the "Issuance" rather than the "Issue" of letters of TSO design approval: import articles.

In final rule FR Doc. E9–24821 published on October 16, 2009 (74 FR 53368), make the following corrections:

A. Corrections to the Preamble

1. On page 53368, in the first column, revise the Effective Date section to read as follows: "This rule is effective April 16, 2011, except for the amendments to §§ 1.1, 1.2, 21.183, 21.185, 21.195, 21.197, 21.223, 21.225, subparts L and N of part 21, and §§ 45.11 and 45.13, which are effective April 14, 2010."

2. On page 53375, in the first column, in the first paragraph of section 6, Location of or Change to Manufacturing Facilities, remove the words "or physical changes" from the first sentence, and remove the word "only" from the last sentence.

3. On page 53379, in the second column, in the first paragraph of section 13, Persons Authorized to Perform Maintenance, Preventive Maintenance, Rebuilding, and Alterations, remove the word "only" from the last sentence.

4. On page 53379, in the third column, in the second paragraph of section 14, Statement of Conformity, remove the word "special" and add in its place the word "standard" in the last sentence.

5. On page 53380, in the first column, revise the first paragraph of section C, Compliance Dates, to read: "The effective and compliance date for part 1; part 21, subparts H, I, L, and N; and part 45, subpart B, §§ 45.11 and 45.13 is 180 days after publication in the **Federal Register**. The rule changes in these subparts are either cost relieving or have no economic impact on industry. The changes do not affect, and are not affected by, other changes to the rule. Therefore, the compliance date is the same as the effective date. All other portions of the final rule either promulgate new requirements or are tied to other requirements that have an extended effective and compliance date. These rule provisions have an effective and compliance date of 18 months after publication in the **Federal Register**."

B. Corrections to the Regulatory Text

1. On page 53385, in the third column, in the amendment for § 21.9:

A. In paragraph (b), remove the words "(a)(1) through (a)(4)" and add in their place the words "(a)(1) and (a)(2)"; and

B. In paragraph (c) introductory text, remove the words "(a)(1) through (a)(4)" and add in their place the words "(a)(1) and (a)(2)".

2. On page 53387, in the second column, in the amendment for § 21.122, amend paragraph (a) by removing the words "An applicant may obtain a production certificate for" and adding in their place the words "A type certificate holder may utilize".

3. On page 53393, in the third column, in the amendment for § 21.621, revise the section heading to read as follows:

§ 21.621 Issue of letters of TSO design approval: Import articles.

* * * * *

Issued in Washington, DC, on February 24, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2010–4161 Filed 2–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30711; Amdt. No. 3362]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain

airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 1, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 1, 2010.

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

For Examination—

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

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

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

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

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

The Rule

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

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule " under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on February 19, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 8 APR 2010

Atka, AK, Atka, GPS–A, Orig, CANCELLED
Atka, AK, Atka, RNAV (GPS)-A, Orig
Brewton, AL, Brewton Muni, VOR/DME RWY 30, Amdt 8
Ozark, AR, Ozark-Franklin County, VOR/DME–A, Amdt 4
San Diego, CA, Montgomery Field, ILS OR LOC RWY 28R, Amdt 4
San Diego, CA, Montgomery Field, RNAV (GPS) RWY 28R, Amdt 1
Hayden, CO, Yampa Valley, ILS OR LOC/DME Y RWY 10, Amdt 3
Hayden, CO, Yampa Valley, RNAV (GPS) RWY 28, Amdt 1
Hayden, CO, Yampa Valley, RNAV (GPS) Y RWY 10, Amdt 2
Hayden, CO, Yampa Valley, RNAV (RNP) Z RWY 10, Amdt 1
Windsor Locks, CT, Bradley Intl, ILS OR LOC RWY 24, ILS RWY 24 (CAT II), Amdt 11
Windsor Locks, CT, Bradley Intl, RNAV (GPS) RWY 24, Amdt 2
Fort Pierce, FL, St Lucie County Intl, RNAV (GPS) RWY 32, Orig
Okeechobee, FL, Okeechobee County, RNAV (GPS) RWY 5, Amdt 1
Okeechobee, FL, Okeechobee County, RNAV (GPS) RWY 14, Orig
Okeechobee, FL, Okeechobee County, RNAV (GPS) RWY 23, Amdt 1
Okeechobee, FL, Okeechobee County, RNAV (GPS) RWY 32, Orig
Stuart, FL, Witham Field, GPS RWY 12, Orig, CANCELLED
Stuart, FL, Witham Field, GPS RWY 30, Amdt 1, CANCELLED
Stuart, FL, Witham Field, RNAV (GPS) RWY 12, Orig
Stuart, FL, Witham Field, RNAV (GPS) RWY 30, Orig
Lagrange, GA, Lagrange-Callaway, ILS OR LOC RWY 31, Amdt 2
Lagrange, GA, Lagrange-Callaway, RNAV (GPS) RWY 3, Orig
Lagrange, GA, Lagrange-Callaway, RNAV (GPS) RWY 13, Orig
Lagrange, GA, Lagrange-Callaway, RNAV (GPS) RWY 31, Orig
Lagrange, GA, Lagrange-Callaway, VOR RWY 13, Amdt 16
Lagrange, GA, Lagrange-Callaway, VOR/DME RNAV OR GPS RWY 31, Amdt 3, CANCELLED
Winder, GA, Barrow County, NDB RWY 31, Amdt 9
Winder, GA, Barrow County, Takeoff Minimums and Obstacle DP, Amdt 1
Clinton, IA, Clinton Muni, GPS RWY 14, Amdt 1A, CANCELLED
Clinton, IA, Clinton Muni, GPS RWY 32, Amdt 1B, CANCELLED
Clinton, IA, Clinton Muni, RNAV (GPS) RWY 14, Orig
Clinton, IA, Clinton Muni, RNAV (GPS) RWY 32, Orig
Guthrie Center, IA, Guthrie County Rgnl, GPS RWY 36, Orig, CANCELLED
Guthrie Center, IA, Guthrie County Rgnl, RNAV (GPS) RWY 18, Orig
Guthrie Center, IA, Guthrie County Rgnl, RNAV (GPS) RWY 36, Orig
Tipton, IA, Mathews Memorial, GPS RWY 11, Orig, CANCELLED
Tipton, IA, Mathews Memorial, RNAV (GPS) RWY 11, Orig
Tipton, IA, Mathews Memorial, Takeoff Minimums and Obstacle DP, Amdt 1
Vinton, IA, Vinton Veterans Memorial Arpk, GPS RWY 9, Orig, CANCELLED
Vinton, IA, Vinton Veterans Memorial Arpk, GPS RWY 27, Orig, CANCELLED
Vinton, IA, Vinton Veterans Memorial Arpk, RNAV (GPS) RWY 9, Orig
Vinton, IA, Vinton Veterans Memorial Arpk, RNAV (GPS) RWY 27, Orig
Washington, IA, Washington Muni, GPS RWY 18, Orig, CANCELLED
Washington, IA, Washington Muni, GPS RWY 36, Orig, CANCELLED
Washington, IA, Washington Muni, RNAV (GPS) RWY 18, Orig
Washington, IA, Washington Muni, RNAV (GPS) RWY 36, Orig
Washington, IA, Washington Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Washington, IA, Washington Muni, VOR/DME RNAV OR GPS RWY 31, Amdt 4B, CANCELLED
McCall, ID, McCall Muni, RNAV (GPS) RWY 16, Orig
McCall, ID, McCall Muni, RNAV (GPS) Y RWY 34, Amdt 1
McCall, ID, McCall Muni, RNAV (GPS) Z RWY 34, Orig
Olney/Noble, IL, Olney/Noble, NDB RWY 3, Amdt 13
Olney/Noble, IL, Olney/Noble, RNAV (GPS) RWY 3, Orig
Olney/Noble, IL, Olney/Noble, RNAV (GPS) RWY 11, Orig
Olney/Noble, IL, Olney/Noble, Takeoff Minimums and Obstacle DP, Orig
Olney/Noble, IL, Olney/Noble, VOR/DME–A, Amdt 9
Alexandria, LA, Alexandria Intl, ILS OR LOC/DME RWY 14, Amdt 1
Alexandria, LA, Alexandria Intl, RNAV (GPS) RWY 14, Amdt 1
Alexandria, LA, Esler Rgnl, ILS OR LOC/DME RWY 27, Amdt 15
Alexandria, LA, Esler Rgnl, NDB RWY 27, Amdt 1
Alexandria, LA, Esler Rgnl, RNAV (GPS) RWY 9, Amdt 1
Alexandria, LA, Esler Rgnl, RNAV (GPS) RWY 27, Amdt 1
Alexandria, LA, Esler Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Beverly, MA, Beverly Muni, LOC RWY 16, Amdt 7
Pittsfield, MA, Pittsfield Muni, GPS RWY 8, Amdt 1, CANCELLED
Pittsfield, MA, Pittsfield Muni, GPS RWY 26, Orig, CANCELLED
Pittsfield, MA, Pittsfield Muni, RNAV (GPS) RWY 8, Orig
Pittsfield, MA, Pittsfield Muni, RNAV (GPS) RWY 26, Orig
Hattiesburg/Laurel, MS, Hattiesburg-Laurel Rgnl, ILS OR LOC RWY 18, Amdt 7
Madison, MS, Bruce Campbell Field, GPS RWY 17, Orig, CANCELLED
Madison, MS, Bruce Campbell Field, RNAV (GPS) RWY 17, Orig
Madison, MS, Bruce Campbell Field, Takeoff Minimum and Obstacle DP, Amdt 1
Meridian, MS, Key Field, ILS OR LOC RWY 1, Amdt 25
Meridian, MS, Key Field, RNAV (GPS) RWY 1, Amdt 2
Newark, NJ, Newark Liberty Intl, GLS RWY 4L, Orig
Newark, NJ, Newark Liberty Intl, GLS RWY 4R, Orig
Ithaca, NY, Ithaca Tompkins Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5
Clinton, OK, Clinton-Sherman, GPS RWY 17R, Orig-B, CANCELLED
Clinton, OK, Clinton-Sherman, GPS RWY 35L, Orig-A, CANCELLED
Clinton, OK, Clinton-Sherman, RNAV (GPS) RWY 17R, Orig
Clinton, OK, Clinton-Sherman, RNAV (GPS) RWY 35L, Orig
Hobart, OK, Hobart Rgnl, RNAV (GPS) RWY 17, Amdt 2
Hobart, OK, Hobart Rgnl, RNAV (GPS) RWY 35, Amdt 2
Georgetown, SC, Georgetown County, RNAV (GPS) RWY 23, Amdt 1
Del Rio, TX, Del Rio Intl, ILS OR LOC RWY 13, Orig
Del Rio, TX, Del Rio Intl, LOC RWY 13, Amdt 2, CANCELLED
Del Rio, TX, Del Rio Intl, RNAV (GPS) RWY 13, Amdt 2
El Paso, TX, El Paso Intl, RADAR–1, Amdt 14
El Paso, TX, El Paso Intl, VOR RWY 26L, Amdt 31
Lubbock, TX, Lubbock Preston Smith Intl, ILS OR LOC RWY 17R, Amdt 17
Lubbock, TX, Lubbock Preston Smith Intl, Takeoff Minimums and Obstacle DP, Orig
Richmond, VA, Richmond Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Kelso, WA, Southwest Washington Rgnl, GPS RWY 12, Orig, CANCELLED
Kelso, WA, Southwest Washington Rgnl, NDB–A, Amdt 6
Kelso, WA, Southwest Washington Rgnl, RNAV (GPS) RWY 12, Orig
Kelso, WA, Southwest Washington Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Charleston, WV, Yeager, ILS OR LOC RWY 5, Amdt 7
Charleston, WV, Yeager, ILS OR LOC RWY 23, Amdt 30
Charleston, WV, Yeager, RNAV (GPS) RWY 5, Orig
Charleston, WV, Yeager, RNAV (GPS) RWY 23, Orig
Charleston, WV, Yeager, Takeoff Minimums and Obstacle DP, Amdt 8
Charleston, WV, Yeager, VOR–A, Amdt 13
Rawlins, WY, Rawlins Muni/Harvey Field, NDB OR GPS–A, Amdt 9B, CANCELLED
Rawlins, WY, Rawlins Muni/Harvey Field, RNAV (GPS) RWY 22, Orig
Rawlins, WY, Rawlins Muni/Harvey Field, VOR/DME RWY 22, Amdt 2

[FR Doc. 2010–3935 Filed 2–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30712; Amdt. No. 3363]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 1, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 1, 2010.

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

For Examination—

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

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

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

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

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

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

The Rule

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

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

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on February 19, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

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

* * * **Effective Upon Publication**

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Apr–10	OK	ENID	ENID WOODRING RGNL	0/2566	2/3/10	VOR RWY 35, AMDT 14.
8–Apr–10	OK	ENID	ENID WOODRING RGNL	0/2569	2/3/10	RNAV (GPS) RWY 35, ORIG.
8–Apr–10	OK	ENID	ENID WOODRING RGNL	0/2579	2/3/10	ILS OR LOC RWY 35, AMDT 5.
8–Apr–10	WI	MADISON	BLACKHAWK AIRFIELD	0/2837	2/3/10	VOR OR GPS A, ORIG–B.
8–Apr–10	FL	NAPLES	NAPLES MUNI	0/2858	2/4/10	VOR RWY 23, AMDT 6C.
8–Apr–10	AL	MOBILE	MOBILE REGIONAL	0/3027	2/8/10	RNAV (GPS) RWY 32, AMDT 1.
8–Apr–10	KS	GARDNER	GARDNER MUNI	0/3029	2/4/10	TAKEOFF MINIMUMS AND OBSTACLE DP, ORIG.
8–Apr–10	WI	HAYWARD	SAWYER COUNTY	0/3031	2/3/10	RNAV (GPW) RWY 2, ORIG.
8–Apr–10	OH	AKRON	AKRON-CANTON REGIONAL.	0/3076	2/3/10	VOR OR GPS RWY 23, AMDT 9A.
8–Apr–10	OH	AKRON	AKRON-CANTON REGIONAL.	0/3078	2/3/10	RADAR–1, AMDT 23.
8–Apr–10	OH	AKRON	AKRON-CANTON REGIONAL.	0/3079	2/3/10	VOR OR GPS RWY 5, AMDT 2A.
8–Apr–10	OK	BRISTOW	JOMES MEML	0/3089	2/3/10	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 4.
8–Apr–10	MO	AVA	AVA BILL MARTIN MEMORIAL.	0/3090	2/3/10	VOR A, AMDT 2.
8–Apr–10	OK	ARDMORE	ARDMORE MUNI	0/3093	2/3/10	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 1.
8–Apr–10	MO	LEXINGTON	LEXINGTON MUNI	0/3105	2/4/10	VOR/DME OR GPS RWY 22, ORIG.
8–Apr–10	IA	AMES	AMES MUNI	0/3187	2/3/10	ILS OR LOC RWY 1, AMDT 1A.
8–Apr–10	MO	SEDALIA	SEDALIA MEMORIAL	0/3231	2/4/10	RNAV (GPS) RWY 18, AMDT 1A.
8–Apr–10	MO	SEDALIA	SEDALIA MEMORIAL	0/3232	2/4/10	RNAV (GPS) RWY 36, AMDT 1A.
8–Apr–10	MO	MEXICO	MEXICO MEMORIAL	0/3233	2/4/10	RNAV (GPS) RWY 24, AMDT 1.
8–Apr–10	MO	MEXICO	MEXICO MEMORIAL	0/3234	2/4/10	LOC/DME RWY 24, AMDT 1.
8–Apr–10	LA	GALLIANO	SOUTH LAFOURCHE LEONARD MILLER JR.	0/3269	2/3/10	RNAV (GPS) RWY 18, AMDT 1.
8–Apr–10	LA	JENNINGS	JENNINGS	0/3270	2/4/10	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 2.
8–Apr–10	LA	JENNINGS	JENNINGS	0/3272	2/4/10	VOR/DME RWY 8, AMDT 1.
8–Apr–10	LA	JENNINGS	JENNINGS	0/3274	2/4/10	RNAV (GPS) RWY 8, ORIG.
8–Apr–10	WI	FOND DU LAC	FOND DU LAC COUNTY	0/3283	2/3/10	VOR/DME OR GPS RWY 18, AMDT 6B.
8–Apr–10	WI	MADISON	DANE COUNTY REGIONAL—TRUAX FIELD.	0/3285	2/3/10	VOR/DME OR TACAN RWY 18, AMDT 1.
8–Apr–10	WI	MADISON	DANE COUNTY REGIONAL—TRUAX FIELD.	0/3287	2/3/10	VOR/DME OR TACAN RWY 14, ORIG–A.
8–Apr–10	IL	CHICAGO	CHICAGO MIDWAY INTL	0/3288	2/3/10	ILS OR LOC/DME RWY 31C, ORIG.
8–Apr–10	WI	FOND DU LAC	FOND DU LAC COUNTY	0/3289	2/3/10	RNAV (GPS) RWY 36, ORIG.
8–Apr–10	IL	CHICAGO	CHICAGO MIDWAY INTL	0/3290	2/3/10	RNAV (GPS) RWY 22R, ORIG.
8–Apr–10	IL	CHICAGO/PROSPECT HGTS/WHEELING.	CHICAGO EXECUTIVE	0/3291	2/4/10	RNAV (GPS) RWY 16, ORIG.
8–Apr–10	WI	MADISON	DANE COUNTY REGIONAL—TRUAX FIELD.	0/3311	2/3/10	RADAR–1, AMDT 17.
8–Apr–10	TX	LUFKIN	ANGELINA COUNTY	0/3312	2/4/10	ILS OR LOC RWY 7, AMDT 2.
8–Apr–10	TX	LUFKIN	ANGELINA COUNTY	0/3313	2/4/10	RNAV (GPS) RWY 7, ORIG.
8–Apr–10	MO	CHARLESTON	MISSISSIPPI COUNTY	0/3322	2/3/10	NDB OR GPS RWY 36, AMDT 3.
8–Apr–10	TX	BAY CITY	BAY CITY MUNI	0/3357	2/4/10	GPS RWY 31, ORIG–A.
8–Apr–10	MO	CAPE GIRARDEAU.	CAPE GIRARDEAU RGNL	0/3431	2/4/10	ILS OR LOC RWY 10, AMDT 11.
8–Apr–10	MO	ST LOUIS	LAMBERT—ST LOUIS INTL.	0/3434	2/4/10	ILS OR LOC RWY 6, AMDT 1B.
8–Apr–10	MO	CAPE GIRARDEAU.	CAPE GIRARDEAU RGNL	0/3436	2/4/10	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 7.
8–Apr–10	WI	MADISON	DANE COUNTY REGIONAL—TRUAX FIELD.	0/3469	2/3/10	VOR/DME OR TACAN RWY 32, ORIG–A.
8–Apr–10	TX	BAY CITY	BAY CITY MUNI	0/3470	2/4/10	GPS RWY 13, ORIG–A.
8–Apr–10	IA	STORM LAKE	STORM LAKE MUNI	0/3484	2/4/10	NDB RWY 17, ORIG.
8–Apr–10	IA	STORM LAKE	STORM LAKE MUNI	0/3485	2/4/10	RNAV (GPS) RWY 17, ORIG.
8–Apr–10	IA	STORM LAKE	STORM LAKE MUNI	0/3492	2/4/10	NDB RWY 35, AMDT 1B.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Apr–10	ME	PRESQUE ISLE	NORTHERN MAINE REGIONAL ARPT AT PRESQUE IS.	0/3911	2/4/10	VOR RWY 19, AMDT 10A.
8–Apr–10	FL	ST PETERSBURG-CLEARWATER.	ST PETERSBURG-CLEARWATER INTL.	0/4070	2/4/10	RNAV (GPS) RWY 17L, ORIG–A.
8–Apr–10	FL	PALM COAST	FLAGLER COUNTY	0/4071	2/4/10	TAKEOFF MINIMUMS AND OBSTACLE DP, ORIG.
8–Apr–10	NM	TAOS	TAOS REGIONAL	0/4122	2/4/10	VOR/DME B, AMDT 3.
8–Apr–10	WI	FOND DU LAC	FOND DU LAC COUNTY	0/4190	2/3/10	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 1.
8–Apr–10	CT	GROTON/NEW LONDON.	GROTON-NEW LONDON	0/4194	2/4/10	VOR RWY 23, AMDT 10.
8–Apr–10	CT	GROTON/NEW LONDON.	GROTON-NEW LONDON	0/4195	2/4/10	RNAV (GPS) RWY 33, ORIG.
8–Apr–10	CT	GROTON/NEW LONDON.	GROTON-NEW LONDON	0/4196	2/4/10	RNAV (GPS) RWY 5, ORIG–B.
8–Apr–10	CT	GROTON/NEW LONDON.	GROTON-NEW LONDON	0/4197	2/4/10	RNAV (GPS) RWY 23, ORIG–A.
8–Apr–10	CT	GROTON/NEW LONDON.	GROTON-NEW LONDON	0/4198	2/4/10	VOR RWY 5, AMDT 8.
8–Apr–10	CT	GROTON/NEW LONDON.	GROTON-NEW LONDON	0/4229	2/4/10	ILS OR LOC RWY 5, AMDT 11A.
8–Apr–10	FL	GAINESVILLE	GAINESVILLE RGNL	0/4309	2/4/10	RADAR–1, ORIG.
8–Apr–10	FL	GAINESVILLE	GAINESVILLE RGNL	0/4310	2/4/10	RNAV (GPS) RWY 25, AMDT 1.
8–Apr–10	FL	GAINESVILLE	GAINESVILLE RGNL	0/4311	2/4/10	RNAV (GPS) RWY 29, AMDT 1.
8–Apr–10	AZ	PHOENIX	PHOENIX SKY HARBOR INTL.	0/4365	2/4/10	RNAV (GPS) Y RWY 25R, AMDT 2.
8–Apr–10	AZ	FLAGSTAFF	FLAGSTAFF PULLIAM	0/4366	2/4/10	ILS OR LOC/DME RWY 21, ORIG–D.
8–Apr–10	MO	MALDEN	MALDEN RGNL	0/4375	2/5/10	RNAV (GPS) RWY 18, AMDT 1.
8–Apr–10	TX	HOUSTON	DAVID WAYNE HOOKS MEMORIAL.	0/4395	2/5/10	LOC RWY 17R, AMDT 1A.
8–Apr–10	IL	MOLINE	QUAD CITY INTL	0/4448	2/5/10	ILS OR LOC RWY 9, AMDT 30A.
8–Apr–10	OH	ALLIANCE	MILLER	0/4456	2/5/10	VOR OR GPS A, AMDT 8B.
8–Apr–10	SD	SIOUX FALLS	JOE FOSS FIELD	0/4477	2/5/10	RNAV (GPS) RWY 15, ORIG–C.
8–Apr–10	SD	SIOUX FALLS	JOE FOSS FIELD	0/4478	2/5/10	RNAV (GPS) RWY 3, ORIG–B.
8–Apr–10	SD	SIOUX FALLS	JOE FOSS FIELD	0/4479	2/5/10	RNAV (GPS) RWY 33, ORIG–B.
8–Apr–10	OH	ASHTABULA	ASHTABULA COUNTY	0/4501	2/5/10	VOR/DME RWY 26, AMDT 6A.
8–Apr–10	OH	ASHTABULA	ASHTABULA COUNTY	0/4502	2/5/10	VOR RWY 8, ORIG–A.
8–Apr–10	OK	MEDFORD	MEDFORD MUNI	0/4816	2/8/10	RNAV (GPS) RWY 17, ORIG.
8–Apr–10	TN	BRISTOL/JOHNSON/KINGSPORT.	TRI-CITIES RGNL	0/4944	2/9/10	RNAV (GPS) RWY 9, ORIG.
8–Apr–10	MT	HAMILTON	RAVALLI COUNTY	0/4997	2/9/10	RNAV (GPS) RWY B, ORIG.
8–Apr–10	MT	HAMILTON	RAVALLI COUNTY	0/4994	2/9/10	RNAV (GPS) RWY A, ORIG.
8–Apr–10	NC	CHARLOTTE	CHARLOTTE/DOUGLAS INTL.	0/5474	2/11/10	RNAV (RNP) Z RWY 36C, ORIG.

[FR Doc. 2010–3938 Filed 2–26–10; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release Nos. 33–9089A; 34–61175A; IC–29092A; File No. S7–13–09]

RIN 3235–AK28

Proxy Disclosure Enhancements; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction.

SUMMARY: We are making technical corrections to amendments to our disclosure rules adopted in Release No. 33–9089 (December 16, 2009), which was published in the **Federal Register** on December 23, 2009 (74 FR 68334). Specifically, we are correcting Forms 10–Q and 10–K to retain the current numbering of the items appearing in each form to avoid confusion that might otherwise arise from references to the current numbering in professional literature. In addition, we are making three corrections to Form 8–K. We are correcting Form 8–K to add an instruction, which was inadvertently excluded, that corresponds to an instruction contained in Forms 10–Q and 10–K that allows certain wholly-owned subsidiaries to omit the disclosure of shareholder voting results. We also are correcting Form 8–K to amend the regulatory text to make it consistent with the discussion of the amendments to that form contained in Release No. 33–9089.

DATES: *Effective Date:* February 28, 2010.

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are making the following corrections to Release No. 33–9089 (December 16, 2009), which was published in FR Doc. E9–30327 and appeared on page 68334 in the **Federal Register** on December 23, 2009:

PART 249—[CORRECTED]

Note: The text of Forms 8–K, 10–Q and 10–K do not, and these amendments will not, appear in the Code of Federal Regulations.

Form 8–K [Corrected]

■ 1. On page 68366, in the first column, paragraph (a) of Form 8–K is corrected to read as follows:

"(a) The date of the meeting and whether it was an annual or special meeting. This information must be provided only if a meeting of security holders was held."

■ 2. On page 68366, in the first column, in Form 8–K, "Instruction 3 to Item 5.07" is corrected to read:

"*Instruction 3 to Item 5.07.* If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto regarding the election of directors."

■ 3. On page 68366, in the first and second column, in Form 8–K, "Instruction 5 to Item 5.07" is corrected to read:

"*Instruction 5 to Item 5.07.* A registrant may omit the information called for by this Item 5.07 if, on the date of the filing of its report on Form 8–K, the registrant meets the following conditions:

1. All of the registrant's equity securities are owned, either directly or indirectly, by a single person which is a reporting company under the Exchange Act and which has filed all the material required to be filed pursuant to Section 13, 14 or 15(d) thereof, as applicable; and

2. During the preceding thirty-six calendar months and any subsequent period of days, there has not been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within thirty days, with respect to any indebtedness of the registrant or its subsidiaries, and there has not been any material default in the payment of rentals under material long-term leases."

Form 10–Q [Corrected]

■ 4. On page 68366, in the second column, the amendatory language for amendment 10 is corrected to read:

"10. Amend Form 10–Q (referenced in § 249.308a) by removing and reserving Item 4 in Part II—Other Information."

Form 10–K [Corrected]

■ 5. On page 68366, in the second column, the amendatory language for amendment 11 is corrected to read:

"11. Amend Form 10–K (referenced in § 249.310) by removing and reserving Item 4 in Part I."

Dated: February 23, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–4006 Filed 2–26–10; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9480]

RIN 1545–BI89

Reduced 2009 Estimated Income Tax Payments for Individuals With Small Business Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 6654 of the Internal Revenue Code (Code) relating to reduced estimated income tax payments for qualified individuals with small business income for any taxable year beginning in 2009. The temporary regulations implement changes to section 6654 made by the American Recovery and Reinvestment Act of 2009. The temporary regulations provide guidance for qualified individuals with small business income to certify that they satisfy the statutory gross income requirement for purposes of the reduction in their required 2009 estimated income tax payments. The text of the temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on March 1, 2010.

Applicability Date: These regulations apply for any taxable year beginning in 2009.

FOR FURTHER INFORMATION CONTACT: Adrienne Mikolashek, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These temporary regulations contain amendments to the Income Tax Regulations (26 CFR part 1) under section 6654(d) of the Code relating to the addition to tax for failure by an individual to pay estimated income tax. Section 6654(d)(1)(D) was added by section 1212 of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (123 Stat. 336 (2009)), effective for taxable years beginning in 2009.

Section 6654 imposes an addition to tax in the case of an individual taxpayer's underpayment of estimated tax. Estimated tax is payable in four installments throughout the taxable year, and the amount of each required installment is generally 25 percent of the required annual payment of estimated tax. Under section 6654(d)(1)(B), the required annual payment is the lesser of (i) 90 percent of the tax shown on the income tax return for the taxable year (or, if no return is filed, 90 percent of the tax for the year) or (ii) 100 percent of the tax shown on the taxpayer's return for the preceding taxable year (or 110 percent if the taxpayer's adjusted gross income for the preceding taxable year exceeded $150,000). The provision allowing for the payment of 100 (or 110) percent of the tax shown on the taxpayer's return for the preceding taxable year does not apply if the preceding taxable year was less than 12 months or if the taxpayer did not file a return for that year.

Under section 6654(d)(1)(D), the applicable percentage of tax shown on the return for the preceding taxable year (either 100 or 110 percent) is reduced to 90 percent for qualified individuals for taxable years beginning in 2009. In other words, for taxable years beginning in 2009, a qualified individual's annual required payment of estimated tax is the lesser of (i) 90 percent of the tax shown on the return for the 2009 taxable year (or, if no return is filed, 90 percent of the tax for the year) or (ii) 90 percent of the tax shown on the individual's return for taxable year 2008.

Explanation of Provisions

The temporary regulations explain who is a qualified individual under section 6654(d)(1)(D) and how a taxpayer establishes that the taxpayer is a qualified individual. A qualified individual is any individual (1) whose adjusted gross income shown on the individual's return for the preceding taxable year is less than $500,000 and (2) who certifies that more than 50 percent of the gross income shown on that return was income from a small business. See section 6654(d)(1)(D)(ii). If an individual is married, within the meaning of section 7703, and files a separate return for a taxable year

beginning in 2009, then to qualify, the individual's adjusted gross income shown on the preceding year's return must be less than $250,000, rather than $500,000. See section 6654(d)(1)(D)(iv). Pursuant to section 6654(d)(1)(D)(ii)(II), the Secretary shall prescribe by regulation the form, manner, and time for filing a certification. Additionally, section 6654(m) authorizes the Secretary to prescribe regulations as necessary to carry out the purposes of section 6654.

Income from a small business is defined in general terms in section 6654(d)(1)(D)(iii) as income from a trade or business the average number of employees of which was less than 500 for calendar year 2008. The temporary regulations specify that the trade or business must be a bona fide trade or business of which the individual was an owner. The temporary regulations provide that a trade or business may be organized as, or take the legal form of, a corporation, partnership, limited liability company, or sole proprietorship.

The temporary regulations also provide that a qualified individual shall file a certification with the IRS in the manner and at the time prescribed in forms, publications, or other guidance, such as Form 2210, "Underpayment of Estimated Tax by Individuals, Estates, and Trusts" (or any successor form and its instructions).

The temporary regulations will be applicable for taxable years beginning in 2009. The reduced percentage in section 6654(d)(1)(D) is limited to taxable years beginning in 2009 and does not apply to taxable years beginning before or after 2009.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. For the applicability of the Regulatory Flexibility Act, see the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Adrienne Mikolashek, Office of the Associate Chief Counsel, Procedure and Administration.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

■ **Par. 2.** Section 1.6654–2 is amended by:

■ 1. Revising paragraph (a) introductory text.

■ 2. Redesignating paragraph (a)(1) as paragraph (a)(1)(i).

■ 3. Adding new paragraphs (a)(1)(ii) and (f).

The additions and revision read as follows:

§ 1.6654–2 Exceptions to imposition of the addition to the tax in the case of individuals.

(a) [Reserved]. For further guidance, see § 1.6654–2T(a).

(1)(i) * * *

(ii) [Reserved]. For further guidance, see § 1.6654–2T(a)(1)(ii).

* * * * *

(f) [Reserved]. For further guidance, see § 1.6654–2T(f).

■ **Par. 3.** Section 1.6654–2T is added to read as follows:

§ 1.6654–2T Exceptions to imposition of the addition to the tax in the case of individuals (temporary).

(a) *In general.* The addition to the tax under section 6654 will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equals or exceeds the lesser of the amount in § 1.6654–2(a)(1) or the amount in § 1.6654–2(a)(2).

(1)(i) [Reserved]. For further guidance, see § 1.6654–2(a)(1)(i).

(ii) *Special rule for taxable years beginning in 2009.* For any taxable year beginning in 2009, for a qualified individual, the amount described in § 1.6654–2(a)(1)(i) is reduced to 90 percent of that amount.

(A) *Qualified individual* means any individual whose adjusted gross income shown on the individual's return for the preceding taxable year is less than $500,000 and who certifies, as prescribed in paragraph (a)(1)(ii)(D) of this section, that more than 50 percent of the gross income shown on the return for the preceding taxable year was income from a small business.

(B) *Income from a small business* means income from the operation of a bona fide trade or business of which the individual was an owner during calendar year 2009, and that on average had fewer than 500 employees in calendar year 2008.

(C) The trade or business may be organized as, or take the legal form of, a corporation, partnership, limited liability company, or sole proprietorship.

(D) A qualified individual shall file a certification of the individual's qualification in the manner and at the time prescribed by the Internal Revenue Service in forms, publications, or other guidance.

(a)(2) through (e) [Reserved]. For further guidance, see § 1.6654–2(a)(2) through (e).

(f) *Effective/applicability date.* Paragraph (a) of this section applies to any taxable year beginning in 2009.

(g) *Expiration date.* The applicability of paragraph (a) of this section expires on or before February 26, 2013.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: February 18, 2010.

Michael F. Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2010–4126 Filed 2–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 43

[AG Order No. 3141–2010]

Recovery of Cost of Hospital and Medical Care and Treatment Furnished by the United States; Delegation of Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends Department of Justice regulations to increase the settlement and waiver authority delegated to heads of departments and agencies of the United States responsible for the furnishing of hospital, medical, surgical, or dental care. This change responds to the increase in medical costs since 1992, when the current level of delegated settlement and waiver authority was established, and will further the efficient operation of the government.

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

FOR FURTHER INFORMATION CONTACT: Phyllis J. Pyles, Director, Torts Branch, Civil Division, Department of Justice, Washington, DC 20530, telephone (202) 616–4252.

SUPPLEMENTARY INFORMATION: This rule amending 28 CFR part 43 represents the first increase since 1992 of the settlement and waiver authority delegated to the departments and agencies of the United States responsible for the furnishing of hospital, medical, surgical, or dental care. During the intervening period, the cost of medical care and treatment has increased substantially. That increase warrants a corresponding increase in settlement and waiver authority to further the efficient operation of the government.

Administrative Procedure Act

This rule relates to a matter of agency management or personnel and therefore is exempt from the usual requirements of prior notice and comment and a thirty-day delay in effective date. *See* 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. A Regulatory Flexibility Analysis was not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866: Regulatory Planning and Review

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, § 1(b), "Principles of Regulation." This rule is limited to agency organization, management, and personnel as described by Executive Order 12866, § (3)(d)(3), and therefore is not a "regulation" or "rule" as defined by that Executive Order. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132: Federalism

This rule will 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. Therefore, in accordance with Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a "rule" for purposes of the reporting requirement of 5 U.S.C. 801.

List of Subjects in 28 CFR Part 43

Claims, Health care.

■ Accordingly, by virtue of the authority vested in the Attorney General by law, including 42 U.S.C. 2651–2653, Executive Order 11060 (3 CFR, 1959–1963 Comp. p. 651), part 43 of title 28 of the Code of Federal Regulations is amended as follows:

PART 43—RECOVERY OF COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

■ 1. The authority citation for part 43 continues to read as follows:

Authority: Sec. 2, 76 Stat. 593; 42 U.S.C. 2651–2653; E.O. 11060, 3 CFR, 1959–1963 Comp. p. 651.

■ 2. In § 43.3, paragraphs (a)(2), (a)(3), and (b) are revised to read as follows:

§ 43.3 Settlement and waiver of claims.

(a) * * *

(2) Compromise or settle and execute a release of any claim, not in excess of $300,000, which the United States has for the reasonable value of such care and treatment; or

(3) Waive and in this connection release any claim, not in excess of $300,000, in whole or in part, either for the convenience of the Government, or if the head of the Department or Agency, or his or her designee, determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in the care and treatment described in § 43.1.

(b) Claims in excess of $300,000 may be compromised, settled, waived, and released only with the prior approval of the Department of Justice.

* * * * *

Dated: February 23, 2010.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2010–4025 Filed 2–26–10; 8:45 am]

BILLING CODE 4410–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0964; FRL–9116–8]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; NO_X Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Illinois State Implementation Plan (SIP) that would terminate the provisions of the Nitrogen Oxides (NO_X) Budget Trading Program that apply to electric generating units. EPA is no longer operating the NO_X Budget Trading Program as a compliance option under the NO_X SIP Call. These sources are now subject to provisions in a newer set of approved Illinois rules that address EPA's Clean Air Interstate Rule (CAIR). For these reasons, the sunset of the NO_X Budget Trading Program for these sources merely deactivates duplicative rule language.

DATES: This direct final rule will be effective April 30, 2010, unless EPA receives adverse comments by March

31, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R05–OAR–2009–0964 by one of the following methods:

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

2. *E-mail: damico.genevieve@epa.gov.*

3. *Fax:* (312) 385–5501.

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, 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–2009–0964. 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 and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 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 John Summerhays, Environmental Scientist, at (312) 886–6067, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, (312) 886–6067, or by e-mail at *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

This supplementary information section is arranged as follows:

I. Review of State's Submittal
II. Final Action
III. Statutory and Executive Order Reviews

I. Review of State's Submittal

On December 7, 2009, Illinois submitted a rule revision to EPA for the sunset of 35 Illinois Administrative Code (IAC) 217 Subpart W, which sets requirements for electric generating units (EGUs) in the NO_X Budget Trading Program. These sources are now subject to requirements of rules adopted pursuant to CAIR (in 35 IAC 225) and approved by EPA on October 16, 2007, which supersede 35 IAC 217 Subpart W.

Illinois' revision would add 35 IAC 217.751, the full text of which is:

> The provisions of this Subpart W shall not apply for any control period in 2009 or thereafter. Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the applicable provisions of this Subpart.

The NO_X Budget Trading Program was mandated under a rule commonly known as the NO_X SIP Call, published on October 27, 1998, at 63 FR 57356, with subsequent amendments. Subsequently, EPA promulgated a similar set of requirements in CAIR, published May 12, 2005, at 70 FR 25162. Illinois adopted and submitted rules in 35 IAC 225 that addressed CAIR which, among other provisions, required EGUs to participate in the CAIR NO_X Ozone Season Trading Program. This latter program has largely superseded the NO_X Budget Trading Program. Indeed, EPA no longer offers the NO_X Budget Trading Program as an option to meet the requirements of the NO_X SIP Call, and EPA encourages states to clarify their regulatory requirements by terminating provisions established with the NO_X Budget Trading Program that have been superseded by provisions established pursuant to CAIR.[1] EPA approved the pertinent Illinois rules of 35 IAC 225 on October 16, 2007, at 72 FR 58528. These rules fully supersede the requirements applicable to EGUs in 35 IAC 217 Subpart W with respect to ozone seasons of 2009 and beyond, and so EPA finds that the sunset of the Subpart W requirements (except to the extent that any enforcement actions for noncompliance prior to 2009 remain pending) is fully approvable.

Under the NO_X Budget Trading Program, an excess emissions penalty assessed for the 2008/2009 control periods requires the deduction of allowances from a subsequent control period. Generally, no NO_X Budget Trading Program allowances will be allocated for the 2009 control period and thereafter. Therefore, if any such excess emissions penalty is to be imposed, the Administrator will deduct CAIR NO_X Ozone Season allowances allocated for a subsequent control period.

II. Final Action

EPA is approving 35 IAC 217.751. This paragraph terminates the provisions of 35 IAC 217 Subpart W, which sets requirements for EGUs pursuant to the NO_X SIP Call, since these requirements have been

[1] EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (D.C. Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

superseded by requirements pursuant to CAIR. The sunset of these provisions takes effect with the 2009 ozone season, except that the provisions remain in effect for purposes of addressing noncompliance with Subpart W prior to 2009.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective April 30, 2010 without further notice unless we receive relevant adverse written comments by March 31, 2010. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective April 30, 2010.

III. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 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 52

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

Dated: February 10, 2010.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

■ 2. Section 52.740 is amended by adding paragraph (c)(185), to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(185) On December 7, 2009, Illinois submitted a rule for the sunset of the provisions of 35 IAC 217 Subpart W, regulating electric generating unit participation in the NO_X Budget Trading Program, since these provisions have been superseded by provisions established pursuant to the Clean Air Interstate Rule.

(i) *Incorporation by reference.* The Illinois rule at 35 IAC 217.751, entitled "Sunset Provisions," submitted on December 7, 2009, effective on November 2, 2009, is incorporated by reference.

[FR Doc. 2010–4088 Filed 2–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R07–OAR–2009–0860; FRL–9120–2]

Approval and Promulgation of Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Iowa State Operating Permits Program submitted by the State on February 20, 2009. The purpose of this revision is to increase emissions fees for the Title V Operating Permits Program. EPA is approving this revision pursuant to section 502 of the Clean Air Act and implementing regulations.

DATES: This direct final rule will be effective April 30, 2010, without further notice, unless EPA receives adverse comment by March 31, 2010. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2009–0860, by one of the following methods:

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

2. *E-mail: casburn.tracey@epa.gov.*

3. *Mail or Hand Delivery:* Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2009–0860. 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 through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Tracey Casburn at (913) 551–7016, or by e-mail at *casburn.tracey@epa.gov.*

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

Table of Contents

I. What Is Being Addressed in This Document?
II. What Part 70 Revision Is EPA Approving?
III. What Action Is EPA Taking?
IV. Statutory and Executive Order Reviews

I. What Is Being Addressed in This Document?

The State has revised Chapter 22, "Control of Pollution," of the Iowa Administrative Code. This revision was promulgated by the State's Environmental Protection Commission. EPA is approving the revision described below for the reasons discussed in this document.

II. What Part 70 Revision Is EPA Approving?

The State implements an operating permit program applicable to certain sources of air pollution in the state. One EPA requirement for a Title V program is that the permitting state must establish a fee structure sufficient to cover the costs of the program (40 CFR 70.9(b)). The State modified Iowa Rule 567–22.106(1). This modification increases the fixed dollar amount of $29 per ton to $56 per ton as the maximum annual Title V Operating Permit fee established on the first 4,000 tons of actual emissions of each regulated pollutant emitted from a source subject to the Title V operating permit program. The State analyzed projected program costs over a three-year period and determined this increase is necessary to maintain the State's current level of service. Increases in the costs associated with negotiated contracts for staff, indirect costs, operating costs of the State's ambient air quality monitoring network and projected decreases in actual emissions have made this revision necessary. The revision is consistent with the requirements of 40 CFR 70.9. The State effective date for this revision was February 4, 2009.

III. What Action Is EPA Taking?

EPA is approving the request to amend the Iowa Operating Permits Program. As noted previously in this document, the revision is consistent with applicable EPA requirements. The revision meets the requirements of the CAA, and implementing regulations. This revision is consistent with applicable EPA requirements in Title V of the CAA and 40 CFR Part 70.

EPA is processing this action as a direct final action because the revision makes a routine change to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, 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). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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.*). Because this rule approves 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).

This 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). 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). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This 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 approves a state rule implementing a Federal standard.

In reviewing state operating permit program submissions, EPA's role is to approve State choices, provided that they meet the requirements of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state operating permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program submission that otherwise satisfies the provisions of the CAA. 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. This 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.*).

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 rule 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 final 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 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 16, 2010.

Karl Brooks,

Regional Administrator, Region 7.

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

PART 70—[AMENDED]

■ 1. The authority citation for Part 70 continues to read as follows:

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

■ 2. Appendix A to Part 70 is amended by adding paragraph (l) under Iowa to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

* * * * *

(l) The Iowa Department of Natural Resources submitted for program approval a revision to rule 567–22.106(1) on February 20, 2009. The State effective date was February 4, 2009. This revision to the Iowa program is approved effective April 30, 2010.

* * * * *

[FR Doc. 2010–4144 Filed 2–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2008–0924; FRL–9119–3]

RIN 2060–AP40

Regulation of Fuels and Fuel Additives: Federal Volatility Control Program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 1997 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action establishes an applicable standard of 7.8 pounds per square inch (psi) Reid vapor pressure (RVP) under the federal volatility control program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 1997 8-hour ozone nonattainment area during the high ozone season—June 1st to September 15th of each year—beginning in 2010. This action requires the use of 7.8 psi RVP gasoline in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson counties, and in portions of Larimer, and Weld counties.

DATES: This final rule is effective March 31, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0924. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Kurt Gustafson, Office of Transportation and Air Quality, Transportation and Regional Programs Division, Mailcode 6406J, Environmental Protection Agency, 1200 Penn Ave., NW., Washington, DC 20460; telephone number: (202) 343–9219; fax number: (202) 343–9219; e-mail address: *gustafson.kurt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Regulated Entities. Entities potentially affected by this rule are fuel producers and distributors who do business in Colorado. Regulated entities include:

Examples of potentially regulated entities	NAICS codes [a]
Petroleum Refineries	324110
Gasoline Marketers and Distributors	424710 424720
Gasoline Retail Stations	447110
Gasoline Transporters	484220 484230

[a] North American Industry Classification System (NAICS).

This table provides only a guide for readers regarding entities likely to be regulated by this action. You should carefully examine the regulations in 40 CFR 80.27 to determine whether your facility is impacted. If you have further questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

II. Background

Section 211(h) of the Clean Air Act (CAA), requires that EPA promulgate regulations establishing a maximum RVP of 9.0 psi for gasoline introduced into commerce during the high ozone season. It also provides that EPA shall "establish more stringent Reid Vapor Pressure standards in a nonattainment area as the Administrator finds necessary to generally achieve comparable evaporative emissions (on a per-vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors." In today's action, EPA is establishing an applicable standard for gasoline at 7.8 pounds per square inch (psi) under the federal volatility control program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado 8-hour ozone nonattainment area (as codified in volume 40 of the Code of Federal Regulations (CFR) Part 81) during the high ozone season. This action requires the use of 7.8 psi RVP gasoline in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson counties, and in portions of Larimer and Weld counties.

Gasoline with 7.8 psi RVP is already required in the former 1-hour ozone nonattainment area, which represents a significant portion of the fuel used in the newly expanded area. The change codified in this action extends the low RVP fuel requirement to portions of Larimer and Weld counties and into the remaining portions of Arapahoe, Adams, Boulder and Broomfield counties. Denver is located in Petroleum Administration for Defense Districts (PADD) IV, which is the most isolated area within the 48 lower states of the U.S. in terms of supply. PADD IV includes the Rocky Mountain states (Montana, Idaho, Wyoming, Utah, and Colorado). Gasoline supply to the Denver market originates from 6 main refiners. These refiners vary in size, refining capacity and complexity. The refineries are: Suncor (Commerce City, CO), Valero Corp. (Commerce City, CO), Conoco-Phillips (Borger, TX), Valero Corp. (Sunray, TX), Sinclair Oil Corp. (Casper and Rawlings, WY), and Frontier Oil Corp. (Cheyenne, WY and El Dorado, KS).

III. Final Action

EPA is establishing an applicable standard of 7.8 psi RVP under the federal volatility control program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 1997 8-hour ozone nonattainment area (as codified in volume 40 of the Code of Federal Regulations (CFR) Part 81) during the high ozone season—June 1st to September 15th of each year—beginning in 2010. This action requires the use of 7.8 psi RVP gasoline in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson counties, and in portions of Larimer, and Weld counties.

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 rule 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). This rule will be effective 30 days after publication in the **Federal Register**.

IV. Response to Comments

Only one comment was submitted in response to EPA's Notice of Proposed Rulemaking. Frontier Refining, having identified themselves as a small refiner, commented that it would be unable to provide supplemental volumes of low (7.8 psi) RVP gasoline above its current volume to the Denver metro area and asked for small refiner relief. Frontier commented that it supplies 3,000 barrels a day of conventional (9.0 psi) gasoline that would no longer be available for the market in the 2010 summer control period when a lower vapor pressure is required, but that it would have the ability to produce the low RVP gasoline for the 2011 summer control period.

EPA understands the commenter's concerns. We believe that granting an exemption that would allow Frontier to sell 9.0 RVP fuel in areas where 7.8 RVP fuel is required would create significant enforcement issues. The 3,000 barrel per day allocation that Frontier Refining indicates that it would be unable to convert to lower RVP fuel represents approximately 3.7% of the total volume supplied daily to the Denver 8-hour nonattainment area. Although this volume of 9.0 fuel, which would be sold in the 7.8 areas, would be relatively small, EPA would likely not be able to determine if fuel at a retail outlet having an RVP exceeding 7.8 psi is in violation either because it is fuel from a refinery without an exemption, or fuel supplied by Frontier Refining. Further, we believe there are other factors such as economic incentives, for distributors and retailers to sell as much 9.0 RVP fuel supplied by Frontier Refining as possible in the 7.8 RVP areas, due to price differentials between products that would exacerbate this problem. This would likely result in more 9.0 RVP fuel being sold in the 7.8 RVP area than predicted and thus, affect the emissions reductions needed in the area. Also, we believe that distributors and retailers might sell, within the 7.8 RVP fuel

areas, 9.0 RVP fuel produced by large refiners to obtain the advantage of the price differential. We do not believe that requiring product transfer document information, indicating that 9.0 RVP fuel is being supplied by a small refiner and is useable in the 7.8 RVP fuel areas, would alleviate the enforcement issues largely because fuel is fungible as a result of mixing at terminals. This would mean much larger volumes of fuel would be eligible for the exemption than just the volume supplied by Frontier Refining, making enforcement by retail sampling and testing difficult.

Additionally, we have significant concerns about the emission increases associated with providing this relief, even if the enforcement problems noted above could be resolved to limit the fuel receiving the relief. This is because the Denver-Boulder-Greeley-Ft. Collins-Loveland 8-hour ozone nonattainment area is required to attain the standard as expeditiously as practicable, but no later than November 2010. On June 18, 2009, the State submitted an Ozone SIP revision with a dispersion modeled attainment demonstration. The attainment demonstration's truncated 2010 design value was 84 ppb; the modeled design value, however, was 84.8 ppb which is 0.2 ppb below a violation for the 1997 .08 ppm ozone NAAQS. In addition, the State's supporting documentation and SIP revision submittal also contain information (see submission in docket EPA–HQ–OAR–2008–0924) showing that 7.8 RVP fuel will provide additional reductions of VOC emissions, which will help ensure the success of Colorado's ozone action plan. Specifically, implementation of this fuel requirement will provide approximately three tons per day of additional VOC emission reductions, which will help the area towards its attainment goal in 2010. As shown by the attainment demonstration, there is no room in the area for increased emissions. The risk of failure to attain increases significantly if the area does not get all the emission reductions expected from the gasoline volatility program. We also believe the State's request to implement this program in the expanded 8-hour nonattainment area is a valid and reasonable request. We note that the economic hardship for Frontier Refining is limited to the 2010 ozone season only, and that there are other markets available for its 9.0 psi gasoline, which means that its product would not be stranded by this rule. Therefore, we believe that the risk of failure to attain, and the consequences connected to that outcome, is too great to warrant granting the relief requested.

Further, we have spoken to other refiners that supply the market and all have expressed support for the rule. And at least one refiner has stated it has the capacity to provide more low RVP gasoline to the area; therefore, it is reasonable to expect that the difference can be replaced with low RVP gasoline from other sources. In this case the clear need for the state to receive the emission reductions expected from this rule, both during the summer of 2010 and later, and the apparent ability of the industry overall to supply the required low RVP gasoline warrant not providing the individualized exception to this rule requested by Frontier Refining.

V. Environmental Impact

The Colorado Department of Public Health and Environment estimated that 2.7 tons per day of hydrocarbon (HC) emissions would be reduced from lowering gasoline volatility to 7.8 psi RVP in the expanded Non-Attainment Area (*see* docket for analysis).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and therefore is not subject to review under the EO.

The Colorado Department of Public Health and Environment prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in "Analysis of Expansion of Low RVP Area by the State of Colorado". A copy of the analysis is available in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, the phase I and phase 2 volatility rules (55 FR 11868, March 22, 1989 and 55 FR 23658, June 11, 1990) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0178. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are refiners, importers or blenders of gasoline that choose to produce or import low RVP gasoline for sale in the expanded portion of the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area not already covered by low RVP requirements, and gasoline distributors and retail stations in those areas. We have determined that only one small refiner would be affected by the low RVP requirements. Other small entities, such as gasoline distributors and retail stations located in the area that will become a covered area as a result of today's action, will be subject to the same requirements as those small entities which are located in the current covered area. EPA believes the impacts these small entities (*e.g.* small blenders, importers, retailers, etc) would occur primarily in the form of a slightly higher wholesale gasoline price which would then be passed along in product price increases. In the proposed rule, we estimated low RVP incremental costs to be 0.45 to 3.4 cents/gallon during the summer volatility season. There would be no fuel or price difference outside the summer control season. In the proposed rule, we indicated that out of total 3.4 million gallons of gasoline consumed per day in the Denver-Boulder-Greeley-Ft. Collins-Loveland area during the control season, approximately 133,000 gallons per day of fuel would need to meet the more stringent low RVP standard. Applying an average price of $2.50 per gallon for gasoline, the

incremental costs to produce the needed volume of low RVP gasoline equates to 0.002% to 0.02% of the total yearly consumer cost of gasoline in the Denver-Boulder-Greeley-Ft. Collins-Loveland NAA. For any one retail station that would have to convert entirely from a stream of 9.0 psi gasoline to low RVP gasoline in the summer season, the incremental costs, applying the same $2.50 per gallon retail price, would be 0.2% to 1.4% of the gas revenue during the control season or 0.05% to 0.4% on an annual basis. However, since all wholesale suppliers would increase prices by about the same amount, the competitive environment for small entities purchasing that gasoline should not be affected significantly.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule affects portions of the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area that were not previously part of the 1–Hour ozone nonattainment area. EPA estimates that 133,000 gallons a day of gasoline would be affected by this rule; resulting in an economic impact of less than $700,000 per summer. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Under Executive Order 13132, EPA may not issue an action that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed action.

EPA has concluded that this action will have federalism implications. Moreover, it also may preempt State law. Current gasoline performance standards adopted by the state require 9.0 psi gasoline in the affected area where this rule would require 7.8 psi gasoline. Accordingly, EPA provides the following federalism summary impact statement as required by section 6(c) of Executive Order 13132.

EPA consulted with State and local officials early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. The State indicated to EPA (*see* State's docket submission) that the use of 7.8 psi gasoline in the entire Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area was necessary to ensure the success of Colorado's ozone action plan. The state requested EPA undertake this rulemaking to update the boundaries of the low RVP summer gasoline program to correspond to current 8-hour ozone nonattainment area boundaries. Gasoline with 7.8 psi RVP is already required in the former 1-hour ozone nonattainment area, which represents a significant portion of the fuel used in the newly expanded area. The change requested by the state and codified in this action extends the low RVP fuel requirement to portions of Larimer and Weld counties and into the remaining portions of Arapahoe, Adams, Boulder and Broomfield counties.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule impacts portions of the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 1997 8-hour ozone nonattainment area not previously part of the 1–Hour nonattainment area. There are no Tribal lands in the regulated area. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the applicable 8-hour ozone NAAQS which establishes the level of protection provided to human health or the environment. This rule will tighten the applicable volatility standard of gasoline during the summer resulting in slightly lower mobile source emissions. Therefore disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result.

VII. Legal Authority and Statutory Provisions

Authority for this final action is in sections 211(h) and 301(a) of the Clean Air Act, 42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 80

Administrative practice and procedures, Air pollution control, Environmental protection, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: February 19, 2010.

Lisa P. Jackson,

Administrator.

■ Title 40, chapter I, part 80 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

■ 2. In § 80.27(a)(2)(ii), the table is amended by revising the entry for Colorado and footnote 2 to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

(2) * * *

(ii) * * *

APPICABLE STANDARDS [1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
* * *	*	*	*	*	
Colorado [2]	9.0	7.8	7.8	7.8	7.8
* * *	*	*	*	*	

[1] Standards are expressed in pounds per square inch (psi).

[2] The Colorado Covered Area encompasses the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area (*see* 40 CFR part 81).

* * * * *

[FR Doc. 2010–4085 Filed 2–26–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8121]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of

the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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 rule involves no policies that have federalism implications under Executive Order 13132.

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 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.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Alabama:				
Bayou La Batre, City of, Mobile County	015001	July 30, 1971, Emerg; March 17, 1972, Reg; March 17, 2010, Susp.	March 17, 2010	March 17, 2010.
Citronelle, City of, Mobile County	010277	July 23, 1975, Emerg; June 17, 1977, Reg; March 17, 2010, Susp.	.....do	-do.-
Creola, City of, Mobile County	010409	December 31, 1981, Emerg; December 31, 1981, Reg; March 17, 2010, Susp.	.....do	-do.-
Dauphin Island, Town of, Mobile County.	010418	December 11, 1970, Emerg; December 11, 1970, Reg; March 17, 2010, Susp.	.....do	-do.-
Mobile County, Unincorporated Areas	015008	December 11, 1970, Emerg; December 11, 1970, Reg; March 17, 2010, Susp.	.....do	-do.-
Mount Vernon, Town of, Mobile County	010169	July 25, 1975, Emerg; December 16, 1977, Reg; March 17, 2010, Susp.	.....do	-do.-
Prichard, City of, Mobile County	010170	April 22, 1975, Emerg; February 4, 1981, Reg; March 17, 2010, Susp.	.....do	-do.-
Saraland, City of, Mobile County	010171	May 9, 1974, Emerg; December 18, 1979, Reg; March 17, 2010, Susp.	.....do	-do.-
Mississippi:				
Canton, City of, Madison County	280109	August 9, 1974, Emerg; November 15, 1979, Reg; March 17, 2010, Susp.	.....do	-do.-
Flora, Town of, Madison County	280399	N/A, Emerg; January 31, 1995, Reg; March 17, 2010, Susp.	.....do	-do.-
Madison, City of, Madison County	280229	October 17, 1974, Emerg; December 16, 1980, Reg; March 17, 2010, Susp.	.....do	-do.-
Madison County, Unincorporated Areas	280228	July 17, 1975, Emerg; January 2, 1980, Reg; March 17, 2010, Susp.	.....do	-do.-
Pearl River Valley Water Supply District, Madison, Hinds, Leake, Rankin, and Scott Counties.	280338	N/A, Emerg; March 5, 1993, Reg; March 17, 2010, Susp.	.....do	-do.-
Ridgeland, City of, Madison County	280110	December 27, 1973, Emerg; September 28,1979, Reg; March 17, 2010, Susp.	.....do	-do.-

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region VI				
Arkansas:				
Batesville, City of, Independence County.	050091	April 9, 1975, Emerg; August 16, 1982, Reg; March 17, 2010, Susp.	.....do	-do.-
Cave City, City of, Independence and Sharp Counties.	050313	December 10, 1982, Emerg; May 1, 1985, Reg; March 17, 2010, Susp.	.....do	-do.-
Independence County, Unincorporated Areas.	050090	July 3, 1978, Emerg; January 6, 1988, Reg; March 17, 2010, Susp.	.....do	-do.-
Newark, City of, Independence County	050092	August 8, 1975, Emerg; September 1, 1987, Reg; March 17, 2010, Susp.	.....do	-do.-
Oil Trough, Town of, Independence County.	050093	July 3, 1975, Emerg; June 1, 1987, Reg; March 17, 2010, Susp.	.....do	-do.-

*-do- = Ditto.
Code for reading third column: Emerg—Emergency; Reg—Regular; Susp—Suspension.

Dated: February 23, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–4137 Filed 2–26–10; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 74

[WT Docket Nos. 08–166, 08–167, and ET Docket No. 10–24; FCC 10–16]

Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition; Public Information Collection Approved by Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective dates.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for public information collection 3060–1135 pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. This document announces the effective dates, of the rules previously published in the **Federal Register,** affected by this public information collection.

DATES: The following rules, originally published in the **Federal Register** 75 FR 3622, January 22, 2010, have been approved by OMB and are effective as follows: §§ 15.216, 74.802(e)(2) and 74.851(i), effective *March 1, 2010;* § 74.851(h), effective April 15, 2010.

FOR FURTHER INFORMATION CONTACT: Bill Stafford, Wireless Telecommunications Bureau, (202) 418–0563, e-mail *Bill.Stafford@fcc.gov* or Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail *Hugh.VanTuyl@fcc.gov.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1135

Expiration Date: 08/31/2010

Title: Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations (Wireless Microphones).

Estimated Annual Burden: $1,625,000 total annual cost; 32,924 total annual hours.

Needs and Uses: In the Report and Order [1] in WT Docket No. 08–166, WT Docket No. 08–167, ET Docket No. 10–24, FCC 10–16, adopted January 14, 2010 and released on January 15, 2010, the Federal Communications Commission ("Commission") modified the rules authorizing the operation of low power auxiliary stations (wireless microphones). The Report and Order requires all wireless microphones to cease operations in the 700 MHz Band (698–806 MHz) no later than June 12, 2010, making the band available for use by public safety entities such as police, fire, emergency services, and commercial licensees. To effectuate the Commission's plan to clear wireless microphones from the 700 MHz Band, the Report and Order provides an early clearing mechanism for the 700 MHz Band; requires that any person who manufactures wireless microphones or sells, leases, or offers them for sale or lease must display a disclosure at the point of sale or lease that informs consumers of the conditions that apply to the operation of wireless microphones in the core TV bands; and requires any person who manufactures, sells, leases, or offers for sale or lease, wireless microphones capable of operating in the 700 MHz Band that are destined for non U.S. markets, to include labeling that makes clear that the devices cannot be operated in the United States. In a related order under delegated authority,[2] the Wireless Telecommunications Bureau and Consumer and Governmental Affairs Bureau of the Federal Communications Commission have adopted the specific

[1] Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition; Amendment of Parts 15, 74 and 90 of the Commission's Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones, WT Docket Nos. 08–166, 08–167, ET Docket No. 10–24, *Report and Order and Further Notice of Proposed Rulemaking,* FCC 10–16 (rel. January 15, 2010); 75 FR 3622 (January 22, 2010).

[2] Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition; Amendment of Parts 15, 74 and 90 of the Commission's Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones, WT Docket Nos. 08–166, 08–167, ET Docket No. 10–24, *Order,* DA 10–92 (rel. January 15, 2010); 75 FR 3639 (January 22, 2010).

text that must be used in the consumer disclosure at the point of sale.

On January 22, 2010, the Commission requested emergency approval of the information collection requirements from the Office of Management and Budget (OMB).[3] On February 17, 2010, the Commission received OMB approval. The OMB control number for this collection is 3060–1135. This information collection will be used to ensure that these microphones do not continue to be used or continue to be made available for use in the United States in the 700 MHz Band, in contravention of the steps taken by the Commission to make the 700 MHz Band available for use by public safety entities and commercial licensees, and to provide them a home in the core TV spectrum.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

[FR Doc. 2010–4265 Filed 2–25–10; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–36, MB Docket No. 07–163, RM–11385, RM–11416]

FM Table of Allotments, Markham, Ganado, and Victoria, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The staff grants a rulemaking petition filed by Katherine Pyeatt to allot Channel 283A to Markham, Texas, as a second local service. The staff also grants a counterproposal filed by Fort Bend Broadcasting Company, licensee of Station KHTZ(FM), Ganado, Texas, to upgrade Station KHTZ(FM) from Channel 284C2 to Channel 235C and to modify its license accordingly.

DATES: Effective March 15, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 07–163, adopted January 27, 2010, and released January 29, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, <http://www.bcpiweb.com>.

The Notice of Proposed Rule Making in this proceeding proposed the allotment of Channel 235A at Markham, Texas. As described above, Fort Bend Broadcasting proposed the upgrade of its Station KHTZ(FM), Ganado, Texas, from Channel 284C2 to Channel 235C at a new transmitter site and the modification of its license to specify operation on non–adjacent Channel 235C. The document explains that it was not necessary to compare these conflicting proposals because an alternate channel is available for allotment at Markham. Specifically, the document allots Channel 283A at Markham in lieu of Channel 235A. Because the conflict was resolved, the document also grants Fort Bend's counterproposal to upgrade Station KHTZ(FM) to Channel 235C. To accommodate this upgrade, the document substitutes Channel 284C3 for Channel 236C3 at Victoria, Texas, and modifies the license for Station KVIC(FM), Victoria, to specify operation on Channel 284C3. Finally, because Fort Bend's counterproposal involves licensed stations, the channel substitutions for Station KHTZ(FM) at Gandado, Texas, and for KVIC(FM), Victoria, Texas, will be updated in the Commission's Consolidated Data Base System [CDBS].

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

The Commission will send a copy of the Report & Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Markham, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–4131 Filed 2–26–10; 8:45 am]

BILLING CODE 6712–01–S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

Defense Federal Acquisition Regulation Supplement; Additional Requirements Applicable to Multiyear Contracts (DFARS Case 2008–D023)

AGENCY: Defense Acquisition Regulations System. Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD is issuing this interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008. Section 811 is applicable to multiyear contracts for the procurement of major systems of DoD. This interim rule also implements section 8008 of the Fiscal Year 2007 Defense Appropriations Act, and the same language in subsequent DoD appropriations acts. Section 8008 specifically addresses multiyear procurement of aircraft.

DATES: Effective March 1, 2010. Comments on the interim rule should be submitted to the address shown below on or before April 30, 2010 to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008–D023, using any of the following methods:

[3] *See* Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested, 75 FR 3731 (January 22, 2010).

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

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2008–D023 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Meredith Murphy, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

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

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 703–602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

Section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 amends 10 U.S.C. 2306b and is applicable to multiyear contracts for the procurement of major systems of DoD. Section 811 imposes several additional requirements applicable to multiyear contracts for the acquisition of property, including deletion of one requirement, but the addition of six new requirements that the Secretary of Defense must certify in writing in the year he requests legislative authority to enter into a multiyear contract. Section 811 requires the Secretary of Defense to certify in writing, by no later than March 1 of the year in which the Secretary requests legislative authority to enter into a multiyear contract with respect to Major Defense Acquisition Programs (MDAPs), that the Secretary of Defense has made certain cost savings determinations with regard to such contract.

DoD has revised DFARS 217.1 accordingly. The revision to the DFARS does not include 2306b(a)(1)–(5), which was not revised by Section 811, and which is covered at Federal Acquisition Regulation (FAR) 17.105–1(b). These FAR paragraphs remain applicable to DOD, National Aeronautics and Space Administration, and the Coast Guard.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule relates primarily to internal operating procedures of DoD and will not have a significant cost or administrative impact on contractors or offerors. Therefore, DoD has not performed an initial regulatory flexibility analysis.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2008–D023) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 217

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 217 is amended as follows:

■ 1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

■ 2. Section 217.170 is amended by

■ a. Redesignating existing paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively; and

■ b. Adding new paragraph (b) to read as follows:

217.170 General.

* * * * *

(b) Any requests for increased funding or reprogramming for procurement of a major system under a multiyear contract authorized under this section shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary of Defense under 217.172(e)(2) (10 U.S.C. 2306b(i)(1)).

* * * * *

■ 3. Section 217.172 is amended by:

■ a. Redesignating paragraphs (c) through (h) as paragraphs (d) through (i);

■ b. Adding new paragraph (c); and

■ c. Revising newly redesignated paragraphs (d) and (f).

The addition and revisions read as follows:

217.172 Multiyear contracts for supplies.

* * * * *

(c) The head of the agency shall not enter into a multiyear contract unless—

(1) The Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract; and

(2) In the case of a contract for procurement of aircraft, the budget request includes full funding of procurement funds for production beyond advance procurement activities of aircraft units to be produced in the fiscal year covered by the budget.

(d)(1) The head of the agency must not enter into or extend a multiyear contract that exceeds $500 million (when entered into or extended until the Secretary of Defense identifies the contract and any extension in a report submitted to the congressional defense committees (10 U.S.C. 2306b(1)(5)).

(2) In addition, for contracts equal to or greater than $500 million, the head of the contracting activity must determine that the conditions required by paragraphs (f)(2)(i) through (vii) of this section will be met by such contract, in accordance with the Secretary's certification and determination required by paragraph (e)(2) of this section (10 U.S.C. 2306b(a)(1)(7)).

* * * * *

(f) The head of the agency shall ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (b) of this section:

(1) The multiyear exhibits required by DoD 7000.14–R, Financial Management Regulation, are included in the agency's budget estimate submission and the President's budget request.

(2) The Secretary of Defense certifies to Congress in writing, by no later than March 1 of the year in which the Secretary requests legislative authority to enter into such contracts, that each of the conditions in paragraphs (f)(2)(i) through (vii) of this section are satisfied (10 U.S.C. 2306b(i)(1)(A)–(G)).

(i) The Secretary has determined that each of the requirements in FAR 17.105, paragraphs (b)(1) through (6) will be met by such contract and has provided the basis for such determination to the congressional defense committees (10 U.S.C. 2306b(i)(1)(A)).

(ii) The Secretary's determination under paragraph (f)(2)(i) of this section was made after the completion of a cost analysis performed by the Cost Assessment and Program Evaluation

(CAPE) of the Department of Defense and such analysis supports the findings (10 U.S.C. 2306b(i)(1)(B)).

(iii) The system being acquired pursuant to such contract has not been determined to have experienced cost growth in excess of the critical cost growth threshold pursuant to section 10 U.S.C. 2433(d) within 5 years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded (10 U.S.C. 2306b(i)(1)(C)).

(iv) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most current estimates of the program acquisition unit cost or procurement unit cost for such system to determine that current estimates of such unit costs are realistic (10 U.S.C. 2306b(i)(1)(D)).

(v) During the fiscal year in which such contract is to be awarded, sufficient funds will be available to perform the contract in such fiscal year, and the future-years defense program for such fiscal year will include the funding required to execute the program without cancellation (10 U.S.C. 2306b(i)(1)(E)).

(vi) The contract is a fixed price type contract (10 U.S.C. 2306b(i)(1)(F)).

(vii) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities. The head of the agency shall submit to USD(C)(P/B) information supporting the agency's determination that this requirement has been met (10 U.S.C. 2306b(i)(1)(G)).

(viii) The head of the agency shall submit information supporting this certification to USD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(ix) In the case of a contract with a cancellation ceiling in excess of $100 million, if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract—

(A) The head of the agency shall, as part of this certification, give written notification to the congressional defense committees of—

(*1*) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(*2*) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(*3*) A financial risk assessment of not including the budgeting for costs of contract cancellation (10 U.S.C. 2306b(g)); and

(B) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award in accordance with the procedures at PGI 217.1.

(3) If the value of a multiyear contract for a particular system or component exceeds $500 million, use of a multiyear contract is specifically authorized by—

(i) An appropriations act (10 U.S.C. 2306b(l)(3)); and

(ii) A law other than an appropriations act (10 U.S.C. 2306b(i)(3)).

(4) The contract is for the procurement of a complete and usable end item (10 U.S.C. 2306b(i)(4)(A)).

(5) Funds appropriated for any fiscal year for advance procurement are obligated only for the procurement of those long-lead items that are necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law (10 U.S.C. 2306b(i)(4)(b)).

(6) The Secretary may make the certification under paragraph (f)(2) of this section notwithstanding the fact that one or more of the conditions of such certification are not met if the Secretary determines that, due to exceptional circumstances, proceeding with a multiyear contract under this section is in the best interest of the Department of Defense and the Secretary provides the basis for such determination with the certification (10 U.S.C. 2306b(i)(5)).

(7) The Secretary of Defense may not delegate this authority to make the certification under 217.172(f)(2) or the determination under 217.172(f)(6) to an official below the level of the Under Secretary of Defense for Acquisition, Technology, and Logistics (10 U.S.C. 2306b(i)(6)).

(8) The Secretary of Defense shall send a notification containing the findings of the agency head under FAR 17.105(b), and the basis for such findings, 30 days prior to the award of a multiyear contract or a defense acquisition program that has been specifically authorized by law ((10 U.S.C. 2306b(i)(7)).

(9) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (10 U.S.C. 2306b(i)(2)). One such restriction may be the achievement of specified cost savings. If the agency finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency shall assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request shall—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details regarding the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD (AT&L) DPAP for transmission to Congress via the Secretary of Defense and the President.

[FR Doc. 2010–2703 Filed 2–26–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 090206140–91414–04]

RIN 0648–AX39

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 29 Supplement

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to supplement the regulations implementing Amendment 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). Amendment 29 established a multi-species individual fishing quota (IFQ) program for the grouper and tilefish component of the commercial sector of the reef fish fishery in the Gulf of Mexico (Gulf) exclusive economic zone. This final rule removes several measures constraining harvest of shallow-water grouper species that were inadvertently not removed in the final rule for Amendment 29, further clarifies existing criteria for approval of new landing locations for both the red snapper IFQ program and grouper and tilefish IFQ program, and provides a

definition of "offloading" in the codified text for IFQ participants. The intent of this final rule is to enhance IFQ program enforcement capabilities, reduce confusion for IFQ participants offloading their fish, and allow for more efficient functioning of the IFQ programs for red snapper and groupers and tilefishes.

DATES: This rule is effective March 31, 2010.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) and record of decision may be obtained from Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701–5505.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by e-mail to *rich.malinowski@noaa.gov*, or *David__Rostker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

This final rule includes administrative measures that were not included in the final rule for Amendment 29 (74 FR 44732). These measures allow for more efficient functioning of the grouper and tilefish IFQ program, reduce confusion among IFQ participants who are offloading their fish, and further enhance enforcement capabilities of the IFQ programs, as intended by the Council. This final rule also discusses two options considered by the Council at the October 2009 Council meeting. On December 10, 2009, NMFS published a proposed rule to supplement the final rule for Amendment 29 and requested public comment (74 FR 65500). NMFS invited comments in the proposed rule on these options, which include extending the offloading window past 6 p.m. and providing an option to fishermen at the time of landing to provide a headcount of the IFQ fish onboard. NMFS received comments on both of these options, which are provided along with NMFS' responses to these comments in the comments and responses section below.

Comments and Responses

NMFS received seven public comments on the proposed supplemental rule to Amendment 29. One comment, regarding transferability of IFQ shares, fell outside the scope of the rule and was not addressed in this final rule. One comment pertained to the actions addressed in the proposed rule; the rest pertained to options the Council may consider in the future. No comments were received pertaining to the FRFA or economic impacts of this action. The following are NMFS' responses to topics in these comments.

Comment 1: The rule should further clarify what it means for a landing location to be accessible by public roads.

Response: The text states that in order for a proposed landing location to be considered publicly accessible, vehicles must have access to the site via public roads. NMFS believes that this language provides a sufficient description of the requirement, and further clarification is unnecessary.

Comment 2: If a landing location is disapproved, documentation should be provided explaining the disapproval, and an appeals process should be created.

Response: NMFS is working to develop a process for informing participants of the reasons for disapproving a landing location. This may include a publicly posted list of disapproved sites, or individual responses to participants.

An appeals process is neither practical nor necessary for the NMFS disapproval of a landing location. Locations are disapproved by NMFS if they are not accessible or are deemed unsafe for law enforcement agents. If participants rectify the situation to eliminate these deficiencies, they can re-submit the location for another review.

Comment 3: Fishermen with smaller vessels frequently do not have computers onboard and should be allowed to call dealers to receive a landing transaction code to transport fish.

Response: Under current regulations, the dealer must enter all landing transactions through the dealer IFQ account to receive a landing transaction code. Thus, fishermen may call their dealer to electronically connect to the IFQ system if they are at a landing site other than the dealer facility. The fishermen must still accurately weigh the fish on site to complete the landing transaction before transporting the fish. There is no specific requirement for a computer to be onboard a vessel and be used as the mechanism to receive a landing transaction code, only that a landing transaction code be received by the fishermen prior to transporting fish.

Comment 4: Allowing a headcount would help small-scale fishermen because weighing fish onboard is difficult, time consuming, and not very accurate.

Response: The Council is considering this option for the same reasons expressed in the comment. NMFS' preliminary determination is that providing a headcount instead of the weight of the catch at the time of landing would not allow for adequate monitoring and enforcement of the IFQ program. However, if the Council chooses to proceed with this option, some controls would need to be applied to restrict the use of this option (see Comment 5).

Comment 5: If a headcount is implemented, limitations and controls should be developed, such as allowing the headcount only for trailered vessels at public sites, creating a trip limit (e.g., 200 lb (90.7 kg)) for vessels using a headcount, and requiring weights if the shareholder's allocation is less than a minimum amount.

Response: If the Council chooses to proceed with the headcount option, the suggested restrictions would be considered. These controls and limitations would help address NMFS' concerns about monitoring and enforcement. However, these changes to the regulations would need to be addressed in future regulatory action before regulations could be implemented.

Comment 6: Extending the offloading time period past 6 p.m. would help fishermen who trailer their boats. Under current regulations, some fishermen landing after 6 p.m. must leave the boat overnight at their landing location and offload in the morning. Problems include: leaving a vessel unattended in a public area, the need to reassemble a crew for offloading, and restrictions on docking/parking at public sites.

Response: The Council is considering this option for the same reasons expressed in the comment. Because Amendment 29 specifically states that the allowable time period to offload IFQ fish is between 6 a.m. and 6 p.m. local time, the Council would need to address this option in a future plan amendment if it is to be implemented in the future.

Classification

The Administrator, Southeast Region, NMFS has determined that the FMP, Amendment 29, and the final rule are consistent with the Magnuson-Stevens Act, and other applicable laws.

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

NMFS prepared an FEIS for Amendment 29. A notice of availability for the FEIS was published on May 8, 2009 (74 FR 21684).

NMFS prepared a FRFA, as required by section 604 of the Regulatory Flexibility Act, for Amendment 29. A copy of the full analysis is available from NMFS (see **ADDRESSES**). Two of the measures contained in this final rule, namely the measure to remove the trip limit and accountability measures that constrain commercial harvest and the measure to clarify existing landing location criteria, are measures inherent in an IFQ program. Providing a definition of the term "offloading" for IFQ participants is further clarification of an existing IFQ component. The FRFA prepared for Amendment 29 analyzed the economic conditions that would exist assuming these measures were already included in the IFQ program for Gulf groupers and tilefishes. No new economic effects would be expected to accrue to this rule in addition to those described in Amendment 29 and no comments were received about the economic impacts of the proposed rule, therefore, no new economic analysis has been conducted for those measures in this final rule.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number (0648–0587). Public reporting burden for the "Landing Location Criteria Form" is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to the OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: February 23, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.16, a sentence is added after the heading in paragraph (c)(3)(ii) and paragraphs (c)(3)(v)(A) and (B) are revised to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

* * * * *

(c) * * *

(3) * * *

(ii) * * * For the purpose of this paragraph, offloading means to remove IFQ red snapper from a vessel. * * *

* * * * *

(v) * * *

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(*1*) Vehicles must have access to the site via public roads;

(*2*) Vessels must have access to the site via navigable waters;

(*3*) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard animal; a posted sign restricting access to the site; or any other physical deterrent.

* * * * *

■ 3. In § 622.20, a sentence is added after the heading in paragraph (c)(3)(ii) and paragraphs (c)(3)(v)(A) and (B) are revised to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

* * * * *

(c) * * *

(3) * * *

(ii) * * * For the purpose of this paragraph, offloading means to remove IFQ groupers and tilefishes from a vessel. * * *

* * * * *

(v) * * *

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(*1*) Vehicles must have access to the site via public roads;

(*2*) Vessels must have access to the site via navigable waters;

(*3*) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard animal; a posted sign restricting access to the site; or any other physical deterrent.

* * * * *

§ 622.44 [Amended]

■ 4. In § 622.44, paragraph (h) is removed.

■ 5. In § 622.49, paragraphs (a)(3)(i), (a)(4)(i), and (a)(5)(i) are revised to read as follows:

§ 622.49 Accountability measures.

(a) * * *

(3) * * *

(i) *Commercial fishery.* If SWG commercial landings exceed the applicable ACL as specified in this paragraph (a)(3)(I), the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the SWG commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for SWG, in gutted weight, are 7.99 million lb (3.62 million kg) for 2010, and 8.04 million lb (3.65 million kg) for 2011 and subsequent fishing years.

* * * * *

(4) * * *

(i) *Commercial fishery.* If gag commercial landings exceed the applicable ACL as specified in this paragraph (a)(4)(I), the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the gag commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for gag, in gutted

weight, are 1.71 million lb (0.78 million kg) for 2010, and 1.76 million lb (0.80 million kg) for 2011 and subsequent fishing years.

* * * * *

(5) * * *

(i) *Commercial fishery.* If red grouper commercial landings exceed the ACL, 5.87 million lb (2.66 million kg) gutted weight, the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the red grouper commercial quota for that following year at the level of the prior year's quota.

* * * * *

[FR Doc. 2010–4191 Filed 2–26–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 39
Monday, March 1, 2010

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

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–TP–0014]

RIN 1904–AB85

Energy Conservation Program: Public Meeting and Availability of the Notice of Proposed Rulemaking for Walk-In Coolers and Walk-In Freezers; Date Change

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

ACTION: Proposed rulemaking; date change.

SUMMARY: The Department of Energy published a proposed rule in the **Federal Register** on January 4, 2010, concerning a public meeting and availability of the notice of proposed rulemaking (NOPR) regarding test procedures for walk-in coolers and walk-in freezers. This document changes the date of the public meeting, the date of the deadline for requesting to speak at the public meeting, and the date of the deadline for submitting written comments on the framework document because the scheduled public meeting of February 11, 2010, was cancelled due to inclement weather, which forced a Federal Government shutdown. The public meeting will now be held on Wednesday, March 24, 2010, beginning at 9 a.m. The close of the comment period has been changed to March 31, 2010 in order to accommodate comments received at the public meeting and comments that may be submitted based on issues raised at the public meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–2192, *Charles.Llenza@ee.doe.gov* or Mr. Michael Kido, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8145, *Michael.Kido@hq.doe.gov*.

DATES: DOE will hold a public meeting in Washington, DC on Wednesday, March 24, 2010, beginning at 9 a.m. DOE must receive requests to speak at the meeting before 4 p.m., Wednesday, March 10, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Wednesday, March 17, 2010. Written comments on the NOPR are welcome, especially following the public meeting, and should be submitted by Wednesday, March 31, 2010.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures, requiring a 30-day advance notice. If you are a foreign national and wish to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

SUPPLEMENTARY INFORMATION: As noted above, DOE will hold a public meeting on Wednesday, March 24, 2010 in Washington, DC. The purpose of the meeting is to discuss the NOPR regarding test procedures for walk-in coolers and walk-in freezers. For additional information regarding the NOPR and the meeting, including detailed instructions for the submission of comments and access to the docket to read background documents or comments received, please refer to the January 4, 2010 proposed rule. 75 FR 186. The Department welcomes all interested parties, regardless of whether they participate in the public meeting, to submit written comments regarding matters addressed in the NOPR, as well as any other related issues, by March 31, 2010.

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

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–4124 Filed 2–26–10; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1343]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: On November 17, 2009, the Board published final rules amending Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation. The final rule limited the ability of financial institutions to assess overdraft fees for paying automated teller machine (ATM) and one-time debit card transactions that overdraw a consumer's account, unless the consumer affirmatively consents, or opts in, to the institution's payment of overdrafts for those transactions. The Board proposes to amend Regulation E and the official staff commentary to clarify certain aspects of the final rule.

DATES: Comments must be received on or before March 31, 2010.

ADDRESSES: You may submit comments, identified by Docket No. R–1343, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in

paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Dana E. Miller or Vivian W. Wong, Senior Attorneys, or Ky Tran-Trong, Counsel, Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

In November 2009, the Board adopted a final rule under Regulation E, which implements the Electronic Fund Transfer Act, limiting a financial institution's ability to assess fees for paying ATM and one-time debit card transactions pursuant to the institution's discretionary overdraft service without the consumer's affirmative consent to such payment. The rule was published in the **Federal Register** on November 17, 2009 and has a mandatory compliance date of July 1, 2010. *See* 74 FR 59033 (Regulation E final rule).

Since publication of the Regulation E final rule, institutions have requested clarification of particular aspects of the rule and further guidance regarding compliance with the rule. In addition, certain technical corrections are necessary. Accordingly, the Board is proposing to amend certain provisions of Regulation E and the official staff commentary, as discussed in Section III of this **SUPPLEMENTARY INFORMATION**. Separately, the Board is also proposing elsewhere in today's **Federal Register** to amend Regulation DD to make certain clarifications and conforming amendments in light of particular provisions adopted in the Regulation E final rule.

Although comment is requested on the proposed amendments, the Board emphasizes that the purpose of this rulemaking is to clarify and facilitate compliance with the final rule, not to reconsider the need for—or the extent of—the protections that the rule affords consumers. Thus, commenters are encouraged to limit their submissions accordingly.

In addition, because the Board does not intend to extend the mandatory compliance date for the Regulation E final rule, any amendments must be adopted in final form promptly to give institutions sufficient time to implement the amended rule by July 1, 2010. In order to ensure that final clarifications can be provided as soon as possible, comments on this proposal must be submitted within 30 days from publication in the **Federal Register**.

II. Statutory Authority

The Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.,* is implemented by the Board's Regulation E (12 CFR part 205). The purpose of the act and regulation is to provide a framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. An official staff commentary interprets the requirements of Regulation E (12 CFR part 205 (Supp. I)). In the **SUPPLEMENTARY INFORMATION** to the Regulation E final rule, the Board described its statutory authority and applied that authority to the requirements of the rule. For purposes of this rulemaking, the Board continues to rely on the description of its legal authority and analysis in the Regulation E final rule.

III. Section-by-Section Analysis

A. Section 205.17(a)—Definition

Section 205.17(a) of the Regulation E final rule defines the term "overdraft service" for purposes of § 205.17. In particular, § 205.17(a)(3) of the final rule explains that the term does not include payments of overdrafts pursuant to a line of credit or other credit exempt from Regulation Z pursuant to 12 CFR 226.3(d)—that is, credit secured by margin securities in brokerage accounts extended by Securities and Exchange Commission or Commodity Futures Trading Commission-registered broker-dealers. Comment 17(a)–1 provided further guidance on this exception. However, comment 17(a)–1 inadvertently stated that "§ 205.17(a)(3) does not apply" to margin credit transactions. As drafted, this would mean that the § 205.17(a)(3) exception to the definition of "overdraft service" does not apply to margin credit. The proposed rule revises comment 17(a)–1 to eliminate the incorrect reference.

B. Section 205.17(b)—Opt-In Requirement

17(b)(1), 17(b)(4)—General Rule and Scope of Opt-In; Notice and Opt-In Requirements

Section 205.17(b)(1) of the Regulation E final rule sets forth the general rule prohibiting an account-holding financial institution from assessing a fee or charge on a consumer's account held at the institution for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, unless the institution satisfies several requirements, including providing consumers notice and obtaining the consumer's affirmative consent to the overdraft service. Section 205.17(b)(4) includes an exception from the notice and opt-in requirements of § 205.17(b)(1) for institutions that have a policy and practice of declining ATM and one-time debit card transactions for which authorization is requested, when the institution has a reasonable belief that the consumer's account has insufficient funds at the time of the authorization request.

Since the issuance of the final rule, questions have been raised whether the § 205.17(b)(4) exception would permit institutions with such a policy and practice to assess an overdraft fee without the consumer's affirmative consent if an authorized transaction settles on insufficient funds. To clarify the scope of this provision, the Board is proposing to amend §§ 205.17(b)(1), (b)(4), and the related commentary to explain that the fee prohibition of § 205.17(b)(1) applies to all institutions, and that § 205.17(b)(4) provides relief only from the requirements of §§ 205.17(b)(1)(i)–(iv), including the notice and opt-in requirements, when no overdraft fees are assessed. The proposal thus clarifies the Board's intent that institutions cannot assess a fee for the payment of ATM and one-time debit card overdrafts if the consumer does not opt in, even if the institution has a policy and practice of declining ATM and one-time debit card transactions upon a reasonable belief that an account has insufficient funds.

An institution may not be able to avoid paying certain ATM or one-time debit card transactions that overdraw a consumer's account, even if a consumer does not opt in. This can occur in limited circumstances. For example, an institution may authorize a debit card transaction on the reasonable belief that there are sufficient funds in the account, but intervening transactions, such as checks, may reduce the available funds in the checking account before the debit card transaction is presented for settlement, causing an overdraft. Or, a merchant may request authorization of an amount that is less than the amount later submitted for settlement, or not request authorization at all. The proposal clarifies that in such circumstances, an institution may not assess an overdraft fee for paying the debit card transaction into overdraft.

In the January 2009 proposed rule, the Board proposed two limited exceptions to the fee prohibition under proposed § 205.17(b)(5), including one which would have permitted an institution to assess overdraft fees, even if the

consumer had not opted in, if the institution had a reasonable belief that there were sufficient funds available in the consumer's account at the time it authorized an ATM or one-time debit card transaction. This exception did not extend to transactions for which the merchant did not request authorization.

The Board declined to adopt the proposed exceptions to the fee prohibition under § 205.17(b)(5). *See* 74 FR 59033, 59046 (Nov. 17, 2009). As explained in the **SUPPLEMENTARY INFORMATION** to the Regulation E final rule, consumers who choose not to opt in may reasonably expect that an ATM or one-time debit card transaction will be declined if there are insufficient funds in their account, and that they will not be assessed overdraft fees. Adopting exceptions to the fee prohibition would undermine the consumer's ability to understand the institution's overdraft practices and make an informed choice. While the Board recognized that both financial institutions and consumers can have imperfect account balance information, the Board stated that financial institutions are in a better position to mitigate the information gap than consumers, such as through improvements to payment processing systems.

By contrast, the exception adopted by the Board in § 205.17(b)(4) of the Regulation E final rule was intended to provide relief from the requirements of §§ 205.17(b)(1)(i)–(iv), including but not limited to the requirement to provide an opt-in notice.[1] The exception was not intended to permit institutions to assess fees for paying overdrafts absent consumer consent.

If § 205.17(b)(4) were read to permit an exception from the fee prohibition, consumers with accounts at institutions that do not offer discretionary overdraft programs would be treated differently and provided fewer protections than consumers at institutions that do offer such programs, where an institution cannot prevent paying overdrafts resulting from ATM and one-time debit card transactions. Specifically, consumers with accounts at institutions that do not offer discretionary overdraft services could be assessed an overdraft fee without consenting to the payment of overdrafts. In contrast, consumers with accounts at institutions that do offer discretionary overdraft services and who did not opt in could not be assessed such fees. Such a result would not promote transparency or benefit consumers overall.

Nonetheless, the Board understands that the § 205.17(b)(4) exception could be read to permit institutions to assess overdraft fees, even if the consumer did not opt in. Accordingly, the Board is proposing to revise § 205.17(b)(4) and the related commentary to clarify that the prohibition on assessing overdraft fees under § 205.17(b)(1) applies to all institutions, including those institutions that have a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction.[2] The proposal adds new comment 17(b)(4)–1 to explain that, assuming a consumer has not opted in, if an institution with such a policy and practice authorizes an ATM or one-time debit card transaction on the reasonable belief that the consumer has sufficient funds in the account to cover the transaction, but at settlement the consumer has insufficient funds in the account (for instance, due to intervening transactions that post to the consumer's account), the institution may not assess an overdraft fee or charge for paying that transaction.[3] However, institutions that have such a policy and practice are not required to comply with the requirements of §§ 205.17(b)(1)(i)–(iv), including the notice and opt-in requirements, if no fees are assessed.[4]

17(b)(1)(iv)—Written Confirmation

Section 205.17(b)(1)(iv) states that an institution must provide the consumer a written confirmation of his or her opt-in choice before charging overdraft fees. The written confirmation helps ensure that a consumer intended to opt into an institution's overdraft service by providing the consumer with a written record of that choice. Written confirmation is particularly appropriate to evidence the consumer's choice where a consumer opts in by telephone. Some institutions have asked whether the written confirmation required by § 205.17(b)(1)(iv) must be sent to the consumer before the institution may assess overdraft fees.

The requirement to provide the confirmation before charging overdraft fees balances the interest in ensuring that consumers understand their choice, with the interest in providing consumers access to overdraft services expeditiously when requested. The requirement ensures that institutions send out the written confirmation promptly, which minimizes the time until consumers receive the confirmation, while recognizing that a consumer may not opt into an institution's overdraft service until the time the service is needed. Permitting fees to be assessed once the written confirmation has been sent permits institutions to pay the transaction with minimal delay to the consumer. Consumers who did not intend to opt in would be able to revoke the opt-in at any time.

To provide additional clarity, the Board is proposing to revise comment 17(b)–7 to clarify that an institution may not assess any overdraft fees or charges on the consumer's account until the institution has sent the written confirmation. To address concerns about operational and litigation risks related to tracking compliance with the requirements for charging overdraft fees, the proposed comment also states that an institution complies with § 205.17(b)(1)(iv) if it has adopted reasonable procedures designed to ensure that the written confirmation is sent before fees are assessed.

Comment 17(b)–8—Outstanding Negative Balance

While many institutions charge the same per-item overdraft fee amount regardless of the amount of the consumer's negative balance, some institutions impose tiered fees based on the amount of the consumer's outstanding negative balance at the end of the day. For example, an institution may impose a $10 per-item overdraft fee if the consumer's account is overdrawn by less than $20, and a $25 per-item overdraft fee if the account is overdrawn by $20 or more. Questions have been raised as to how overdraft fees may be assessed in these circumstances.

[1] *See* 74 FR 59045 (noting that the proposed rule "created an exception *to the notice and opt-in requirement* for institutions that have a policy and practice of declining to pay any ATM withdrawals or one-time debit card transactions for which authorization is requested, when the institution has a reasonable belief that the consumer's account does not have sufficient funds available to cover the transaction at the time of the authorization request" (emphasis added)).

[2] The Board is also proposing conforming revisions to § 205.17(b)(1).

[3] The proposal also revises comment 17(b)(4)–1, redesignated as comment 17(b)(4)–2, to address the application of the final rule when institutions follow different practices for different types of accounts. The proposed comment is also revised to eliminate text now reflected in proposed new comment 17(b)(4)–1.

[4] Some institutions have asked whether they may provide supplemental materials with the opt-in notices that describe their overdraft services. In footnote 39 to the Regulation E final rule, the Board explained that institutions may provide consumers other information about their overdraft services and other overdraft protection plans in a separate document outside of the opt-in notice. See 74 FR at 59047. However, institutions are reminded that, to the extent such additional materials promote the payment of overdrafts under Regulation DD, those materials may be subject to additional disclosure requirements under 12 CFR 230.11(b).

To the extent institutions impose tiered fees based on the amount of the consumer's outstanding negative balance, proposed new comment 17(b)–8 clarifies that the fee or charge must be based on the amount of the negative balance attributable solely to check, ACH, or other transactions not subject to the fee prohibition. For instance, if a consumer's negative balance of $30 is attributable in part to a debit card transaction that initially overdrew the account, and in part to a $10 check that the bank subsequently paid, the institution should base any overdraft fees solely on an outstanding negative balance of $10.

Comment 17(b)–9—Daily or Sustained Overdraft, Negative Balance, or Similar Fees or Charges

Some institutions assess daily or sustained overdraft, negative balance, or similar fees or charges when a consumer has overdrawn an account and has not repaid the amount overdrawn within a specified period of time. For example, today, if a consumer overdraws his or her account by $30, the institution may assess an overdraft fee of $20. If the resulting negative $50 balance is not paid back on the fifth day, the institution may assess an additional $20 sustained overdraft fee.

In certain circumstances, an ATM or one-time debit card transaction may overdraw a consumer's account, even if the consumer has not opted in, as discussed above. The Board has been asked whether the prohibition in § 205.17(b)(1) against assessing overdraft fees on ATM and one-time debit card transactions where the consumer has not opted in also extends to daily or sustained overdraft, negative balance, or similar fees or charges.

In addition, a consumer who has not opted in may sometimes overdraw his or her account as a consequence of the payment both of ATM or one-time debit card transactions and of check, ACH, or other transactions not subject to the fee prohibition in § 205.17(b)(1). The Board has also been asked to clarify whether a daily or sustained overdraft, negative balance, or similar fee or charge may be assessed if an account is overdrawn based in part on an ATM or one-time debit card transaction and in part to a check, ACH or other type of transaction not subject to the final rule. The proposed clarifications would address both questions.

Under the final rule, consumers who do not opt in may not be assessed any overdraft fees for paying ATM or one-time debit card transactions, including daily or sustained overdraft, negative balance, or similar fees or charges. As noted above, consumers who do not opt in may reasonably expect not to incur per-item overdraft fees for ATM and one-time debit card transactions, even if such transactions overdraw their account. Similarly, such consumers would reasonably expect not to incur daily or sustained overdraft, negative balance, or similar fees or charges due to these transactions. For clarity, proposed comment 17(b)–9.i explains that if a consumer has not opted in, the prohibition on assessing overdraft fees and charges in § 205.17(b)(1) applies to all overdraft fees or charges, including but not limited to daily or sustained overdraft, negative balance, or similar fees or charges, assessed for paying an ATM or one-time debit card transaction. Thus, where a consumer's negative balance is attributable solely to an ATM or one-time debit card transaction, the rule prohibits the assessment of such sustained overdraft fees if the consumer has not opted in. For example, if a consumer who has not opted in has a $50 account balance, and the institution nonetheless pays a $60 debit card transaction (and no other transactions occur), the institution may not charge any overdraft fees, including a daily or sustained overdraft, negative balance, or similar fee or charge, for paying that debit card transaction.

The Regulation E final rule applies solely to ATM and one-time debit card transactions. That is, the final rule does not apply to overdraft fees imposed in connection with other types of transactions, including check, ACH or recurring debit card transactions. As a result, institutions may impose daily or sustained overdraft, negative balance, or similar fees or charges associated with paying overdrafts for such transactions. For example, where a consumer has a $50 account balance, and the institution pays a $60 check, the institution may charge a per-item overdraft fee, as well as a daily or sustained, negative balance, or similar fee or charge if a negative balance remains outstanding.

Similarly, proposed comment 17(b)–9.i clarifies that where the consumer's negative balance is attributable in part to a check, ACH or other transaction not subject to the fee prohibition of § 205.17(b)(1), an institution is not prohibited from assessing a daily or sustained overdraft, negative balance, or sustained fee, even if the negative balance is also attributable in part to an ATM or one-time debit card transaction. The Board believes this result is consistent with the general scope of the Regulation E final rule, which prohibits fees only with respect to ATM and one-time debit card transactions. For example, if a consumer has a $50 account balance, and the institution posts a one-time debit card transaction of $60 and a check transaction of $40 that same day, the institution may charge a per-item fee for the check overdraft (but cannot assess any overdraft fees for the debit card transaction because the consumer has not opted in). Likewise, assuming no other transactions occur or deposits are made to the account, because the consumer's negative balance is attributable in part to the $40 check, the institution may charge a sustained overdraft fee when permitted by the account agreement.

The proposal also provides guidance on the date on which such a fee may be assessed. Specifically, proposed comment 17(b)–9.i states that the date is determined by the date on which the check, ACH, or other transaction is paid into overdraft. Because the rule does not cover checks, ACH, or other transactions, the Board believes institutions may charge per-item overdraft fees, or sustained or other similar fees. Nonetheless, the Board believes it is appropriate to base the date on which fees may be charged on the date that the transaction not subject to the rule is paid.

Proposed comment 17(b)–9.ii includes three examples illustrating how fees may be applied when a negative balance is attributable in part to a check, ACH, or other transaction not subject to § 205.17(b)(1). The first example demonstrates the general application of the rule. The second example addresses the result when a consumer with an outstanding negative balance makes a deposit that diminishes the negative balance, but does not bring the account current. The third example demonstrates how to determine the date when fees may apply when the check, ACH or other transaction is paid on a different date than the ATM or one-time debit card transaction that overdraws the account.

The examples are based on certain assumptions. Among them are that the institution posts ATM and debit card transactions before it posts other transactions, and that it allocates deposits to debits in the same order in which it posts debits. Thus, the examples assume that deposits made to the account are allocated first to debit card transactions, then to checks. The proposed rule does not, however, require transactions to be posted or deposits to be allocated in the manner set forth in the example. Institutions may post transactions or allocate deposits as permitted by applicable law.

The Board recognizes that programming systems to conform to the

proposed rule may raise operational and cost concerns, and could be challenging to implement by July 1, 2010. Institutions that do not make the necessary systems changes could not assess daily or sustained, negative balance or similar overdraft fees or charges, even on checks and other transactions not subject to the opt-in requirement, after the final rule's mandatory compliance date of July 1, 2010.

17(b)(3)—Same Account Terms, Conditions, and Features

Comment 17(b)(3)–2 provides guidance on limited-feature deposit account products in light of the requirement under § 205.17(b)(3) to offer consumers the same account terms, conditions, and features regardless of their opt-in choice. This comment inadvertently included an incorrect cross-reference. The proposal revises the comment to omit the cross-reference.

IV. Regulatory Analysis

Sections VII and VIII of the **SUPPLEMENTARY INFORMATION** to the Regulation E final rule set forth the Board's analyses under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1). *See* 74 FR 59050–59052. Because the proposed amendments are clarifications and would not, if adopted, alter the substance of the analyses and determinations accompanying the Regulation E final rule, the Board continues to rely on those analyses and determinations for purposes of this rulemaking.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside ►bold-type arrows◄ while language that would be deleted is set off with **[**bold-type brackets**]**.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons discussed in the preamble, the Board proposes to amend 12 CFR part 205 and the Official Staff Commentary, as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

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

Authority: 15 U.S.C. 1693b.

2. Section 205.17 is amended by revising paragraphs (b)(1) introductory text and (b)(4) to read as follows:

* * * * *

(b) *Opt-in requirement.* (1) *General.* Except as provided under paragraph**[**s (b)(4) and**]** (c) of this section, a financial institution holding a consumer's account shall not assess a fee or charge on a consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, unless the institution:

* * * * *

(4) **[***Exception to***]**►*Application to certain financial institutions;*◄ *notice and opt-in requirements.* **[**The requirements of § 205.17(b)(1) do not apply to an institution that has**]**►The prohibition on assessing overdraft fees under § 205.17(b)(1) applies to all institutions, including an institution that has◄ a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction.► However, such an institution is not required to comply with the requirements of §§ 205.17(b)(1)(i)–(iv), including the notice and opt-in requirements, if it does not assess overdraft fees.◄ Financial institutions may ► rely on◄**[**apply**]** this ►provision◄**[**exception**]** on an account► type◄-by-account► type◄ basis.

* * * * *

3. In Supplement I to part 205,

a. In Section 205.17(a), paragraph 1. is revised.

b. In Section 205.17(b), paragraph 7. is revised.

c. In Section 205.17(b), new paragraphs 8. and 9. are added.

d. In Section 205.17(b), paragraph 17(b)(3)–2. is revised.

e. In Section 205.17(b), paragraph 17(b)(4)–1. is redesignated as 17(b)(4)–2. and revised, and new paragraph 17(b)(4)–1. is added.

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.17(a)—Requirements for Overdraft Services

17(a) Definition

1. *Exempt securities- and commodities-related lines of credit.* **[**Section 205.17(a)(3)**]**►The definition of "overdraft service"◄ does not **[**apply to**]**►include the payment of◄ transactions in a securities or commodities account pursuant to which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

17(b) Opt-In Requirement

* * * * *

7. *Written confirmation.* A financial institution may comply with the requirement in § 205.17(b)(1)(iv) by providing to the consumer a copy of the consumer's completed opt-in form or by sending a letter or notice to the consumer acknowledging that the consumer has elected to opt into the institution's service. The written confirmation notice must include a statement informing the consumer of his or her right to revoke the opt-in at any time. To the extent the institution complies with the written confirmation requirement by providing a copy of the completed opt-in form, the institution may include the statement about revocation on the initial opt-in notice.► An institution may not assess any overdraft fees or charges on the consumer's account until the institution has sent the written confirmation. An institution complies with this requirement if it has adopted reasonable procedures designed to ensure that the written confirmation is sent before fees are charged.

8. *Outstanding Negative Balance.* For a consumer who has not opted in, to the extent that a fee or charge is based on the amount of the outstanding negative balance, the fee or charge must be based on the amount of the negative balance attributable solely to check, ACH, or other transactions not subject to the fee prohibition. For instance, if a consumer's negative balance of $30 is attributable in part to a debit card transaction that overdrew the account, and in part to a $10 check subsequently paid by the institution, the institution should base any overdraft fees solely on an outstanding negative balance of $10.

9. *Daily or Sustained Overdraft, Negative Balance, or Similar Fee or Charge*

i. *Daily or sustained overdraft, negative balance, or similar fees or charges.* If a consumer has not opted into the institution's overdraft service, the prohibition on assessing overdraft fees or charges in § 205.17(b)(1) applies to all overdraft fees or charges, including but not limited to daily or sustained overdraft, negative balance, or similar fees or charges. Thus, where a consumer's negative balance is solely attributable to an ATM or one-time debit card transaction, the rule prohibits the assessment of such fees unless the consumer has opted in. However, the

rule does not prohibit an institution from assessing daily or sustained overdraft, negative balance, or similar fees or charges if a negative balance is attributable in whole or in part to a check, ACH, or other transaction not subject to the fee prohibition of § 205.17(b)(1). In such case, the date on which such a fee may be assessed is determined by the date on which the check, ACH, or other transaction is paid into overdraft.

ii. *Examples.* The following examples illustrate the application of the rule. For each example, assume the following: (a) The debit card transactions are paid into overdraft, even though the consumer has not opted in, because the amount of the transaction at settlement exceeded the amount authorized or the amount was not submitted for authorization; (b) under the terms of the account agreement, the institution may charge a one-time sustained overdraft fee of $20 on the fifth consecutive day the consumer's account remains overdrawn; (c) the institution posts ATM and debit card transactions before other transactions; and (d) the allocates deposits to account debits in the same order in which it posts debits.

a. Assume that a consumer has a $50 account balance on March 1. That day, the institution posts a one-time debit card transaction of $60 and a check transaction of $40. The institution charges an overdraft fee of $20 for the check overdraft but cannot assess any overdraft fees for the debit card transaction because the consumer has not opted in. At the end of the day, the consumer has an account balance of negative $70. The consumer does not make any deposits to the account, and no other transactions occur between March 2 and March 6. Because the consumer's negative balance is attributable in part to the $40 check (and associated overdraft fee), the institution may charge a sustained overdraft fee on March 6.

b. Same facts as in a., except that on March 3, the consumer deposits $40 in the account. The institution allocates the $40 to the debit card transaction first, consistent with its posting order policy. At the end of the day on March 3, the consumer has an account balance of negative $30, which is attributable to the check transaction (and associated overdraft fee). The consumer does not make any further deposits to the account, and no other transactions occur between March 4 and March 6. Because the remaining negative balance is attributable to the March 1 check transaction, the institution may charge a sustained overdraft fee on March 6.

c. Assume that a consumer has a $50 account balance on March 1. That day, the institution posts a one-time debit card transaction of $60. At the end of the day on March 1, the consumer has an account balance of negative $10. Because the consumer did not opt in, the institution may not assess an overdraft fee for the debit card transaction. On March 3, the institution pays a check transaction of $100 and charges an overdraft fee of $20. At the end of the day on March 3, the consumer has an account balance of negative $130. The consumer does not make any further deposits to the account, and no other transactions occur between March 4 and March 8. Because the consumer's negative balance is attributable in part to the check, the institution may assess a $20 sustained overdraft fee. However, because the check was paid on March 3, the institution must use March 3 as the start date for determining the date on which the sustained overdraft fee may be assessed under the terms of the account agreement. Thus, the institution may charge a $20 sustained overdraft fee on March 8.◄

* * * * *

Paragraph 17(b)(3)—Same Account Terms, Conditions, and Features

* * * * *

2. *Limited-feature bank accounts.* Section 205.17(b)(3) does not prohibit institutions from offering deposit account products with limited features, provided that a consumer is not required to open such an account because the consumer did not opt in [(see comment 17(b)(3)–2)]. For example, § 205.17(b)(3) does not prohibit an institution from offering a checking account designed to comply with state basic banking laws, or designed for consumers who are not eligible for a checking account because of their credit or checking account history, which may include features limiting the payment of overdrafts. However, a consumer who applies, and is otherwise eligible, for a full-service or other particular deposit account product may not be provided instead with the account with more limited features because the consumer has declined to opt in.

* * * * *

Paragraph 17(b)(4)—[Exception to]►Application to certain financial institutions;◄ notice and opt-in requirements.

►1. *Application of fee prohibition.* Although the fee prohibition in § 205.17(b)(1) applies to all institutions, an institution that has a policy and practice of declining to authorize and pay ATM or one-time debit card transactions when it has a reasonable belief that the consumer does not have sufficient funds to cover the transaction is not required to provide an opt-in notice or comply with the other requirements of §§ 205.17(b)(1)(i)–(iv). Nonetheless, the prohibition against assessing overdraft fees or charges in § 205.17(b)(1) still applies. For example, if an institution with such a policy and practice authorizes an ATM or one-time debit card transaction on the reasonable belief that the consumer has sufficient funds in the account to cover the transaction, but at settlement, the consumer has insufficient funds in the account (for example, due to intervening transactions that post to the consumer's account), the institution may not assess an overdraft fee or charge for paying that transaction, and it is not required to provide an opt-in notice.

2◄[1]. *Account►type◄-by-account ►type application◄[exception]*. [If a financial institution has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions with respect to one type of deposit account offered by the institution, when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction, that account is not subject to § 205.17(b)(1), even if other accounts that the institution offers are subject to the rule. For example, if the institution] ►If a financial institution ◄offers three types of checking accounts, and the institution has [such] a policy and practice ►of declining to authorize and pay any ATM or one-time debit card transactions when it has a reasonable belief that the consumer does not have sufficient funds to cover the transaction ◄with respect to only one of the three types of accounts, that [one] type of account is not subject to the notice ►and opt-in ◄requirement►s, assuming no fees are charged◄. However, the other two types of accounts offered by the institution remain subject to the notice ►and opt-in ◄requirement►s◄.

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 18, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–3720 Filed 2–26–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1315]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: On January 29, 2009, the Board published final rules amending Regulation DD, which implements the Truth in Savings Act, and the official staff commentary to the regulation. The final rule addressed depository institutions' disclosure practices related to overdraft services, including balances disclosed to consumers through automated systems. The Board proposes to amend Regulation DD and the official staff commentary to clarify the application of the rule to retail sweep programs and the terminology for overdraft fee disclosures, and to make amendments that conform to the Board's final Regulation E amendments addressing overdraft services, adopted in November 2009.

DATES: Comments must be received on or before March 31, 2010.

ADDRESSES: You may submit comments, identified by Docket No. R–1315, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Dana E. Miller or Vivian W. Wong, Senior Attorneys, or Ky Tran-Trong, Counsel, Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

In December 2008, the Board adopted a final rule amending Regulation DD, which implements the Truth in Savings Act, and the official staff commentary to the regulation. The final rule addressed depository institutions' disclosure practices related to overdraft services, including balances disclosed to consumers through automated systems. The rule was published in the **Federal Register** on January 29, 2009 and became effective January 1, 2010. *See* 74 FR 5584 (Regulation DD final rule).[1]

In November 2009, the Board adopted a final rule under Regulation E, which implements the Electronic Fund Transfer Act, limiting a financial institution's ability to assess fees for paying ATM and one-time debit card transactions pursuant to the institution's discretionary overdraft service without the consumer's affirmative consent to such payment. The Rule was published in the **Federal Register** on November 17, 2009 and has a mandatory compliance date of July 1, 2010. *See* 74 FR 59033 (Regulation E final rule).

Since publication of the two rules, institutions and others have requested clarification of particular aspects of the rule and further guidance regarding compliance with the rule. In addition, conforming amendments to the Regulation DD final rule are necessary in light of certain provisions subsequently adopted in the Regulation E final rule. Accordingly, the Board is proposing to amend Regulation DD and the official staff commentary, as discussed in Section III of this **SUPPLEMENTARY INFORMATION**. Similarly, elsewhere in today's **Federal Register**, the Board has proposed to amend certain aspects of the Regulation E final rule.

[1] The Board published a technical amendment in April 2009 correcting a printing error with respect to Sample Form B–10. Depository institutions must use Sample Form B–10, or a substantially similar form, including the box and gridlines, to provide totals for overdraft fees and returned item fees for the statement cycle and year-to-date. 74 FR 17768 (April 17, 2009).

II. Statutory Authority

The Truth in Savings Act, 12 U.S.C. 4301 *et seq.,* is implemented by the Board's Regulation DD (12 CFR part 230). The purpose of the act and regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield, the interest rate, and other account terms. An official staff commentary interprets the requirements of Regulation DD (12 CFR part 230 (Supp. I)). Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration. In the **SUPPLEMENTARY INFORMATION** to the Regulation DD final rule, the Board described its statutory authority and applied that authority to the requirements of the rule. For purposes of this rulemaking, the Board continues to rely on that legal authority and analysis.

III. Section-by-Section Analysis

A. Section 230.6(a)—Periodic Statement Disclosures; General Rule

Section 230.6(a) describes disclosures that are required to be made when statements are provided, including certain fees or charges. The Board is proposing two technical amendments to § 230.6(a) and the related staff commentary. First, the Board is proposing to add a new § 230.6(a)(5) to clarify that the periodic statement aggregate fee disclosures required by § 230.11(a), discussed below, are among the disclosures that are required to be provided on periodic statements for purposes of § 230.6(a). Second, the Board is proposing to revise comment 6(a)(3)–2, which contains a cross-reference to § 230.11(a) that references institutions that promote the payment of overdrafts. Because the Regulation DD final rule extended the aggregate fee disclosure requirement to all institutions, and not just those institutions that promote the payment of overdrafts, the proposed revision eliminates the promotion reference.

B. Section 230.11(a)—Disclosure of Total Fees on Periodic Statements

Section 230.11(a)(1)(i) requires institutions to disclose on each periodic statement, as applicable, the total dollar amount of all fees or charges imposed on the account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn. Sample Form B–10 displays this total as "Total Overdraft Fees." Some institutions may use terms other than "overdraft fee," such as "NSF

items-paid" to describe per-item overdraft fees in their account agreements. Under Regulation DD, comment 3(a)–2 requires institutions to use consistent terminology in their account-opening disclosures, periodic statements, and other disclosures. In light of this comment, questions have been raised as to whether institutions may use terminology other than "Total Overdraft Fees" in the periodic statement aggregate fee disclosure to describe the total amount of all fees or charges imposed on the account for paying overdrafts.[2]

Under § 230.11(a)(1), institutions are required to provide a fee total that includes *all* overdraft fees, including any additional daily or sustained overdraft, negative balance, or similar fees or charges imposed by the institution. *See* comment 11(a)(1)–2. Thus, the use of terminology other than "Total Overdraft Fees" may not capture the various fees associated with the discretionary overdraft service. Moreover, the purpose of the aggregate fee disclosure is to provide consumers who use overdraft services with additional information about fees to help them better understand the costs associated with the service. Permitting the use of other terminology could be confusing to consumers and potentially undermines their ability to compare costs, particularly if a consumer has accounts at different institutions that each use different terminology.

Accordingly, the Board is proposing to revise § 230.11(a)(1)(i) to clarify that the periodic statement aggregate fee disclosure must disclose the total dollar amount for all fees or charges imposed on the account for paying overdrafts, using the term "Total Overdraft Fees." Proposed comment 11(a)–2 would explain that this provision supersedes comment 3(a)–2. As explained in comment 11(a)(1)–3, institutions may use terminology such as "returned item fee" or "NSF fee" to describe the fees for returning items unpaid.

C. Section 230.11(c)—Disclosure of Account Balances

Comment 11(c)–2—Retail Sweep Programs

Under the Regulation DD final rule, § 230.11(c) requires institutions that disclose balance information to a consumer through an automated system to disclose a balance that does not include additional amounts that the institution may provide to cover an item when there are insufficient or unavailable funds in the consumer's account, including under a service to transfer funds from another account of the consumer. The Board adopted this provision to ensure that consumers receive accurate information about their account balances and to help avoid consumer confusion as to whether an account has sufficient funds to cover a transaction.

Questions have been raised about the application of the rule to retail sweep programs. In a retail sweep program, an institution establishes two legally distinct subaccounts, a transaction subaccount and a savings subaccount, which together make up the consumer's account. The institution allocates and transfers funds between the two subaccounts in order to maximize the balance in the savings subaccount while complying with the monthly limitations on transfers out of savings accounts established under the Board's Regulation D, 12 CFR 204.2(d)(2).

Retail sweep programs are distinguishable from overdraft protection plans that transfer funds from a consumer's linked accounts in several respects. In particular, retail sweep programs are generally not established for the purpose of covering overdrafts. Rather, institutions typically establish retail sweep programs by agreement with the consumer, in order for the institution to minimize its transaction account reserve requirements and, in some cases, to provide a higher interest rate for the consumer than the consumer would earn on a transaction account alone. Furthermore, most retail sweep programs are structured so that the consumer (or person acting on behalf of the consumer) cannot independently access the funds in the savings subaccount; all transfers out of, and deposits or transfers into, the savings subaccount component of a retail sweep program are effected through the transaction subaccount. Notwithstanding the establishment of two legally distinct subaccounts under a retail sweep program, the account statements that consumers receive under such a program show a single consumer account balance, and a single account on which all transactions into and out of the account are reflected.

By contrast, linked accounts can be used and funded independently of one another. For example, a consumer can directly make deposits to, and withdrawals from, a savings account whether or not it is linked to a checking account. The link between accounts under an overdraft protection program is primarily established for purposes of providing funds from the savings account in the event that the consumer has insufficient funds in the checking account. Additionally, retail sweep programs typically do not impose fees on transfers between the savings subaccount and the transaction subaccount, while institutions typically charge fees for transfers from linked accounts to cover an overdraft.

Based on the foregoing, consumers under a retail sweep program may reasonably expect to see a single balance combining the funds in the transaction subaccount and the savings subaccount when they request an account balance. Consumers could be confused if a balance that only includes funds in the transaction subaccount were displayed because, in some cases, the balance in the transaction subaccount could be zero (to the extent funds had been transferred to the savings subaccount at the time of the balance inquiry). In recognition of the distinct characteristics of retail sweep programs, the Board is proposing to add a new comment 11(c)–2 to clarify that § 230.11(c) does not require an institution to exclude from the consumer's balance funds that may be transferred from another account pursuant to a retail sweep program when disclosing a transaction account balance under such a program.

Comment 11(c)–3—Additional Balance

Section 230.11(c) of the Regulation DD final rule permitted institutions to disclose an additional balance including overdraft funds, so long as the institution prominently states that the balance contains additional overdraft funds. Comment 11(c)–2 of the final rule provided guidance on how institutions could appropriately identify the additional funds. However, the comment only addressed opt-outs. Subsequent to the adoption of the Regulation DD final rule, however, the Board adopted the Regulation E final rule, which requires institutions to obtain a consumer's affirmative consent, or opt-in, to the institution's overdraft service, before charging any fee for paying ATM and one-time debit card transactions. In light of the final Regulation E opt-in requirement, the Board is proposing to renumber current comment 11(c)–2 as comment 11(c)–3 and amend it to include references to the opt-in requirement. References to opt-outs have been retained in some instances because some institutions may provide an opt-out choice with respect to checks, ACH, and other types of

[2] The official staff commentary to Regulation DD provides that institutions should not use the generic term "insufficient funds fee" or "NSF fee" to describe both fees for paying overdrafts and fees for returning items unpaid. *See, e.g.,* comment 6(a)(3)–2(iv) (institutions may group itemized fees, but may not group together fees for paying overdrafts and fees for returning checks or other items unpaid).

transactions not subject to the Regulation E final rule restrictions.

The Board is also proposing to extend the requirement to indicate, when applicable, that funds in the additional balance may not be available for all transactions to circumstances under which funds from overdraft services subject to the Board's Regulation Z or from services that transfer funds from another account are not available for all transactions. For example, if a consumer has an overdraft line of credit, but under the terms of the agreement with the institution, the consumer cannot access the line of credit when using a debit card at a point-of-sale transaction, the proposed comment would state that any additional balance displayed through an automated system should indicate that the overdraft funds are not available for all transactions.

D. Effective Date

Because some depository institutions may be using terminology other than "Total Overdraft Fees" in their aggregate fee disclosure under § 230.11(a)(1), the Board is proposing to make the proposed revisions to § 230.11(a)(1)(i) effective approximately 90 days after publication of the final rule in the **Federal Register**. The Board solicits comment on whether this time frame would be an appropriate time period for implementation. The Board is proposing to make the remaining revisions effective approximately 30 days after publication of the final rule in the **Federal Register**.

IV. Regulatory Analysis

Sections VI and VII of the **SUPPLEMENTARY INFORMATION** to the Regulation DD final rule set forth the Board's analyses under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1). *See* 74 FR 5591–5593. Because the proposed amendments are clarifications and would not, if adopted, alter the substance of the analyses and determinations accompanying the Regulation DD final rule, the Board continues to rely on those analyses and determinations for purposes of this rulemaking.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside ►bold-type arrows◄ while language that would be deleted is set off with **[**bold-type brackets**]**.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Reporting and recordkeeping requirements, Truth in savings.

Authority and Issuance

For the reasons discussed in the preamble, the Board proposes to amend 12 CFR part 230 and the Official Staff Commentary, as set forth below:

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Section 230.6 is amended by adding paragraph (a)(5) to read as follows:

(a) *General rule.* * * *

►(5) *Aggregate fee disclosure.* The disclosure of total overdraft and returned item fees required by § 230.11(a).◄

* * * * *

3. Section 230.11 is amended by revising paragraph (a)(1)(i) to read as follows:

(a) *Disclosure of total fees on periodic statements*—(1) * * *

(i) The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn►, using the term "Total Overdraft Fees."◄**[**.**]**

* * * * *

4. In Supplement I to part 230,

a. In Section 230.6(a)(3), paragraph 2. is revised.

b. In Section 230.11(a)(1), paragraph 2. is revised.

c. In Section 230.11(c), paragraphs 2. and 3. are redesignated as paragraphs 3. and 4., respectively.

d. In Section 230.11(c), new paragraph 2. is added.

e. In Section 230.11(c), newly redesignated paragraph 3. is revised.

Supplement I to Part 230—Official Staff Interpretations

* * * * *

§ 230.6 Periodic Statement Disclosures.

(a) *General Rule*

(a)(3) Fees Imposed

* * * * *

2. *Itemizing fees by type.* In itemizing fees imposed more than once in the period, institutions may group fees if they are the same type. (*See* 230.11(a)(1) of this part regarding certain fees that are required to be grouped **[**when an institution promotes the payment of overdrafts**]**.) * * *

* * * * *

§ 230.11 Additional Disclosures Regarding the Payment of Overdrafts.

(a) Disclosure of total fees on periodic statements

(a)(1) General

* * * * *

2. *Fees for paying overdrafts.* Institutions must disclose on periodic statements a total dollar amount for all fees or charges imposed on the account for paying overdrafts. The institution must disclose separate totals for the statement period and for the calendar year-to-date. The total dollar amount includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. It does not include fees for transferring funds from another account of the consumer to avoid an overdraft, or fees charged under a service subject to the Board's Regulation Z (12 CFR part 226). ►Under § 230.11(a)(1)(i), the disclosure must describe the total dollar amount for all fees or charges imposed on the account for paying overdrafts using the term "Total Overdraft Fees." This requirement supersedes comment 3(a)–2.◄

* * * * *

(c) Disclosure of account balances

* * * * *

►2. *Retail sweep programs.* In a retail sweep program, an institution establishes two legally distinct subaccounts, a transaction subaccount and a savings subaccount, which together make up the consumer's account. The institution allocates and transfers funds between the two subaccounts in order to maximize the balance in the savings account while complying with the monthly limitations on transfers out of savings accounts established under the Board's Regulation D, 12 CFR 204.2(d)(2). Retail sweep programs are generally not established for the purpose of covering overdrafts. Rather, institutions typically establish retail sweep programs by agreement with the consumer, in order for the institution to minimize its transaction account reserve requirements and, in some cases, to provide a higher interest rate for the consumer than the consumer would earn on a transaction account alone. Section 230.11(c) does not require an institution to exclude from the consumer's balance funds that may be transferred from another account pursuant to a retail sweep program that

are established for such purposes and that have the following characteristics: (1) The classification of the accounts involved complies with the Board's Regulation D, 12 CFR 204.2(d)(2), (2) the consumer does not have direct access to the non-transaction subaccount that is part of the retail sweep program, and (3) the consumer's monthly statement shows the account balance as the combined balance in the subaccounts.

3◄[2]. *Additional balance.* The institution may disclose additional balances supplemented by funds that may be provided by the institution to cover an overdraft, whether pursuant to a discretionary overdraft service, a service subject to the Board's Regulation Z (12 CFR part 226), or a service that transfers funds from another account held individually or jointly by the consumer, so long as the institution prominently states that any additional balance includes these additional overdraft amounts. The institution may not simply state, for instance, that the second balance is the consumer's "available balance," or contains "available funds." Rather, the institution should provide enough information to convey that the second balance includes these amounts. For example, the institution may state that the balance includes "overdraft funds." Where a consumer ►has not opted into, or as applicable,◄ has opted out of the institution's discretionary overdraft service, any additional balance disclosed should not include funds [institutions] provided under that service. Where a consumer ►has not opted into◄[has opted out of] the institution's discretionary overdraft service for some, but not all transactions (*e.g.,* the consumer has ►not opted into◄[opted out] overdraft services for ATM and ►one-time ◄debit card transactions), an institution that includes ►these additional overdraft ◄funds [from its discretionary overdraft service] in the ►second ◄balance should convey that the overdraft funds are not available for all transactions. For example, the institution could state that overdraft funds are not available for ATM and ►one-time (or everyday) ◄debit card transactions.► Similarly, if funds are not available for all transactions pursuant to a service subject to the Board's Regulation Z (12 CFR part 226) or a service that transfers funds from another account, a second balance that includes such funds should also indicate this fact.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 18, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–3719 Filed 2–26–10; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126, and 134

RIN 3245–AF65

Small Business, Small Disadvantaged Business, HUBZone, and Service-Disabled Veteran-Owned Protest and Appeal Regulations

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) proposes to amend its regulations to clarify the effect, across all small business programs, of initial and appeal eligibility decisions on the procurement in question; increase the amount of time that SBA has to render formal size determinations; require that SBA's Office of Hearings and Appeals (OHA) issue a size appeal decision within 60 calendar days of the close of the record, if possible; increase the amount of time that SBA has to file North American Industry Classification System (NAICS) code appeals; alter the NAICS code appeal procedures to comply with a Federal Court decision; clarify that contracting officers must reflect final agency eligibility decisions in federal procurement databases and goaling statistics; clarify how a contracting officer assigns a NAICS code and size standard to a multiple award procurement; and make other changes to size status protest and appeal rules.

DATES: Comments must be received on or before March 31, 2010.

ADDRESSES: You may submit comments, identified by RIN: 3245–AF65, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD/ROM submissions:* Khem Sharma, Chief, Office of Size Standards, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Khem Sharma, Chief, Office of Size Standards, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.Regulations.gov,* please submit the information to Khem Sharma, Chief, Size Standards Division, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street, SW., Washington, DC 20416, or send an e-mail to *khem.sharma@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Program Analyst, Size Standards Division, Office of Government Contracting, (202) 205–7189 or at *carl.jordan@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA is proposing to delete the reference to other factors to be considered when assigning a NAICS code to a procurement in 13 CFR 121.402. SBA's regulations currently provide that a contracting officer should consider the principal purpose of the product or service to be acquired, and that a procurement is usually classified according to the component which accounts for the greatest percentage of contact value. SBA's regulations further provide that contracting officers may consider previous Government procurement classifications of the same or similar products or services and which classification would best serve the purposes of the Small Business Act. SBA believes these additional factors are unnecessary. A repeated error is not persuasive evidence, especially since such classifications are almost never reviewed or challenged. As discussed above, SBA receives very few NAICS code appeals because of the short appeal timelines. Further, it is unclear how a contracting officer can determine which NAICS code and size standard can best serve the purposes of the Small Business Act. Thus, we are proposing to delete reference to prior government classifications and the purpose of the Small Business Act. Each solicitation should be classified based on the principal purpose of that particular solicitation, and the contracting officer only needs to make a reasonable choice.

SBA is proposing to delete a provision in § 121.404 that requires a concern to recertify its size where a solicitation is modified so that initial offers are no longer responsive. Generally, a firm must be small at the time of initial offer,

including price. This rule provides procuring agencies and offerors with finality with respect to eligibility. Some procurements may drag on for several years due to a variety of reasons, including protests, discussions, funding issues, and changes in requirements. Disqualifying an offeror based on whether a procuring agency's requirement changes during the course of a protracted procurement unfairly punishes both the procuring agency and offerors that have expended time and resources pursuing the procurement. Reasonable people may disagree about whether a solicitation has been modified so that initial offers are no longer responsive. For example, in *Size Appeal of Continental Staffing, Inc.,* SBA No. SIZ–4808 (2006) the contracting officer did not request new size certifications and argued that its requirement had not changed so much that initial offers were no longer non-responsive. OHA disagreed and remanded, ordering the Area Office to determine the prospective awardee's size at the time of a revised offer submitted approximately five months after the initial offer, resulting in the firm being ineligible because a more recent year would be used to calculate the firm's size. In SBA's view, if a change in a requirement is drastic enough that all offers are non-responsive, the procuring agency will have to cancel the procurement and issue a new solicitation open to all potential offerors, not just offerors who responded to the now obsolete solicitation. Offerors would then have to submit size certifications along with their initial offer, including price, in response to the new solicitation. SBA recently finalized rules which require re-certification after award to ensure that contracts are properly counted for goaling and statistical purposes. 13 CFR 404(g). In SBA's view, the procurement community is better served if there is a clear bright line for purposes of determining eligibility for award.

SBA is proposing to amend § 121.407 to address how a NAICS code and size standard should be assigned to a multiple award procurement. Agencies frequently acquire diverse goods and services from multiple vendors under contracts awarded pursuant to a single solicitation. SBA's regulations require the contracting officer to assign the single NAICS code to the procurement that best describes the principal purpose of the acquisition. 13 CFR 121.402. The fact that multiple contracts will be awarded under a solicitation does not alter this fundamental principle. Generally, if all awardees will be eligible to compete for orders, then, just like any other procurement, the solicitation should be assigned the single NAICS code that best describes the principal purpose of the acquisition. However, if a multiple award procurement is divided up into contract line item numbers (CLINs) or special item numbers (SINs), where only awardees under the CLIN or SIN will compete for orders, then each CLIN or SIN should be assigned the single NAICS code that best describes the principal purpose CLIN or SIN. This will ensure that firms that are actually small for the actual work receive the award, and ensure that procuring agencies only receive credit towards their goals for awards to firms that are small for the work to be performed.

SBA is proposing to amend § 121.1009 to provide SBA within 15 business days to decide a size protest. SBA's regulations currently provide that SBA will issue a formal size determination within 10 working days of its receipt of a size protest, "if possible." 13 CFR 121.1009(e). The Federal Acquisition Regulation (FAR) currently provides that a contracting officer should withhold award for 10 business days after SBA's receipt of a size protest, after which time the contracting officer may proceed with award if "further delay would be disadvantageous to the Government." FAR 19.302(h)(2). The FAR further provides that a contracting officer need not withhold award if he or she determines in writing that award must be made to protect the public interest. FAR 19.302(h)(1).

Under current regulations, after SBA receives a size protest, it notifies the protested concern, and the protested concern is provided 3 business days to respond to the protest and provide information to SBA. Thus, by the time the SBA receives the protested concern's information, SBA generally has approximately 5 business days to write a formal size determination. However, in some cases, protested concerns ask for additional time to submit the required information, such as tax returns or payroll records, corporate organization documentation, and forms detailing ownership interests in other concerns. In some cases, the concern's submission raises additional issues, leading the size specialist to request additional information from the protested concern. Moreover, to draft a decision, size specialists sometimes have to read and analyze voluminous documentation. For example, if a size protest involves allegations of undue or excessive reliance on a subcontractor, a size specialist must thoroughly analyze the protested concern's proposal and the solicitation to make a determination. Further, a size specialist also may have to conduct legal or other research before a decision can be drafted.

SBA conducted a survey of its six Government Contracting Area Offices and found that, on average, the Area Offices issued size determinations more than 10 business days after receipt 29% of the time. SBA's regulations currently provide SBA with 15 business days to decide other status protests, such as SDB, SDVO, and HUBZone protests. 13 CFR 124.1013(a), 125.27(d), 126.803(b). Formal size determinations are typically more complicated than other small business program eligibility determinations. Increasing the amount of time SBA has to make a size determination will also make SBA's regulations more consistent across all programs, which would be beneficial to all participants in the small business procurement community.

SBA is proposing to amend §§ 121.1009, 121.1013, 125.27 and 126.803 to clarify the effect of protest or appeal decisions on the procurement in question and make the effect more consistent and coherent across small business programs. SBA's size, small disadvantaged business (SDB), Service-Disabled Veteran-Owned (SDVO) and Historically Underutilized Business Zone (HUBZone) regulations contain varied and sometimes inconsistent explanations on how the protest or appeal decision applies to the procurement in question. 13 CFR 121.1004(c), 121.1009(g), 124.1013(h), 124.1014(f), 125.27(g), 126.803(d), 126.805(g), 134.504.

The purpose of the protest and appeal process is to assure that contracts are awarded to eligible concerns. However, the process must be balanced so that it does not impede the procuring agency's ability to accomplish its mission. SBA's size regulations currently provide that a timely filed protest applies to the procurement in question, even if filed after award. 13 CFR 121.1004(c). SBA's regulations further provide that a contracting officer may apply an appellate size decision received after award to the procurement in question, but is not required to do so. SBA's size regulations do not address how a formal size decision or appellate decision applies for goaling purposes, but other program regulations, such as the SDVO regulations, do address the effect of protest and appeal decisions for goaling purposes. 13 CFR 125.27(g). Over the last several years, the U.S. Government Accountability Office (GAO) has sustained bid protests, and in many cases recommended termination, where

a firm was found to be other than small and the decision was received after award. *See Hydroid LLC,* B–299072, Jan. 31, 2007, 2007 CPD ¶ 20; *ALATEC Inc.,* B–298730, Dec. 4, 2006, 2006 CPD ¶ 191; *Spectrum Security Services, Inc.,* B–297320.3, Dec. 29, 2005, 2005 CPD ¶ 227; *Tiger Enterprises, Inc.,* B–293439, B–292815.3, Jan. 20, 2004, 2004 CPD ¶ 19; *Adams Industrial, Inc.,* B–280186, Aug. 28, 1998, 98–2 CPD ¶ 56. In contrast, SBA's regulations specifically provide that a procuring agency need not terminate a contract based on an SDVO protest determination that is received after award. 13 CFR 125.27(g); *see Major Contracting Services, Inc.,* B–400616, Nov. 20, 2008, 2008 CPD ¶ 214; *Veteran Enterprise Technology Services, LLC,* B–298201.2, Jul. 13, 2006, 2006 CPD ¶ 108.

SBA is proposing to specifically address how initial and appellate decisions apply to the procurement in question across all small business programs, including for goaling purposes. If the SBA issues an initial decision that a concern is eligible, the procuring agency may make an award based on that decision, notwithstanding an appeal or notice of an appeal. If the initial decision is overturned on appeal, the procuring agency must apply the decision to the procurement in question for goaling purposes. If the appellate decision is received by the contracting officer after award, the contracting officer may take some action, such as terminating the contract or not exercising options, but will not be required to do so. On the other hand, if the SBA issues an initial decision that a concern is ineligible, award should not be made to that concern, unless and until the decision is overturned on appeal. If award has made been, the procuring agency must take some action if the initial decision is not overturned on appeal, such as terminating the award or not exercising the next option. Further, the contracting officer must apply the final Agency decision to the procurement in question for goaling purposes.

SBA is proposing to amend § 121.1009 to clarify when it will reopen a size determination. Currently, SBA may reopen a size determination to correct an administrative error or clear mistake of fact, provided an appeal has not been filed. If an appeal has been filed, SBA may intervene in the case or request a remand. SBA is proposing to clarify that once the Agency issues a final decision it cannot reopen that decision at a later time. SBA's issuance of its final decision starts the clock for purposes of challenging the final agency decision in a court of law. If SBA could reopen a final agency decision then no decision could ever be considered final. Moreover, such an action would lead to due process challenges from the parties, who already litigated the matter and received a final agency decision. Thus, SBA is clarifying that if SBA issues a final agency decision and that decision is not timely challenged, that is the end of the matter.

SBA is proposing to amend § 121.1101(b), which prohibits a size appeal where the contract has been awarded and the issues raised in the appeal are contract-specific. SBA believes that an appellate decision should always apply for goaling purposes. In other words, if a firm that has been awarded a contract is found to be other than small, then SBA believes that the procuring agency should not be able to continue to take small business credit for purposes of its small business goals. Further, a contracting officer may take some action based on a negative appellate decision. Consequently, SBA is proposing that OHA accept all size appeals.

SBA is proposing to amend § 121.1103 to clarify that a NAICS appeal includes an appeal involving whether a procuring agency has assigned the correct corresponding size standard to a procurement. SBA is also proposing to increase the amount of time SBA has to file a NAICS code appeal. Currently, a NAICS code appeal must be filed within 10 calendar days after issuance of the initial solicitation. This 10-day time limit also applies to SBA. OHA receives very few NAICS code appeals. On average 10 NAICS code appeals are filed annually. SBA is proposing to amend its regulations to allow SBA to file a NAICS code appeal at any time before offers or bids are due. SBA occasionally receives notice of clearly inappropriate NAICS codes and size standards, but receives the notice well after the 10-day time limit. Size is a function of the work to be performed. A firm can be small in one industry but large in another. Legitimate small business concerns in the particular industry are harmed when a procurement is misclassified because they may not be able to successfully compete with a concern that is actually large for the work to be performed. Further, procurement misclassification degrades the Federal Government's procurement data, in terms of its small business prime contracting goals as well as the dollar value and contract action data for both the misclassified industry and the proper industry.

SBA is also proposing to amend § 121.1103 to require contracting officers to notify the public of the filing of a NAICS code appeal to ensure that all prospective offerors or bidders have an opportunity to submit evidence or arguments concerning the appropriate NAICS code and size standard. Under SBA's current regulations, if a NAICS code appeal is filed SBA's decision is final, even though prospective offerors other than the appellant may not have received notice of the appeal, and therefore may not have had an opportunity to be heard. In *Advanced Systems Technology, Inc.* v. *U.S.,* 69 Fed. Cl. 474 (2006) the U.S. Court of Federal Claims enjoined the procuring agency from proceeding with its acquisition after SBA issued a NAICS code appeal decision that a prospective offeror had not known about, and after SBA dismissed the prospective offeror's subsequent NAICS code appeal. This change will ensure prospective offerors are provided due process.

SBA is proposing to amend § 124.1013(d) to correct a typographical error. In addition, as discussed above SBA is proposing to amend §§ 124.1013 and 124.1014 to make the effect of an SDB status and appeal determination consistent with other small business programs.

As discussed above, SBA is proposing to amend §§ 125.27, 125.28 and 134.504 to make the effect of an SDVO status and appeal determination consistent with other small business programs. In addition, SBA is proposing to amend § 125.27 to clarify that a firm found to be ineligible must demonstrate to SBA that it has overcome the reason the firm was found to be ineligible before it can represent itself as an SDVO SBC.

As discussed above, SBA is proposing to amend §§ 126.803 and 126.805 to make the effect of a HUBZone status and appeal determination consistent with other small business programs.

SBA is proposing to amend § 134.304 to require that all size appeals be filed within 15 calendar days after receipt of the formal size determination. Currently, SBA's regulations require a size appeal to be filed within 15 calendar days if the procurement is "pending," and 30 calendar days if the size appeal does not involve a "pending" procurement. The term "pending" is ambiguous and is therefore subject to interpretation, which in turn leads to litigation. It is SBA's view that 15 calendar days is sufficient for any party to file a size appeal.

SBA is proposing to amend § 134.316 to require OHA to issue size appeal decisions within 60 calendar days of the close of the record, if possible. Currently, there are no time limits applicable to rendering size appeal decisions. In a size appeal, the record

generally closes 15 calendar days after the Judge notifies the parties that an appeal has been received, but may be extended at the Judge's discretion. 13 CFR 134.309(b). Since an appellate decision may affect contract award or continued performance, appellate decisions need to be rendered in a timely fashion. SBA is also proposing to amend § 134.316 to require OHA to render a NAICS code appeal decision within 15 calendar days of the close of the record, if possible, to minimize delay to the procurement. Currently, there are no time limits for rendering NAICS code appeal decisions.

SBA is proposing to delete § 134.504 and amend redesignated § 134.513 because the effect of an SDVO status appellate determination is set forth in § 125.27. SBA is proposing to amend redesignated § 134.508 to clarify when OHA will dismiss an SDVO appeal. Finally, SBA is proposing to amend redesignated § 134.514 to make a change to the nomenclature.

Compliance With Executive Orders 12866, 12988, 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5. U.S.C. 601–612), Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. *Is there a need for the regulatory action?* SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist effectively the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates the responsibility for establishing small business definitions to SBA's Administrator. This act also provides SBA with the authority to determine which businesses are small businesses concerns (15 U.S.C. 637(b)(1)(G)(6)). The supplementary information section of this proposed rule explains SBA's reasons for revising the size protest and appeal timeframes and application of final decisions on size and other small business status determinations. SBA believes that these changes are needed to provide clarity to procuring agencies and contractors.

2. *What are the potential benefits and costs of this regulatory action?*

SBA believes that more realistic timeframes for filing and rendering decisions on size and NAICS cases will improve the functioning of the size protest and size determination processes. Small businesses will have a sufficient time in which to raise size and NAICS classification issues and SBA will have more time, if needed, to prepare thorough decisions.

The proposed provisions may have cost implications associated with delays to the contracting process. Contracting officers may have to wait an additional 5 days in some cases before SBA renders a size determination. However, contracting officers are already generally required to withhold award for 15 days for a HUBZone, SDB, or SDVO status protest. SBA believes that the potential costs associated with delays in the contracting process are relatively minor and are significantly outweighed by the benefits to the integrity of small business procurement programs and the intended beneficiaries.

SBA recognizes that its proposal to assign a NAICS code to each line item of a multiple award contract will require reprogramming of the Federal Procurement Data System-NG (FPDS–NG). Although contracting officers may already be designating NAICS codes to task orders, FPDS–NG only records one NAICS code for the overall contract. However, revisions to FPDS–NG to incorporate NAICS codes by task order may have already begun in response to the November 15, 2006, recertification rule. SBA does not have an estimate of the costs but it believes that they will not be significant because this requirement affects only one field within the database, especially if reprogramming for this feature has already started. Nonetheless, SBA strongly believes the benefits of accurately reflecting small business awards for multiple award contract vehicles that now account for over $35 billion in federal contracting dollars annually greatly outweighs the programming costs associated with implementing this policy.

3. *What are the alternatives to this proposed rule?*

SBA considered as an alternative completing size determinations within 10 days of receiving all requested information from the protested concern. Although this would also achieve the objective of the proposal, it will create uncertainty as to when a size determination would actually be rendered. If the necessary information requested of a business is received within the 3-day period requested by SBA, a size determination would be completed within 13 days. However, if the protested concern submits incomplete information, the size determination period would vary depending on the circumstances. SBA believes a 15-day period is sufficient in most cases and provides a degree of certainty to contracting officers. It also reinforces the importance of promptly providing information to SBA.

Executive Order 12988

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of that Order, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive or retroactive effect. Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will 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 layers of government, as specified in the order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule, if adopted in final form, would not impose new reporting requirements and would not require new recordkeeping requirements. The proposed rule provides additional time in order for SBA to make its formal size determinations. The proposed rule will impose a 60-day timeframe for issuing size appeal decisions (from the date of close of the record) and a 15-day timeframe for issuing NAICS code appeals (from the date of the close of the record). The rule will also require that all size appeals be filed within 15 calendar days.

Regulatory Flexibility Act

SBA has determined that this proposed rule, if adopted in final form, could have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Therefore, SBA has prepared an Initial Regulatory Flexibility Act (IRFA) analysis addressing the proposed regulation.

IRFA

When preparing a Regulatory Flexibility Analysis, an agency shall

address all of the following: The need for, and objectives of, the rule; the estimated number of small entities to which the rule may apply; the projected reporting, recordkeeping and other compliance requirements; steps taken to minimize the significant economic impact on small entities. This IRFA considers these points and the impact the proposed regulation concerning initial status determinations and appeal decisions may have on small entities.

a. Need for, and Objectives of, the Rule

Under the Small Business Act, SBA is authorized to determine the size of a business entity. 15 U.S.C. 632. SBA's standards and definitions relating to formal size determinations and NAICS code designation for small business concerns are set forth in 13 CFR part 121. The rules for procedures governing cases before OHA are set forth in 13 CFR part 134.

SBA's regulations currently provide that SBA will issue a formal size determination within 10 working days of its receipt of a size protest, "if possible." 13 CFR 121.1009(e). The FAR currently provides that a contracting officer should withhold award for 10 business days after SBA's receipt of a size protest, after which time the contracting officer may proceed with award if "further delay would be disadvantageous to the Government." FAR 19.302(h)(2). The FAR further provides that a contracting officer need not withhold award if he or she determines in writing that award must be made to protect the public interest. FAR 19.302(h)(1).

After SBA receives a size protest it notifies the protested concern, and the protested concern is provided 3 business days to respond to the protest. Thus, SBA generally has only 5 business days to draft a formal size determination. In some cases protested concerns ask for additional time to submit the requested information. In other cases, the information submitted by the protested concern leads the size specialist to request additional information. Size specialists typically have to sift through voluminous documentation before reaching a decision.

SBA's regulations provide SBA with 15 business days to decide other status protests, such as HUBZone, SDB and SDVO. 13 CFR 124.1013(a), 125.27(d), 126.803(b). Increasing the amount of time SBA has to make a size determination will allow size specialists adequate time to perform a thorough review and draft a carefully constructed determination. Increasing the amount of time SBA has to render a formal size determination will also make SBA's regulations consistent and coherent across programs.

SBA's regulations currently do not address the amount of time OHA has to render a decision in connection with a size or NAICS code appeal. SBA is proposing to amend its regulations to require OHA to issue size appeal decisions within 60 calendar days of the close of the record, if possible, and render NAICS code appeal decisions within 15 calendar days of the close of record, if possible.

The proposed rule will require the contracting officer to update federal procurement databases to reflect final agency status determinations.

b. Estimate of the Number of Small Entities to Which the Rule May Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that may be affected by the proposed rules, if adopted. The RFA defines "small entity" to include "small businesses," "small organizations," and "small governmental jurisdictions." SBA's programs do not apply to "small organizations" or "small governmental jurisdictions" because they are non-profit or governmental entities and do not qualify as "business concerns" within the meaning of SBA's regulations. SBA's programs apply only to for-profit business concerns. Therefore, the proposed regulation (like the regulation currently in effect) will not impact small organizations or small governmental jurisdictions.

The proposed rule will not directly negatively affect any small business concern, since it is aimed at preventing other than small concerns from receiving or performing contracts set aside for small business concerns. The proposed rule will indirectly benefit small business concerns by preventing awards to ineligible concerns, or shortening the length of time other than small concerns perform small business set-aside contracts. SBA maintains an internal database of all size protest processed by the agency and the following table was constructed to illustrate the number of protest processed in the last five fiscal years.

Size protests	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Total Determinations Requested	356	409	348	459	593	459	374
Cases Dismissed	110	101	95	122	139	110	121
Determined Small Business	161	170	149	190	219	186	225
Determined Other Than Small	85	122	71	115	163	117	123
Cases in Process/Other Determinations	0	16	33	0	72	46	43

There are more than 330,000 concerns listed as small business concerns in the Dynamic Small Business Search of the Central Contractor Registration database. In fiscal year 2008, there were over 8 million small business contract actions. SBA processes an average of 428 size protests each fiscal year resulting in approximately 43 percent being determined to be small and 27 percent determined to be other than small. The rest are dismissed on procedural grounds. Thus, the number of concerns affected by this rule, regardless of size, will be approximately 290 per year, which is statistically insignificant when compared to the number of small business concerns in the Federal Government marketplace (330,000) or the number of small business contract actions per year (8 million). The number of protests in other small business programs is significantly less than the numbers of size protests received.

c. Projected Reporting, Recordkeeping and Other Compliance Requirements

This proposed rule would not impose a new information collection requirement on small businesses. SBA does not believe that this provision imposes any new record keeping requirements. This proposed rule will require contracting officers to update federal procurement databases to reflect final agency status decisions. Contracting officers should currently be updating these databases, and this rule will make it clear that this must be done.

d. Steps Taken To Minimize the Significant Economic Impact on Small Entities

This proposed rule should not result in a significant economic impact on small entities. This proposed rule will extend the timeframe SBA has for determining size of an entity resulting from a size protest. The addition of the 5 business days will allow SBA more time to adequately review the documentation needed to render a decision and will make SBA's regulations consistent across programs. The timeframe imposed on OHA for rendering decision resulting from appeals should minimize the economic impact on small entities by providing a decision in a timely manner.

e. Conclusion

Based on the foregoing, SBA has determined that this proposed rule will not have a significant impact on a substantial number of small entities with the meaning of the RFA. SBA requests comments addressing any of the issues raised in this IRFA, including comments in the economic effect this rule could have on small entities.

List of Subjects in 13 CFR Parts 121, 124, 125, 126, and 134

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

For the reasons stated in the preamble, SBA proposes to amend parts 121, 124, 125, 126, and 134 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

Subpart A—Size Eligibility Provisions and Standards

1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637, 644, 662(5) and 694a; Public Law 105–135, sec. 401 *et seq.,* 111 Stat. 2592.

§ 121.402 [Amended]

2. Amend § 121.402(b) by removing the third sentence.

§ 121.404 [Amended]

3. Amend paragraph 121.404(a) by removing the second sentence.

4. Revise § 121.407 to read as follows:

§ 121.407 What are the procedures for multiple award procurements?

(a) Except as set forth in paragraphs (b) and (c) of this section, a solicitation to award multiple task or delivery order contracts should be assigned the single NAICS code and size standard which best describes the principal purpose of the acquisition (*See* § 121.402).

(b) A solicitation to award multiple task or delivery order contracts may be assigned more than one NAICS code or size standard if the solicitation is divided into contract line item numbers (CLINs) where orders will only be awarded or competed amongst concerns that have been awarded contracts for those CLINs. In such a case, the contracting officer must assign to each CLIN the single NAICS code and size standard that best describes the principal purpose of the goods or services acquired under that CLIN. (*See* § 121.402). A concern must meet the applicable size standard to be eligible for award as a small business concern.

(c) A solicitation to award multiple contracts for separate and distinct items, where a bidder may submit an offer on some or all of the items, may be assigned multiple NAICS codes and size standards. In such a case, the contracting officer must assign to each CLIN the single NAICS code and size standard that best describes the principal purpose of the item to be acquired under the CLIN. A concern must meet the applicable size standard to be eligible for award as a small business concern.

5. Amend § 121.1009 by revising paragraphs (a), (g)(1), (g)(2), (g)(3), and (h) to read as follows:

§ 121.1009 What are the procedures for making the size determination?

(a) *Time frame for making size determination.* (1) After receipt of a protest or a request for a formal size determination, the Area Office will issue a formal size determination within 15 business days, if possible.

(2) If SBA does not issue its determination within the 15-day period, the contracting officer must contact SBA to ascertain when SBA estimates that it will issue its decision, and may only award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will harm the public interest (*see* paragraph (g) of this section for the effect of a formal size determination or appellate decision).

(3) The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to prevent significant harm to the public interest (*see* paragraph (g) of this section for the effect of a formal size determination or appellate decision).

* * * * *

(g) * * *

(1) A contracting officer may award the contract to a protested concern after the Area Office either has determined that the protested concern is an eligible small business or has dismissed all protests against it. If OHA subsequently overturns the Area Office's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) A contracting officer may not award the contract to a protested concern that the Area Office has determined is not an eligible small business for the procurement in question.

(i) If a contracting officer receives such a determination after contract award, and no OHA appeal has been filed, the contracting officer shall terminate the award.

(ii) If a timely OHA appeal is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(iii) If OHA affirms the size determination finding the protested concern ineligible, the contracting officer shall either terminate the contract or not exercise the next option.

(3) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency size decision (the formal size determination if no appeal is filed or the appellate decision).

* * * * *

(h) *Limited reopening of size determinations.* SBA may, in its sole discretion, reopen a formal size determination to correct an error or mistake, provided it is within the appeal period and no appeal has been filed with OHA. Once the agency has issued a final agency decision (either a formal size determination that is not timely appealed or an appellate decision), SBA cannot re-open the size determination.

6. Amend § 121.1101 by revising paragraph (b) to read as follows:

§ 121.1101 Are formal size determinations subject to appeal?

* * * * *

(b) OHA will review all timely appeals of size determinations.

6. Amend § 121.1103 as follows:

a. Revise the section heading;

b. In paragraph (a), add a new sentence after the first sentence and before the second sentence;

c. Revise paragraph (b)(1);

d. Remove paragraphs (b)(4), and (b)(5); and

e. Add new paragraph (c).

§ 121.1103 What are the procedures for appealing a NAICS code or size standard designation?

(a) * * * A NAICS code appeal may include an appeal involving the applicable size standard, such as where more than one size standard corresponds to the selected NAICS code or there is a question as to the size standard in effect at the time the solicitation was issued or amended.
* * *

(b) * * *

(1) An appeal from a contracting officer's NAICS code or size standard designation must be served and filed within 10 calendar days after the issuance of the solicitation or amendment affecting the NAICS code or size standard. However, SBA may file a NAICS code appeal at anytime before offers or bids are due. OHA will summarily dismiss an untimely NAICS code appeal.

* * * * *

(c) Procedure after a NAICS code appeal is filed and served.

(1) Upon receipt of the service copy of a NAICS code appeal, the contracting officer shall:

(i) Stay the solicitation;

(ii) Advise the public, by amendment to the solicitation or other method, of the existence of the NAICS code appeal and the procedures and deadline for interested parties to file and serve arguments concerning the appeal;

(iii) Send a copy of the entire solicitation (including amendments) to OHA;

(iv) File and serve any response to the appeal prior to the close of the record; and

(v) Inform OHA of any amendments, actions or developments concerning the procurement in question.

(2) Upon receipt of a NAICS code appeal, OHA shall:

(i) Notify the appellant, the contracting officer, the SBA and any other known party of the date OHA received the appeal and the date the record will close; and

(ii) Conduct the appeal in accordance with part 134 of this chapter.

(3) Any interested party may file and serve its response to the NAICS code appeal.

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

7. The authority citation for part 124 continues to read as follows:

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

Subpart B—Eligibility, Certification, and Protests Relating to Federal Small Disadvantaged Business Programs

8. Amend § 124.1013 as follows:

a. Amend paragraph (a) by removing second sentence;

b. Revise paragraph (b);

c. Revise paragraph (d)(1);

d. Revise paragraphs (h)(1) and (h)(2); and

e. Add new paragraphs (h)(3) and (h)(4).

§ 124.1013 How does SBA make disadvantaged status determinations in considering an SDB protest?

* * * * *

(b) *Award of contract.* (1) If SBA does not issue its determination within the 15-day period, the contracting officer must contact SBA to ascertain when SBA estimates that it will issue its decision, and may only award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will harm the public interest (*see* paragraph (h) of this section for the effect of an SDB status determination or appellate decision).

(2) The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to prevent significant harm to the public interest (*see* paragraph (h) of this section for the effect of an SDB status determination or appellate decision).

* * * * *

(d) * * *

(1) Except with respect to a concern which is a current Participant in SBA's 8(a) BD program and is authorized under § 124.1013(b)(3) to submit an affidavit concerning it disadvantaged status, the disadvantaged status determination will be based on the protest record, including reasonable inferences therefrom, as supplied by the protested concern, SBA or others.

* * * * *

(h) * * *

(1) A contracting officer may award the contract to a protested concern after the DC/SDBCE either has determined that the protested concern is an eligible SDB or has dismissed all protests against it. If the AA/GC&BD subsequently overturns the initial determination or dismissal, the contracting officer may apply the appeal decision to the procurement in question.

(2) A contracting officer may not award the contract to a protested concern that the DC/SDBCE has determined is not an eligible SDB for the procurement in question.

(i) If a contracting officer receives such a determination after contract award, and no appeal has been filed, the contracting officer shall terminate the award.

(ii) If a timely appeal is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(iii) If the AA/GC&BD affirms the initial determination finding that the protested concern ineligible, the contracting officer shall either terminate the contract or not exercise the next option.

(3) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency SDB decision (the decision of the AA/SDBCE if no appeal is filed or the decision of the AA/GC&BD).

(4) A concern found to be ineligible is precluded from applying for SDB certification for 12 months from the date of the final agency decision (whether by the AA/SDBCE, without an appeal, or by the AA/GC&BD on appeal). A concern found to be ineligible is also precluded from representing itself as an SDB for a subcontract unless it overcomes the reasons for the protest (e.g., it changes its ownership to satisfy the definition of an SDB set forth in § 124.1002).

§ 124.1014 [Amended]

9. Amend § 124.1014 by removing paragraph (f) and redesignating paragraphs (g) through (i) as paragraphs (f) through (h).

PART 125—GOVERNMENT CONTRACTING PROGRAMS

10. The authority citation for part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644 and 657(f).

Subpart D—Protests Concerning SDVO SBCs

11. Amend § 125.27 by revising paragraphs (e) and (g) to read as follows:

§ 125.27 How will SBA process an SDVO protest?

* * * * *

(e) *Award of Contract.* (1) If SBA does not issue its determination within the 15-day period, the contracting officer must contact SBA to ascertain when SBA estimates that it will issue its decision, and may only award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will harm the public interest (*see* paragraph (g) of this section for the effect of an SDVO status size determination or appellate decision).

(2) The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to prevent significant harm to the public interest (*see* paragraph (g) of this section for the effect of an SDVO status determination or appellate decision).

* * * * *

(g) *Effect of determination.* (1) A contracting officer may award the contract to a protested concern after the Director, Office of Government Contracting (D/GC) either has determined that the protested concern is an eligible SDVO or has dismissed all protests against it. If OHA subsequently overturns the D/GC's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) A contracting officer may not award the contract to a protested concern that the D/GC has determined is not an eligible SDVO for the procurement in question.

(i) If a contracting officer receives such a determination after contract award, and no OHA appeal has been filed, the contracting officer shall terminate the award.

(ii) If a timely OHA appeal is filed after award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(iii) If OHA affirms the D/GC's determination finding the protested concern ineligible, the contracting officer shall either terminate the contract or not exercise the next option.

(3) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency decision (the D/GC's decision if no appeal is filed or OHA's decision).

(4) A concern found to be ineligible may not submit an offer as an SDVO SBC on a future procurement unless it demonstrates to SBA's satisfaction that it has overcome the reasons for the protest (e.g., it changes its ownership to satisfy the definition of an SDVO SBC set forth in § 125.8) and SBA issues a decision to this effect.

12. Revise § 125.28 to read as follows:

§ 125.28 What are the procedures for appealing an SDVO status protest?

The protested concern, the protester, or the contracting officer may file an appeal of an SDVO status protest determination with OHA in accordance with part 134 of this chapter.

PART 126—HUBZONE PROGRAM

13. The authority citation for part 126 continues to read as follows:

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

Subpart H—Protests

14. Amend § 126.803 by revising paragraphs (b)(2) and (b)(3) and redesignating paragraph (d) as (d)(1) and adding new paragraphs (d)(2), (d)(3), (d)(4), and (d)(5) to read as follows:

§ 126.803 How will SBA process a HUBZone status protest?

* * * * *

(b) * * *

(2) If SBA does not issue its determination within the 15-day period, the contracting officer must contact SBA to ascertain when SBA estimates that it will issues its decision, and may only award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will harm the public interest (*see* paragraph (d) of this section for the effect of a HUBZone status determination or appellate decision).

(3) The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to prevent significant harm to the public interest (*see* paragraph (d) of this section for the effect of a HUBZone status determination or appellate decision).

* * * * *

(d) * * *

(2) A contracting officer may award the contract to a protested concern after the D/HUB either has determined that the protested concern is an eligible HUBZone or has dismissed all protests against it. If the AA/GC&BD subsequently overturns the initial determination or dismissal, the contracting officer may apply the appeal decision to the procurement in question.

(3) A contracting officer may not award the contract to a protested concern that the D/HUB has determined is not an eligible HUBZone for the procurement in question.

(i) If a contracting officer receives such a determination after contract award, and no appeal has been filed, the contracting officer shall terminate the award.

(ii) If a timely appeal is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(iii) If the AA/GC&BD affirms the initial determination finding the protested concern ineligible, the contracting officer shall either terminate the contract or not exercise the next option.

(4) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency HUBZone decision (the D/HUB's decision if no appeal is filed or the decision of the AA/GC&BD).

(5) A concern found to be ineligible is precluded from applying for HUBZone certification for 12 months from the date of the final agency decision (the D/HUB's decision if no appeal is filed or the decision of the AA/GC&BD).

§ 126.805 [Amended]

15. Amend § 126.805 by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

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

16. Authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(1), 656(i), and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart C—Rules of Practice for Appeals From Size Determinations and NAICS Code Designations

17. Revise § 134.304 to read as follows:

§ 134.304 Commencement of appeals from size determinations and NAICS code designations

(a) Size appeals must be filed within 15 calendar days after receipt of the formal size determination.

(b) NAICS code appeals must be filed within 10 calendar days after issuance of the solicitation, or amendment to the solicitation affecting the NAICS code or size standard. However, SBA may file a NAICS appeal at anytime before offers or bids are due.

(c) An untimely appeal will be dismissed.

18. Amend § 134.316 by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (c), (d), (e) and (f), respectively, and adding new paragraphs (a) and (b).

§ 134.316 The decision.

(a) The Judge shall issue a size appeal decision, insofar as practicable, within 60 calendar days after close of the record.

(b) The Judge shall issue a NAICS code appeal decision, insofar as practicable, within15 calendar days after close of the record.

* * * * *

Subpart E—Rules of Practice for Appeals From Service-Disabled Veteran Owned Small Business Concern Protests

§ 134.504 [Removed]

19. Remove § 134.504.

§§ 134.505 through 134.515 [Redesignated as §§ 134.504 through 134.514]

20. Redesignate §§ 134.505 through 134.515 as §§ 134.504 through 134.514, respectively.

21. Amend newly redesignated § 134.508 by revising paragraph (a) to read as follows:

§ 134.508 When will a Judge dismiss an appeal?

(a) The Judge shall dismiss an appeal if:

(1) The appeal is untimely filed pursuant to § 134.503.

(2) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

* * * * *

§ 134.513 [Amended]

21. Amend newly redesignated § 134.513 by removing the second sentence.

§ 134.514 [Amended]

22. Amend newly redesignated § 134.514(b) by removing the word "service" in the second sentence and adding in its place the word "issuance".

Dated: October 21, 2009.

Karen Mills,

Administrator.

[FR Doc. 2010–3613 Filed 2–26–10; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0173; Directorate Identifier 2009–NM–076–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The existing AD currently requires repetitive inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps, and corrective action if necessary. The existing AD also currently requires repetitive gap checks of the inboard and outboard carriage of the outboard mid-flaps to detect fractured carriage spindles, and corrective actions if necessary. This proposed AD would require any new or serviceable carriage spindle installed per the requirements of the existing AD to meet minimum allowable diameter measurements taken at three locations. This proposed AD also would require new repetitive inspections, measurements, and overhaul of the carriage spindles, and applicable corrective actions. In addition, this proposed AD would require replacing any carriage spindle when it has reached its maximum life limit. This proposed AD results from reports of fractures that resulted from stress corrosion and pitting along the length of the spindle and spindle diameter, and additional reports of corrosion on the outboard flap carriage spindles. We are proposing this AD to detect and correct cracked, corroded, or fractured carriage spindles, and to prevent severe flap asymmetry, which could result in reduced control or loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by April 15, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0173; Directorate Identifier 2009–NM–076–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On November 24, 2003, we issued AD 2003–24–08, Amendment 39–13377 (68 FR 67027, December 1, 2003), for all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That

AD currently requires repetitive inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps, and corrective action if necessary. That AD also currently requires repetitive gap checks of the inboard and outboard carriage of the outboard mid-flaps to detect fractured carriage spindles, and corrective actions if necessary. That AD resulted from a report indicating that the inboard and outboard carriage spindles (number 7 and 8 carriage spindles) were fractured on the right outboard flap during approach to landing. We issued that AD to detect and correct cracked, corroded, or fractured carriage spindles, and to prevent severe flap asymmetry, which could result in reduced control or loss of controllability of the airplane.

Actions Since Existing AD Was Issued

The preamble to AD 2003–24–08 explains that we considered the requirements "interim action" and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. The service bulletin describes procedures for repetitive detailed and magnetic particle inspections to detect discrepancies (including corrosion, pitting, and cracks) of the carriage spindle, repetitive measurements to determine the diameter of certain areas of the carriage spindle, and applicable corrective actions. The corrective actions include repairing any corrosion or pitting, or replacement with a new or serviceable carriage. The service bulletin also describes procedures for repetitive overhauls of the carriage. In addition, the service bulletin describes procedures for repetitive replacements of any carriage when it has reached its maximum life limit.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2003–24–08 and would retain certain requirements of the existing AD. This proposed AD would require any new or serviceable carriage spindle installed per the requirements of the existing AD to meet minimum allowable diameter measurements taken at three locations of the spindle. This proposed AD also would require accomplishing the actions specified in the service bulletin described previously.

Change to Existing AD

This proposed AD would retain certain requirements of AD 2003–24–08. Since AD 2003–24–08 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2003–24–08	Corresponding requirement in this proposed AD
paragraph (c)	paragraph (g)
paragraph (d)	paragraph (h)
paragraph (e)	paragraph (i)
paragraph (f)	paragraph (j)
paragraph (g)	paragraph (k)
paragraph (h)	paragraph (l)
paragraph (i)	paragraph (m)
paragraph (j)	paragraph (n)

Costs of Compliance

There are about 2,852 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 2003–24–08).	12	$85	None	$1,020 per inspection cycle	652	$665,040 per inspection cycle.
Inspections and measurements (new proposed actions).	2	85	None	$170 per inspection and measurement cycle.	652	$110,840 per inspection and measurement cycle.
Overhauls (new proposed actions).	16	85	$28,000 [1]	$29,360 per overhaul cycle	652	$19,142,720 per overhaul cycle.
Replacements (new proposed actions).	16	85	$60,000 [2]	$61,360 per replacement cycle.	652	$40,006,720 per replacement cycle.

[1] $7,000 per spindle; 4 spindles per airplane.
[2] $15,000 per spindle; 4 spindles per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the actions required by this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. However, we have been advised that the carriages are already being overhauled and replaced on some affected airplanes. In addition, the replacement cycle is approximately every 20 years. Therefore, the future economic cost impact of this proposed rule on U.S. operators is expected to be less than the cost impact figures indicated above.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–13377 (68 FR 67027, December 1, 2003) and adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2010–0173; Directorate Identifier 2009–NM–076–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 15, 2010.

Affected ADs

(b) This AD supersedes AD 2003–24–08, Amendment 39–13377.

Applicability

(c) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from a report indicating that the inboard and outboard carriage spindles were fractured on the right outboard flap during approach to landing. We are issuing this AD to detect and correct cracked, corroded, or fractured carriage spindles and to prevent severe flap asymmetry, which could result in reduced control or loss of controllability of the airplane.

Compliance

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

Restatement of Certain Requirements of AD 2003–24–08, With Updated Service Information

Compliance Times

(g) The tables in paragraph 1.E., "Compliance" of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003, specify the compliance times for paragraphs (g) through (k) of this AD. For carriage spindles that have accumulated the number of flight cycles or years in service specified in the "Threshold" column of the tables, accomplish the gap check and nondestructive test (NDT) and general visual inspections specified in paragraphs (h) and (j) of this AD within the corresponding interval after December 4, 2003 (the effective date AD 2003–24–08), as specified in the "Interval" column. Repeat the gap check and NDT and general visual inspections at the same intervals, except:

(1) The gap check does not have to be done at the same time as an NDT inspection; after doing an NDT inspection, the interval for doing the next gap check can be measured from the NDT inspection; and

(2) As carriage spindles gain flight cycles or years in service and move from one category in the "Threshold" column to another, they are subject to the repetitive inspection intervals corresponding to the new threshold category.

Work Package 2: Gap Check

(h) Perform a gap check of the inboard and outboard carriage of the left and right outboard mid-flaps to determine if there is a positive indication of a severed carriage spindle, in accordance with Work Package 2 of paragraph 3.B., "Work Instructions" of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003.

Work Package 2: Corrective Actions

(i) If there is a positive indication of a severed carriage spindle during the gap check required by paragraph (h) of this AD, before further flight, remove the carriage spindle and install a new or serviceable carriage spindle in accordance with the "Work Instructions" of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003; or Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. If, as a result of the detailed inspection described in paragraph 4.b. of Work Package 2 of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003, a carriage spindle is found not to be severed and no corrosion and no cracking is present, it can be reinstalled on the mid-flap in accordance with Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003; or Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. After the effective date of this AD, use only Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009.

Work Package 1: Inspections

(j) Perform a NDT inspection and general visual inspection for each carriage spindle of the left and right outboard mid-flaps to detect cracks, corrosion, or severed carriage spindles, in accordance with the "Work Instructions" of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003.

Work Package 1: Corrective Actions

(k) If any corroded, cracked, or severed carriage spindle is found during any inspection required by paragraph (j) of this AD, before further flight, remove the carriage spindle and install a new or serviceable carriage spindle in accordance with the "Work Instructions" of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003; or Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. After the effective date of this AD, use only Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009.

Parts Installation

(l) Except as provided in paragraph (i) of this AD: As of December 4, 2003, no person may install on any airplane a carriage spindle that has been removed as required by paragraph (i) or (k) of this AD, unless it has been overhauled in accordance with the "Work Instructions" of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003; or Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. After the effective date of this AD, use only Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. To be eligible for installation under this paragraph, the carriage spindle must have been overhauled in accordance with the requirements of paragraph (m) of this AD.

(m) During accomplishment of any overhaul specified in paragraph (l) of this AD, use the procedures specified in paragraphs (m)(1) and (m)(2) of this AD during application of the nickel plating to the carriage spindle in addition to those specified in Boeing 737 Standard Overhaul Practices Manual, Chapter 20–42–09, Revision 25, dated July 1, 2009.

(1) The maximum deposition rate of the nickel plating in any one plating/baking cycle must not exceed 0.002-inches-per-hour.

(2) Begin the hydrogen embrittlement relief bake within 10 hours after application of the plating, or less than 24 hours after the current was first applied to the part, whichever is first.

Exception to Reporting Recommendations in Certain Service Bulletins

(n) Although Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003, recommends that operators report inspection findings to the manufacturer, this AD does not contain such a reporting requirement.

New Actions Required by This AD

Inspections, Measurements, and Overhauls of the Carriage Spindle

(o) At the applicable times specified in paragraph (o)(1) or (o)(2) of this AD: Do the detailed inspection for corrosion, pitting, and cracking of the carriage spindle, the magnetic particle inspection for cracking of the carriage spindle, measurements of the spindle to determine if it meets the allowable minimum diameter, and overhauls, and applicable corrective actions by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. The applicable corrective actions must be done before further flight. Repeat these actions thereafter at intervals not to exceed 12,000 flight cycles on the carriage spindle or 8 years, whichever comes first.

(1) For Model 737–100, –200, –200C airplanes, at the later of the times specified in paragraph (o)(1)(i) or (o)(1)(ii) of this AD:

(i) Before the accumulation of 12,000 total flight cycles on the carriage spindle since new or overhauled, or within 8 years after the installation of the new or overhauled part, whichever comes first.

(ii) Within 1 year after the effective date of this AD.

(2) For Model –300, –400, and –500 series airplanes, at the later of the times specified in paragraph (o)(2)(i) or (o)(2)(ii) of this AD:

(i) Before the accumulation of 12,000 total flight cycles on the carriage spindle since new or overhauled, or within 8 years after the installation of the new or overhauled part, whichever comes first.

(ii) Within 2 years after the effective date of this AD.

Replacement of the Carriage Spindle

(p) For Model 737–100, –200, –200C airplanes: Replace the carriage spindle with a new or documented (for which the service life, in flight cycles, is known) carriage spindle, in accordance with Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009, at the later of the times specified in paragraphs (p)(1) and (p)(2) of this AD, except as required by paragraph (r) of this AD. Overhauling the carriage spindles does not zero-out the flight cycles. Total flight cycles accumulate since new.

(1) Before the accumulation of 48,000 total flight cycles on the new or overhauled carriage.

(2) Within three years or 7,500 flight cycles after the effective date of this AD, whichever occurs first.

(q) For Model 737–300, –400, and –500 series airplanes: Replace the carriage spindle with a new or documented (for which the service life, in flight cycles, is known) carriage spindle, in accordance with Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009, at the later of the times specified in paragraphs (q)(1) and (q)(2) of this AD, except as required by paragraph (r) of this AD. Overhauling the carriage spindles does not zero-out the flight cycles. Total flight cycles accumulate since new.

(1) Before the accumulation of 48,000 total flight cycles on the new or overhauled carriage.

(2) Within six years or 15,000 flight cycles after the effective date of this AD, whichever occurs first.

(r) For airplanes with an undocumented carriage: Do the applicable actions specified in paragraph (p) or (q) of this AD at the applicable time specified in paragraph (r)(1) or (r)(2) of this AD.

(1) For Model 737–100, –200, –200C series airplanes: Do the actions specified in paragraph (p) of this AD at the time specified in paragraph (p)(2) of this AD.

(2) For Model –300, –400, and –500 series airplanes: Do the actions specified in paragraph (q) of this AD at the time specified in paragraph (q)(2) of this AD.

Repetitive Replacements of Carriage Spindle

(s) For all airplanes: Repeat the replacement of the carriage spindle specified by paragraph (p) or (q) of this AD, as applicable, thereafter at intervals not to exceed 48,000 total flight cycles on the new or overhauled carriage spindle.

Alternative Methods of Compliance (AMOCs)

(t)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

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

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

Issued in Renton, Washington, on February 17, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–4167 Filed 2–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1100; Directorate Identifier 2009–NE–37–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: The FAA is correcting an NPRM, which published in the **Federal Register**. That NPRM applies to IAE V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines. The docket number is incorrect in three locations. This document corrects the docket number in those three locations. In all other respects, the original document remains the same.

DATES: The NPRM is corrected as of March 1, 2010.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; *e-mail: kevin.dickert@faa.gov; phone:* (781) 238–7117, *fax:* (781) 238–7199.

SUPPLEMENTARY INFORMATION: On February 12, 2010 (75 FR 6860), we published a proposed AD, FR Doc. 2010–2999, in the **Federal Register**. That AD applies to IAE V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines. We need to make the following corrections:

§ 39.13 [Corrected]

On page 6860, in the first column, under 14 CFR Part 39, "Docket No.

FAA–2009–0544" is corrected to read "Docket No. FAA–2009–1100".

On page 6860, in the second column, under Comments Invited, in the fifth and sixth line, "Docket No. FAA–2009–0544" is corrected to read "Docket No. FAA–2009–1100".

On page 6861, in the third column, after International Aero Engines AG, "Docket No. FAA–2009–0544" is corrected to read "Docket No. FAA–2009–1100".

Issued in Burlington, Massachusetts, on February 19, 2010.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–4114 Filed 2–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–117501–09]

RIN 1545–BI67

Reduced 2009 Estimated Income Tax Payments for Individuals With Small Business Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance as to qualified individuals with small business income who certify that they satisfy the gross income requirement for purposes of claiming a reduction in their required 2009 estimated income tax payments. The temporary regulations implement section 1212 of the American Recovery and Reinvestment Act of 2009, which amended section 6654(d) of the Internal Revenue Code (Code) to provide for reduced 2009 estimated income tax payments for certain qualified individuals. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by June 1, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–117501–09), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–117501–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–117501–09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Adrienne Mikolashek at (202) 622–4940; concerning submission of comments and a request for a public hearing, Regina Johnson at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 6654. Section 6654 imposes an addition to tax in the case of an individual taxpayer's underpayment of estimated tax. The temporary regulations provide guidance on reduced estimated income tax payments for qualified individuals with small business income for any taxable year beginning in 2009. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Proposed Effective Date

The regulations, as proposed, apply to any taxable year that begins in 2009 or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Adrienne Mikolashek, Office of the Associate Chief Counsel, Procedure and Administration.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.6654–2 also issued under 26 U.S.C. 6654(d) * * *

Par. 2. Section 1.6654–2 is amended by revising paragraph (a) introductory text, and paragraphs (a)(1)(ii) and (f) to read as follows:

§ 1.6654–2 Exceptions to imposition of the addition to the tax in the case of individuals.

(a) [The text of the proposed amendment to § 1.6654–2(a) is the same as the text of § 1.6654–2T(a) published elsewhere in this issue of the **Federal Register**].

(1)(i) * * *

(ii) [The text of the proposed amendment to § 1.6654–2(a)(1)(ii) is the same as the text of § 1.6654–2T(a)(1)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) [The text of the proposed amendment to § 1.6654–2(f) is the same

as the text of § 1.6654–2T(f) published elsewhere in this issue of the **Federal Register**].

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–4125 Filed 2–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31 and 301

[REG–139255–08]

RIN 1545–BI51

Information Reporting for Payments Made in Settlement of Payment Card and Third Party Network Transactions; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Rescheduling of notice of public hearing on proposed rulemaking.

SUMMARY: This document reschedules a notice of public hearing on proposed rulemaking and notice of public hearing relating to information reporting requirements, information reporting penalties, and backup withholding requirements for payment card and third party network transactions.

DATES: The public hearing, originally scheduled for Wednesday, February 10, 2010 at 10 a.m. is rescheduled for Monday, March 15, 2010 at 1 p.m.

ADDRESSES: The public hearing is being held in the IRS New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706.

FOR FURTHER INFORMATION CONTACT: Regina Johnson of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Tuesday, November 24, 2009 (74 FR 61294), announced that a public hearing on proposed regulations relating to information reporting requirements, information reporting penalties, and backup withholding requirements for payment card and third party network transactions, was to be held on Wednesday, February 10, 2010 at 10 a.m. Due to inclement weather, the date and location of the public hearing has been changed. The public hearing is scheduled for Monday, March 15, 2010 beginning at 1 pm. in the auditorium of the IRS New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706. The building has controlled access restrictions, attendants will not be admitted beyond the entrance before 12:30 p.m. The IRS will prepare an agenda showing the scheduling of the speakers testifying, and make copies available free of charge at the hearing.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel.

[FR Doc. 2010–4121 Filed 2–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–111833–99]

RIN 1545–AX46

Regulations Under I.R.C. Section 7430 Relating to Awards of Administrative Costs and Attorneys Fees; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulation relating to awards of administrative costs and attorneys fees under section 7430 to conform to amendments made in the Taxpayer Relief Act of 1997 and the IRS Restructuring and Reform Act of 1998.

DATES: The public hearing, originally scheduled for March 10, 2010 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Regina Johnson of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, November 25, 2009 (74 FR 61589) announced that a public hearing was scheduled for March 10, 2010 at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 7430 of the Internal Revenue Code.

The public comment period for these regulations expired on February 8, 2010. Outlines of topics to be discussed at the hearing were due on February 10, 2010. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak, and an outline of the topics to be addressed. As of Tuesday, February 23, 2010, no one has requested to speak. Therefore, the public hearing scheduled for March 10, 2010, is cancelled.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel.

[FR Doc. 2010–4122 Filed 2–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 240

[DOD–2008–OS–0050]

RIN 0790–AI28

Information Assurance Scholarship Program (IASP)

AGENCY: Assistant Secretary of Defense (Networks and Information Integration)/DoD Chief Information Officer (ASD(NII)/DoD CIO), Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: This proposed rule proposes to add a part to DoD regulations to implement policy, responsibilities and procedures for executing an information assurance scholarship and grant program, known as the DoD Information Assurance Scholarship Program (IASP).

DATES: Comments must be received by April 30, 2010.

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

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any

personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Sandra Smith, (703) 699–0122.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been certified that 32 CFR part 240 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Sec. 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 240 does not contain a Federal mandate that may result in expenditure by State, local and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 240 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

Section 240.7 of this proposed rule contains information collection requirements. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Title: Information Assurance Scholarship Program (IASP).

Type of Request: New.

Number of Respondents: 422.

Responses per Respondent: 1.

Annual Responses: 422.

Average Burden per Response: 4.16 hours.

Annual Burden Hours: 1,755 hours.

Needs and Uses: The National Security Agency (NSA) is the Executive Administrator of the Information Assurance Scholarship Program (IASP), serving on behalf of the Office of the Assistant Secretary of Defense (Networks and Information Integration)/ DoD Chief Information Officer. Those who wish to participate in the IASP Recruitment program must complete and submit an application package through their college or university to NSA. Centers of Academic Excellence in Information Assurance Education (CAE/ IAEs) interested in applying for capacity-building grants must complete and submit a written proposal, and all colleges and universities subsequently receiving grants must provide documentation on how the grant funding was utilized. In addition, IASP participants and their faculty advisors (Principal Investigators) are required to complete annual program assessment documents. Without this written documentation, the DoD has no means of judging the quality of applicants to the program or collecting information regarding program performance.

Affected Public: "Individuals or households," specifically college students at institutions designated as CAE/IAEs who are interested in, and qualified to, apply for a scholarship; "Not-for-profit institutions," specifically CAE/IAEs interested in submitting proposals for capacity-building grants, and faculty advisors (Principal Investigators).

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, DoD Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503, with a copy to the Office of the Assistant Secretary of Defense (Networks and Information Integration)/ DoD Chief Information Officer (ASD(NII)/DoD CIO), 1225 South Clark St., Suite 910, Arlington, VA, 22202. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Assistant Secretary of Defense (Networks and Information Integration)/ DoD Chief Information Officer (ASD(NII)/DoD CIO), 1225 South Clark St., Suite 910, Arlington, VA 22202; or contact Ms. Sandra Smith at (703) 699–0122.

Executive Order 13132, "Federalism"

It has been certified that 32 CFR part 240 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 240

Scholarships.

Accordingly, 32 CFR Part 240 is added to read as follows:

PART 240—INFORMATION ASSURANCE SCHOLARSHIP PROGRAM (IASP)

Sec.

240.1 Purpose.
240.2 Applicability.
240.3 Definitions.
240.4 Policy.
240.5 Responsibilities.
240.6 Retention program.
240.7 Recruitment program.

Authority: 10 U.S.C. 2200, 10 U.S.C. 7045.

§ 240.1 Purpose.

This part implements policy, responsibilities and procedures for executing the DoD Information Assurance Scholarship Program (IASP).

§ 240.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 240.3 Definitions.

The following terms apply to this part:

Center of Academic Excellence (CAE). A collective term that refers to both a National Center of Academic Excellence in Information Assurance Education (CAE/IAE) and a National Center of Academic Excellence in Information Assurance Research (CAE–R).

CAE/IAE. A National CAE/IAE is an institution of higher education which has met established criteria for Information Assurance Education and has been jointly designated by the Department of Homeland Security and the National Security Agency (NSA) as a CAE/IAE.

CAE–R. A National CAE–R is an institution of higher education which has met established criteria for Information Assurance Research and has been jointly designated by the Department of Homeland Security and the NSA as a CAE–R.

DoD IASP Executive Administrator. The NSA functions as the Executive Administrator for the IASP and is charged with the day-to-day administration of the program.

IASP Partner University. A National CAE which has joined in academic partnership with the Information Resources Management College (IRMC) of the National Defense University to award masters' and/or doctoral degrees through DoD's IASP.

Information Assurance (IA). For the purpose of this part, the term "IA" includes computer security, network security and other relevant IT related to information assurance pursuant to Section 2200 of title 10, United States Code.

Information Technology (IT). For the purpose of this part, the term "IT" refers to any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. "IT" includes computers, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources.

Institution of Higher Education. For the purpose of this part, an "institution of higher education" refers to an educational institution in any State that:

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

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

(3) Provides an educational program that awards bachelor's degrees, or provides no less than a 2-year program that is acceptable for full credit toward a degree;

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

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Principal Investigator. Principal Investigators are the primary points of contact at each National CAE/IAE. They are responsible for publicizing the IASP to potential recruitment students and working with students during the application process. Principal Investigators also serve as the primary contact for recruitment students and retention students who have transferred from the IRMC to a Partner University.

Recruitment Students or Recruitment Program. Applies to the portion of the IASP available to qualified non-DoD students currently enrolled at a designated National CAE.

Retention Students or Retention Program. Applies to the portion of the IASP available to full-time, active duty Military Services personnel and civilian employees of the DoD Components.

§ 240.4 Policy.

It is DoD policy that:

(a) The Department of Defense shall recruit, develop, and retain a highly skilled cadre of professionals to support the critical IA and information technology (IT) management, technical, digital and multimedia forensics, cyber investigation, and infrastructure protection functions required for a secure network-centric environment.

(b) The IASP shall be used to attract new entrants to the DoD IA workforce and to retain current IA/IT personnel necessary to support the DoD's diverse warfighting, business, intelligence, and enterprise information infrastructure requirements.

(c) Information Assurance disciplines for the scholarship program include, but are not limited to: biometrics, business management or administration, computer crime investigations, computer engineering, computer programming, computer science, computer systems analysis, cyber operations, database administration, data management, digital and multimedia forensics, electrical engineering, electronics engineering, information security (assurance), mathematics, network management, software engineering, and other similar disciplines as approved by the Assistant Secretary of Defense (Networks and Information Integration)/DoD Chief Information Officer (ASD(NII)/DoD CIO). All academic disciplines shall include a concentration in IA.

(d) Subject to availability of funds, the Department of Defense may provide grants to institutions of higher learning for faculty, curriculum, and infrastructure development and academic research to support the DoD's IA critical areas of interest.

§ 240.5 Responsibilities.

(a) The Assistant Secretary of Defense (Networks and Information Integration)/ Department of Defense Chief Information Officer (ASD(NII)/DoD CIO) shall:

(1) Establish overall policy and guidance to conduct and administer the DoD IASP pursuant to Deputy Secretary of Defense Memorandum, "Delegation of Authority and Assignment of Responsibility under Section 922 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001," October 30, 2000.

(2) Develop annual budget recommendation to administer the DoD IASP and provide academic scholarships and grants.

(3) Oversee program administration and execution by the Director, NSA.

(4) Establish and chair the DoD IASP Steering Committee to oversee key program actions, which include:

(i) Student eligibility criteria.

(ii) Grant and capacity building selection criteria for awards to CAEs.

(iii) Final approval for the allocation of individual IASP scholarships and grants.

(iv) Communications and marketing plans.

(v) IASP metrics and analysis of performance results, including student and CAE/IAE feedback.

(b) The Director, NSA, shall:

(1) Serve as the DoD IASP Executive Administrator to:

(i) Implement the IASP and publish in writing all of the criteria, procedures and standards required for program implementation to encourage the recruitment and retention of personnel who have critical IA and IT skills. Responsibilities include:

(A) Implementing the scholarship application and selection procedures for recruitment and retention students.

(B) Establishing procedures for recruiting students to meet service obligations through employment with a DoD Component upon graduation from their academic program.

(C) Ensuring that all students' academic eligibility is maintained, service obligations are completed, and that reimbursement obligations for program disenrollment are fulfilled.

(D) Establishing procedures for National CAE/IAEs and employing DoD Components to report on students' progress.

(E) Maintaining appropriate accounting for all IASP funding disbursements.

(ii) Make grants, subject to availability of funds, on behalf of the DoD CIO to institutions of higher education to support the establishment, improvement, and administration of IA education programs pursuant to Sections 2200 and 7045 of title 10, United States Code.

(A) Develop and implement the annual solicitation for proposals for IASP grants.

(B) Coordinate the review process for grant proposals.

(C) Distribute grant funding and maintain appropriate accounting.

(D) Establish annual reporting procedures for grant recipients to detail the results from their grant implementation.

(2) Provide representation to the DoD IASP Steering Committee and provide briefings and reports, as required, to effect proper oversight by the DoD CIO and the IASP Steering Committee.

(3) Maintain databases to support the analysis of IASP performance results.

(c) The Information Resources Management College (IRMC) of the National Defense University, under the authority, direction and control of the Chairman of the Joint Chiefs of Staff, shall:

(1) Establish IASP Partner University agreements with National CAE/IAEs to provide master's and doctoral degree opportunities to current, former, and future students enrolled at the IRMC, who are awarded retention scholarships.

(2) Maintain records of IASP student enrollments and graduates, and provide data to the DoD IASP Executive Administrator.

(3) Serve as the liaison between IRMC retention students, their follow-on IASP Partner University, and the DoD IASP Executive Administrator.

(4) Provide academic representation to the DoD IASP Steering Committee and provide briefings and reports as required on the IASP retention program.

(d) The Heads of the DoD Components shall:

(1) Determine the requirement for IASP usage as a vehicle to recruit and retain IA personnel to their organization.

(2) Identify the Office of Primary Responsibility for administering the IASP within the DoD Component.

(3) Establish DoD Component-specific nomination, selection, and post-academic assignment criteria for IASP retention students.

(i) Nominated personnel shall be high performing employees who are rated at the higher levels of the applicable performance appraisal system and demonstrate sustained quality performance with the potential for increased responsibilities. All individuals must be U.S. citizens and be able to obtain a security clearance.

(ii) Nominations must fulfill specific personnel development requirements for both the individual nominee and the nominating organization.

(iii) Salaries of retention scholarship recipients shall be paid by the nominating DoD Component. When deemed necessary, DoD Components are responsible for personnel backfill while recipients are in school.

(iv) Payback assignments of graduated students shall provide relevant, follow-on utilization of academic credentials in accordance with DoD Component mission requirements.

(v) Retention students shall fulfill post-academic service obligations pursuant to Sections 2200 and 7045 of title 10, United States Code. Members of the Military Services shall serve on active duty while fulfilling designated DoD Component service obligations. DoD civilian employees shall sign a continued service agreement that complies with section 2200 of title 10, United States Code, prior to commencement of their education, to continue service within the Department of Defense upon conclusion of their education, for a period equal to three times the length of the education period. The period of obligated service is in addition to any other period for which the recipient is obligated to serve on active duty or in the civil service, as the case may be. Individuals who fail to complete the degree program satisfactorily, or to fulfill the service commitment, shall be required repay program costs, where applicable. Head of Components are responsible to ensure enforcement of these agreements.

(4) Determine annual billet requirements for recruitment students (the number of non-DoD IASP scholars who can be placed in full-time employment positions with the DoD Component upon graduation). Specific responsibilities for DoD Components who identify billet requirements for recruitment students include:

(i) Assessing DoD Component skill requirements to determine skill gaps and providing the annual recruitment student requirement to the DoD IASP Executive Administrator.

(ii) Participating in the selection process for recruitment students.

(iii) Coordinating and processing security clearances for selected recruitment scholarship recipients.

(iv) Allocating billets for an internship period (if applicable).

(v) Assigning mentors to recruitment students.

(vi) Determining post-academic billet assignments for recruitment students prior to the end of the students' academic program.

(5) Participate in the evaluation processes to assess and recommend improvements to the IASP.

§ 240.6 Retention program.

(a) The IASP retention program is open to qualified DoD civilian employees and members of the Military Services. Military officers and DoD civilian employees may apply for a master's or doctoral degree program; enlisted personnel may apply for a master's program.

(b) There are three DoD academic institutions participating in the IASP: the Air Force Institute of Technology (AFIT) at Wright-Patterson Air Force Base in Dayton, Ohio; the Information Resources Management College (IRMC) of the National Defense University at Fort McNair in Washington, DC in conjunction with over 25 Partner Universities; and the Naval Postgraduate School (NPS) in Monterey, California. Students at AFIT and NPS attend full-time programs. IRMC participants may

attend the IRMC component of the IASP either full or part-time and select a follow-on IASP Partner University through which they complete their degree requirements either full or part-time. There are no part-time doctoral programs. All candidates must meet the eligibility requirements for their selected program, which are outlined in IASP Academic Programs for Retention Students.

(1) Military officers and DoD civilian employees may apply to attend any one of the three DoD academic institutions.

(2) Enlisted personnel may attend AFIT or the NPS, which is authorized to enroll enlisted IASP participants pursuant to Sections 2200 and 7045 of title 10, United States Code.

(c) Students must select a degree program in one of the academic disciplines listed in § 240.4(c).

(d) Scholarship funding for the AFIT, the IRMC, and the IASP Partner Universities, and the NPS includes tuition costs, selected fees, books, and pre-approved, limited temporary duty (TDY) costs. Other TDY and/or permanent change of station costs must be paid by the nominating DoD Component. Retention students will continue to receive their military pay or civilian salary from their DoD Component throughout their course of study.

(e) DoD Component nominations are due by January 31st each year. The student nomination process is outlined in IASP Nomination Process for Retention Students.

(f) IASP participants are obligated to remain in good standing in their degree programs, to continue in service as civilian employees or members of the Military Services, and where applicable, to repay program costs for failure to complete the degree program satisfactorily, or to fulfill the service commitment pursuant to Sections 2200 and 7045 of title 10, DoD policy, and the policies of the respective DoD Component.

(g) Members of the Military Services shall meet DoD Component service obligations. DoD civilian employees shall sign a continued service agreement that complies with Reference (a), prior to commencement of their education to continue in service with the Department of Defense upon conclusion of their education, for a period equal to three times the length of the education period.

§ 240.7 Recruitment program.

(a) Annually, in November, NSA (the DoD IASP Executive Administrator) announces a solicitation for proposal from non-DoD National CAE/IAEs interested in participating in DoD's IASP. Graduate students and rising junior or senior undergraduates accepted at or enrolled in one of the non-DoD institutions designated as CAE/IAEs apply for full scholarships to complete a bachelor's, master's, or a doctoral degree, or graduate (post-baccalaureate) certificate program in one of the relevant disciplines defined in § 240.4(c). Student application requirements are included in the solicitation proposal released by NSA.

(b) DoD Component recruitment student requirements are due to the DoD IASP Executive Administrator each year by January 31st.

(c) The student selection process occurs annually in April. The selection process is outlined in IASP Nomination Process for Recruitment Students.

(d) Recruitment students are provided scholarships, covering the full cost of tuition and selected books and fees. Students are also provided a stipend to cover room and board expenses.

(e) Recruitment students may be required to complete a student internship, depending on the length of their individual scholarship. DoD Components typically use the authority granted in 5 CFR 213.3102(r), to arrange the internship.

(f) All recruitment students incur a service commitment which commences after the award of the IASP authorized degree on a date to be determined by the relevant DoD Component. The obligated service in DoD shall be as a civilian employee of the Department or as an active duty enlisted member or officer in one of the Military Services.

(1) Individuals selecting employment in the civil service shall incur a service obligation of one year of service to the Department upon graduation for each year or partial year of scholarship they receive, in addition to an internship, if applicable.

(2) Individuals enlisting or accepting a commission to serve on active duty in one of the Military Services shall incur a service obligation of a minimum of 4 years on active duty in that Service upon graduation. The Military Services may establish a service obligation longer than 4 years, depending on the occupational specialty and type of enlistment or commissioning program selected.

(g) Individuals who fail to complete the degree program satisfactorily or to fulfill the service commitment upon graduation shall be required to reimburse the United States, in whole or in part, the cost of the financial (scholarship) assistance provided to them.

Dated: February 22, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–3993 Filed 2–26–10; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0964; FRL–9116–9]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; NO_X Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Illinois State Implementation Plan (SIP) that would terminate the provisions of the Nitrogen Oxides (NO_X) Budget Trading Program that apply to electric generating units. EPA is no longer operating the NO_X Budget Trading Program as a compliance option under the NO_X SIP Call. These sources are now subject to provisions in a newer set of approved Illinois rules that address EPA's Clean Air Interstate Rule (CAIR). For these reasons, the sunset of the NO_X Budget Trading Program for these sources merely deactivates duplicative rule language.

DATES: Comments must be received on or before March 31, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R05–OAR–2009–0964 by one of the following methods:

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

2. *E-mail: damico.genevieve@epa.gov.*

3. *Fax:* (312) 385–5501.

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, 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.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: John Summerhays, (312) 886–6067, or by e-mail at *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 10, 2010.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–4087 Filed 2–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R07–OAR–2009–0860; FRL–9120–1]

Approval and Promulgation of Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Iowa State Operating Permits Program submitted by the State on February 20, 2009. The purpose of this revision is to increase emissions fees for the Title V Operating Permits Program. EPA is proposing to approve this revision pursuant to section 502 of the Clean Air Act and implementing regulations.

DATES: Comments on this proposed action must be received in writing by March 31, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2009–0860, by mail to Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Tracey Casburn at (913) 551–7016, or by e-mail at *casburn.tracey@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register,** EPA is approving the State's revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 16, 2010.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2010–4142 Filed 2–26–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT

49 CFR Parts 172, 173, 175

[Docket No. PHMSA–2009–0095 (HM–224F)]

RIN 2137–AE44

Hazardous Materials: Transportation of Lithium Batteries

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: On January 11, 2010, the Pipeline and Hazardous Materials Safety Administration (PHMSA) in coordination with the Federal Aviation Administration (FAA) published a notice of proposed rulemaking to comprehensively address the safety risks associated with the air transport of lithium cells and batteries. PHMSA and FAA will hold a public meeting on March 5, 2010, in Washington, DC, to provide interested persons with an opportunity to submit oral comments on the proposals in the NPRM.

DATES: *Public meeting:* March 5, 2010, starting at 1 p.m. and ending at 4 p.m.

Written comments: All comments to this docket must be received no later than March 12, 2010. PHMSA will consider late-filed comments to the extent practicable as the agency develops a final rule.

ADDRESSES: *Public meeting:* The meeting will be held at the U.S. DOT headquarters 1200 New Jersey Ave, SE., Washington, DC 20590. The main visitor's entrance is located in the West Building, on New Jersey Avenue and M Street. Upon entering the lobby, visitors must report to the security desk. Visitors should indicate that they will be attending the Lithium Battery Public Meeting and wait to be escorted to the Conference Center. Any person wishing to participate in the public meeting should provide their name and organization to Kevin A. Leary or Charles E. Betts, by telephone or in writing no later than March 4, 2010. Providing this information will facilitate the security screening process for entry into the building on the day of the meeting.

Oral Presentations: Any person wishing to present an oral statement at the public meetings should notify Charles E. Betts or Kevin A. Leary, by March 4, 2010, and provide in advance or at the meeting, written copies of their presentations.

Written Comments: PHMSA and FAA invite interested parties, whether or not they attend the public meeting, to submit any relevant information, data, or comments to the docket of this proceeding (PHMSA–2009–0095) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (*see* **ADDRESSES**).

Privacy Act: 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 (Volume 65, Number 70; Pages 19477–78), which may also be found at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Charles E. Betts or Kevin A. Leary, Office of Hazardous Materials Standards, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–10, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 2010, PHMSA, in consultation with FAA, proposed to amend requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) applicable to the transportation of lithium cells and batteries, including lithium cells and batteries packed with or contained in equipment (HM–224F; 75 FR 1302). The proposed changes are intended to enhance safety by ensuring that all lithium batteries are designed to withstand normal transportation conditions and to communicate to carriers and emergency responders of the presence of these materials. Specifically, PHMSA and FAA propose to:

- Revise current shipping descriptions for lithium batteries (UN3090), lithium batteries packed with equipment (UN3091), and lithium batteries contained in equipment (UN3091) to specify lithium metal batteries *including lithium alloy batteries as appropriate.*[1]
- Adopt shipping descriptions for lithium ion batteries *including lithium ion polymer batteries* (UN3480), lithium ion batteries packed with equipment *including lithium ion polymer batteries* (UN3481), lithium ion batteries contained in equipment *including lithium ion polymer batteries* (UN3481).[1]
- Adopt watt-hours in place of equivalent lithium content to measure the relative hazard of lithium ion cells and batteries.
- Incorporate by reference the latest revisions to the United Nations Manual of Tests and Criteria applicable to the design type testing of lithium cells and batteries.
- Adopt and revise various definitions including "Aggregate lithium content" "Lithium content", "Lithium ion cell or battery", "Lithium metal cell or battery", "Short circuit", and "Watt-hour" based on definitions found in the UN Manual of Tests and Criteria.
- Require manufacturers to retain results of satisfactory completion of UN design type tests for each lithium cell and battery type and place a mark on the battery and/or cell to indicate testing has been completed successfully. PHMSA and the FAA will coordinate with the appropriate international organizations to ensure consistency.
- For air transportation, eliminate regulatory exceptions for lithium cells and batteries, other than certain exceptions for extremely small lithium cells and batteries that are shipped in very limited quantities such as button cells and other small batteries that are packed with or contained in equipment and those required for operational use in accordance with applicable airworthiness requirements and operating regulations.
- For all transport modes, require lithium cells and batteries to be packed to protect the cell or battery from short circuits.
- Unless transported in a container approved by the FAA Administrator, when transported aboard aircraft, limit stowage of lithium cells and batteries to crew accessible cargo locations or locations equipped with an FAA approved fire suppression system.
- Consolidate and simplify current and revised lithium battery requirements into one section of the HMR.
- Apply appropriate safety measures for the transport of lithium cells or batteries identified as being defective for safety reasons, or those that have been damaged or are otherwise being returned to the manufacturer.

To expedite compliance with the amendments in this notice, PHMSA proposed a mandatory compliance date of 75 days after the date of publication of the final rule.

II. Purpose of Public Meeting

The March 5, 2010 meeting is intended to provide an opportunity for all interested parties to comment on the NPRM and the accompanying regulatory evaluation. However, PHMSA and FAA consider it important to address the risks in the transportation of lithium cells and batteries promptly and that the 60-day comment period provided in the NPRM should be sufficient for all comments to be prepared and submitted. Accordingly, the March 12, 2010 deadline for submission of written comments is not being extended. However, PHMSA will consider late-filed comments to the extent practicable as the agency develops a final rule.

Issued in Washington, DC, on February 24, 2010.

Magdy El-Sibaie,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2010–4232 Filed 2–25–10; 4:15 pm]

BILLING CODE 4910–60–P

[1] In 2006, separate shipping descriptions for lithium metal batteries and lithium ion batteries were adopted into the UN Recommendations. The International Civil Aviation Organization and the International Maritime Organization subsequently adopted these shipping descriptions. All references to primary or secondary lithium batteries in international regulations were revised to reflect this change.

Notices

Federal Register
Vol. 75, No. 39
Monday, March 1, 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

Federal Crop Insurance Corporation

Community Outreach and Assistance Partnership Program

Funding Opportunity Title: Community Outreach and Assistance Partnership Program.

Announcement Type: Request for Applications (RFA) Community Outreach and Assistance Partnership Program: Initial Announcement.

CFDA Number: 10.455.

DATES: Applications are due by 5 p.m. EST on April 15, 2010. Applications received after the deadline will not be considered for funding. All awards will be made and partnership agreements completed by September 30, 2010.

Overview: In accordance with section 1522(d) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately $2.5 million in fiscal year 2010 (subject to availability of funds) for collaborative outreach and assistance programs for limited resource, socially disadvantaged and other traditionally under-served farmers and ranchers, who produce Priority Commodities as defined in Part I.C. Awards under this program will be made on a competitive basis for projects of up to one year. Recipients of awards must demonstrate non-financial benefits from a partnership agreement and must agree to the substantial involvement of RMA in the project. This announcement lists the information needed to submit an application under this program.

FOR FURTHER INFORMATION CONTACT: Jacquea Howard-Brock, Outreach Specialist, Telephone (202) 690–4789, Facsimile (202) 690–1518, E-mail: *jacquea.howard-brock@rma.usda.gov,* Michelle Wert, Management and Program Analyst, Telephone (202) 690–1687, E-mail: *michelle.wert@rma.usda.gov,* Ron Brown, Outreach Specialist, Telephone (919) 875–4896, E-mail: *ron.brown@rma.usda.gov* or Rudy Perez, Outreach Specialist, Telephone (530) 792–5875, Cell (202) 230–1606, E-mail: *rudy.perez@rma.usda.gov.* Application materials can be downloaded from the RMA Web site at *http://www.rma.usda.gov/aboutrma/agreements/;* or from the Government grants Web site at *http://www.grants.gov.* Click on "Find Grant Opportunities," then select "Basic Search," type in "RMA" in the Keyword Search field and select "Search," select "Community Outreach and Assistance Partnership Program" under the Opportunity Title column to access the application package for this announcement.

The collection of this information has been approved under OMB control number 0563–0066 through November 30, 2010.

This announcement consists of seven parts.

Part I—General Information
A. Legislative Authority and Background
B. Purpose
C. Definition of Priority Commodities
D. Program Description
Part II—Award Information
A. Available Funding
B. Types of Applications
Part III—Eligibility Information
A. Eligible Applicants
B. Project Period
C. Non-Financial Benefits
D. Cost Sharing or Matching
E. Funding Restrictions
Part IV—Application and Submission Information
A. Address To Submit an Application Package
B. Content and Form of Application
C. Acknowledgement of Applications
Part V—Application Review Process
A. General
B. Evaluation Criteria and Weights
Part VI—Award Administration
A. Notification of Award
B. Access to Panel Review Information
C. Confidential Aspects of Proposals and Awards
D. Reporting Requirements
E. Administration
F. Prohibitions and Requirements With Regard to Lobbying
G. Applicable OMB Circulars
H. Confidentiality
I. Civil Rights Training
Part VII—Additional Information
A. Requirement To Use Program Logo
B. Requirement To Provide Project Information to an RMA Representative
C. Private Crop Insurance Organizations and Potential Conflict of Interest
D. Dun and Bradstreet (D&B Data Universal Numbering System)
E. Required Registration for Grants.gov

Part I—General Information

A. Legislative Authority and Background

This program is authorized under section 1522(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. RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. One of RMA's four strategic goals is to ensure that its customers and potential customers are well informed of the risk management solutions available. 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, providing risk management education and information and offering outreach programs aimed at equal access and participation of underserved communities.

B. Purpose

The purpose of this program is to fund projects that provide limited resource, socially disadvantaged, and other traditionally underserved producers with training, informational opportunities and assistance necessary to understand:

(1) The kind of risks addressed by existing and emerging risk management tools;

(2) The features and appropriate use of existing and emerging risk management tools; and

(3) How to make sound risk management decisions.

In addition to projects utilizing risk management tools, for 2010, RMA will fund projects in the following Special Emphasis Topic areas: Farm-to-School, Farm Safety, Food Safety, and addressing Food Deserts (urban and rural) with small farmer/rancher products.

Each partnership agreement awarded through this program will provide the applicant with funds, guidance, and the

substantial involvement of RMA to deliver outreach and assistance programs to producers in a specific geographical area.

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, 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, with inadequate crop insurance coverage produced by limited resource, socially disadvantaged, and other traditionally underserved producers.

A project is considered as giving priority to Priority Commodities if the majority of the educational outreach and assistance activities are directed to limited resource, socially disadvantaged and other traditionally under-served producers of one or more of the three classes of commodities listed above or any combination of the three classes.

D. Program Description

This program will support a wide range of innovative outreach and assistance activities in farm management, financial management, marketing contracts, crop insurance, special emphasis topic areas and other existing and emerging risk management tools. RMA will be substantially involved in the activities listed under paragraph 2. The applicant must identify specific ways in which RMA could have substantial involvement in the proposed outreach activity.

In addition to the specific, required activities listed under paragraph 1, the applicant may suggest other activities that would contribute directly to the purpose of this program. For any additional activity suggested, the applicant should identify the objective of the activity, the specific tasks required to meet the objective, specific time lines for performing the tasks, and specific responsibilities of the partners.

1. In conducting activities to achieve the purpose and goal of this program, award recipients will be required to perform the following activities:

• Develop and finalize a risk management outreach delivery plan that will contain the tasks needed to accomplish the purpose of this program, including a description of the manner in which various tasks for the project will be completed, the dates by which each task will be completed, and the partners that will have responsibility for each task. Task milestones must be listed to ensure that progress can be measured at various stages throughout the life of the project. The plan must also provide for the substantial involvement of RMA in the project.

Note: All partnership agreements resulting from this announcement will include delivery plans in a table format. All applicants are strongly encouraged to refer to the table in the application package, when preparing a delivery plan and to use this format as part of the project description.

• Assemble risk management instructional materials appropriate for producers of Priority Commodities to be used in delivering education and information. This will include: (a) Gathering existing instructional materials that meet the local needs of producers of Priority Commodities; (b) identifying gaps in existing instructional materials; and (c) developing new materials or modifying existing instructional materials to fill existing gaps.

• Develop and conduct a promotional program and dissemination activities to publicize the project accomplishments. This program will include activities using the media, newsletters, publications, or other informational dissemination techniques that are designed to: (a) Raise awareness for risk management; (b) inform producers of the availability of risk management tools; (c) inform producers of the training and informational opportunities being offered; and (d) communicate the project's accomplishments (products, results and impacts, etc.) to the broadest audiences. Minority media and publications should also be used to achieve the broadest promotion of outreach opportunities for limited resource and socially disadvantaged farmers and ranchers possible.

• Deliver risk management training and informational opportunities to limited resource and socially disadvantaged agricultural producers and agribusiness professionals of Priority Commodities. This will include organizing and delivering educational activities using the instructional materials identified earlier. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise farmers on risk management.

• Utilize the Results Verification System to document all outreach activities conducted under the partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The recipient will also be required to provide information to an RMA-selected contractor to evaluate all outreach activities and advise RMA as to the effectiveness of activities.

2. RMA will be responsible for the following activities:

• Review and approve in advance the recipient's project delivery plan.

• Collaborate with the recipient in assembling risk management materials for producers. This will include: (a) Reviewing and approving in advance all educational materials for technical accuracy; (b) serving on curriculum development workgroups; (c) providing curriculum developers with fact sheets and other risk management publications prepared by RMA; (d) advising the applicant on the materials available over the internet through the AgRisk Education Library; (e) advising the applicant on technical issues related to crop insurance instructional materials; and (f) advising the applicant on the use of the standardized design and layout formats to be used on program materials.

• Collaborate with the recipient on a promotional program for raising awareness of risk management and for informing producers of training and informational opportunities. This will include: (a) Reviewing and approving in advance all promotional plans, materials, and programs; (b) serving on workgroups that plan promotional programs; (c) advising the applicant on technical issues relating to the presentation of crop insurance products in promotional materials; and (d) participating, as appropriate, in media programs designed to raise general awareness or provide farmers with risk management education.

• Collaborate with the recipient on outreach activities to agricultural producers and agribusiness leaders. This will include: (a) Reviewing and approving in advance all producer and agribusiness educational delivery plans; (b) advising the applicant on technical issues related to the delivery of crop insurance education and information; and (c) assisting the applicant in

informing crop insurance professionals about educational plans and scheduled meetings.

• Reviewing and approving recipient's documentation of risk management education and outreach activities.

Part II—Award Information

A. Available Funding

The amount of funds available in FY 2010 for support of this program is approximately $2.5 million dollars (subject to availability of funds). There is no commitment by USDA/RMA to fund any particular project or to make a specific number of awards. No maximum or minimum funding levels have been established for individual projects or geographic locations. Applicants awarded a partnership agreement for an amount that is less than the amount requested may be required to modify their application to conform to the reduced amount before execution of the partnership agreement. It is expected that awards will be made approximately 120 days after the application deadline.

B. Types of Applications

Applicants must specify whether the application is a new, renewal, or resubmitted application.

1. *New Application*—This is an application that has not been previously submitted to the RMA Outreach Program. All new applications will be reviewed competitively using the selection process and evaluation criteria described in this RFA.

2. *Renewal Application*—This is an application that requests additional funding for a project beyond the period that was approved in an original or amended award. Applications for renewed funding must contain the same information as required for new applications, and additionally must contain a Progress Report. Renewal applications must be received by the relevant due dates, will be evaluated in competition with other pending applications, and will be reviewed according to the same evaluation criteria as new applications.

3. *Resubmitted Application*—This is an application previously submitted to the RMA Outreach office, but was not funded. Resubmitted applications must be received by the relevant due dates, and will be evaluated in competition with other pending applications and will be reviewed according to the same evaluation criteria as new applications.

Part III—Eligibility Information

A. Eligible Applicants

Educational institutions, community based organizations, associations of farmers and ranchers, state departments of agriculture, and other non-profit organizations with demonstrated capabilities in developing and implementing risk management and other marketing options for priority commodities are eligible to apply. Individuals are not eligible applicants. Applicants are encouraged to form partnerships with other entities that complement, enhance, and/or increase the effectiveness and efficiency of the proposed project. 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 (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). Applications from ineligible or excluded persons will be rejected in their entirety.

B. Project Period

Each project will be funded for a period of up to one year from the project starting date for the activities described in this announcement.

C. Non-Financial Benefits

To be eligible, applicants must also demonstrate that they will receive a non-financial benefit as a result of a 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 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.

D. Cost Sharing or Matching

Cost sharing, matching, in-kind contribution, or cost participation is not required.

E. Funding Restrictions

Indirect costs for projects submitted in response to this solicitation are limited to 10 percent of the total direct costs of the agreement. Partnership agreement funds may not be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

2. To purchase, rent, or install fixed equipment;

3. Repair or maintain privately owned vehicles;

4. Pay for the preparation of the partnership application;

5. Fund political activities;

6. Pay costs incurred prior to receiving this partnership agreement;

7. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

Part IV—Application and Submission Information

A. Address To Submit an Application Package

The address for submissions is USDA/RMA, Community Outreach, and Assistance Partnership Program, c/o William Buchanan, 1400 Independence Avenue, SW., Room 6702, Stop 0809, Washington, DC 20250–0809. All applications must be submitted by the deadline. Late or incomplete applications will not be considered and will be returned to the applicant. Applications will be considered as meeting the announced deadline if they are received in the mailroom at the address on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants using the U.S. Postal Service should allow for the extra time for delivery due to the additional security measures that mail delivered to government offices in the Washington DC area now requires. Failure of the selected delivery services will not extend the deadline. Applicants are strongly encouraged to submit completed and signed application packages using overnight mail or delivery service to ensure timely receipt.

Applicants that wish to submit applications electronically, should use the Government Grants Web site at *http://*www.grants.gov.

Note: First time grants.gov applicants—you may need 2 weeks to establish required accounts before you will be able to submit an application through grants.gov. If assistance is needed in submitting an application (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 E-mail: *support@grants.gov*

B. Content and Form of Application

1. *General*—Use the following guidelines to prepare an application. Each application must contain the

following elements in the order indicated. Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion.

(a) Prepare the application on only one side of the page using standard size (8½″ x 11″) white paper, one-inch margins, typed or word processed using no type smaller than 12 point font, and single or double spaced. Use an easily readable font face (*e.g.,* Geneva, Helvetica, Times Roman).

(b) Number each page of the application sequentially, starting with the Project Description, including the budget pages, required forms, and any appendices.

(c) Staple the application in the upper left-hand corner. Do not bind. An original and two copies of the completed and signed application (3 total) and one electronic copy (Microsoft Word format preferred) on compact disc or diskette must be submitted in one package. Only hard copies of OMB Standard Forms should be submitted. Do not include the standard forms on the diskette.

(d) Include original illustrations (photographs, color prints, etc.) in all copies of the application to prevent loss of meaning through poor quality reproduction.

1. *Application for Federal Assistance, OMB Standard Form 424*—Please complete this form in its entirety (including your zip + 4 which is your zip code plus the additional 4 digit code). The original copy of the application must contain a pen-and-ink signature of the authorized organizational representative (AOR), individual with the authority to commit the organization's time and other relevant resources to the project. The Catalog of Federal Domestic Assistance Number (block 10) is "10.455—Community Outreach and Assistance."

2. *Table of Contents*—Each application must contain a detailed Table of Contents immediately following OMB SF 424.

3. *Project Summary*—(Limited to one page, placed after the Table of Contents) The summary should be a self-contained, specific description of the activity to be undertaken and should focus on: Overall project goal(s) and supporting objectives; plans to accomplish project goals; and relevance of the project to the goals of the community outreach and assistance program.

4. *Progress Report*—(Limited to three pages, placed immediately after the Project Summary) Renewal applications of an existing project supported under the same program should include a clearly identified summary progress report describing the results to date. The progress report should contain a comparison of actual accomplishments with the goals established for the project.

5. *A Project Description*—(Limited to twenty-five single-sided pages) that describes the outreach project in detail, including the program delivery plan and a Statement of Work. The description should provide reviewers with sufficient information to effectively evaluate the merits of the application under the criteria contained in Part V. The description should include the circumstances giving rise to the proposed activity; a clear, concise statement of the objectives; the steps necessary to implement the program to attain the objectives; an evaluation plan for the activities; a program delivery plan, and statement of work that describes how the activities will be implemented and managed by the applicant.

The statement of work in table format should identify each objective and the key tasks to achieve the objective, the entity responsible for the task, the completion date, the task location, and RMA's role. Applicants are strongly encouraged to refer to the sample table in the application package, when preparing a delivery plan and to use this table format in that portion of the application narrative that addresses the delivery plan.

6. *Budget, OMB Standard Form 424–A,* "Budget Information, Non-Construction Program"—Indirect costs allowed for projects submitted under this announcement will be limited to 10 percent of the total direct cost of the partnership or cooperative agreement. Applicants should include reasonable travel costs associated with attending at least two RMA designated two-day events, which will include a Project Directors' meeting and civil rights training.

7. *Budget Narrative*—A detailed narrative in support of the budget should show all funding sources and itemized costs for each line item contained on the SF–424A. All budget categories must be individually listed (with costs) in the same order as the budget and justified on a separate sheet of paper and placed immediately behind the SF–424A. There must be a detailed breakdown of all costs, including indirect costs. Include budget notes on each budget line item detailing how each line item was derived. Also provide a brief narrative description of any costs that may require explanation (i.e., why a specific cost may be higher than market costs). Only items or services that are necessary for the successful completion of the project will be funded as permitted under the Act, the applicable Federal Cost principles, and are not prohibited under any other Federal statute. Salaries of project personnel should be requested in proportion to the effort that they would devote to the project.

8. *Key Personnel*—The roles and responsibilities of each Project Director (PD) and/or collaborator should be clearly described; and the qualifying experience and education (One Page Each) of the PD and each co-PD, senior associate and other professional personnel.

9. *Collaborative Arrangements (including Letters of Support)*—If it will be necessary to enter into formal consulting or collaborative arrangements, such arrangements should be fully explained and justified. If the consultants or collaborators are known at the time of application, a vitae or resume should be provided. Evidence (e.g., letter of support) should be included if the collaborators involved have agreed to render these services. Additional information on consultants and collaborators are required in the budget portion of the application.

10. *Current and Pending Support*—All applications 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. 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 projects proposed for funding should be included in the pending section.

11. *Disclosure of Lobbying Activities, OMB Standard Form LLL*—All applications must contain a signed copy of this form (See Part VI (F)). Applicants who are not engaging in lobbying activities should write "Not Applicable" and sign the form.

12. *A completed and Signed* "*Certification Regarding Debarment, Suspension, and Other Responsibility Matters* (Primary Covered Transactions), AD 1047."

13. A completed and Signed "Certifications Regarding Drug-Free Workplace, AD–1049."

14. Appendices are allowed if they are directly germane to the proposed project.

C. Acknowledgment of Applications

Applications submitted by facsimile or through other electronic media (except grants.gov), regardless of the date or time of submission or the time of receipt, will not be considered and will be returned to the applicant. Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide an e-mail address in the application. If an e-mail address is not indicated on an application, receipt will be acknowledged in writing. There will be no notification of incomplete, unqualified, or unfunded applications until the awards have been made. RMA will assign an identification number to the application when received. This number will be provided to applicants when the receipt of application is acknowledged. Applicants should reference the assigned identification number in all correspondence regarding the application.

If receipt of application is not acknowledged by RMA within 21 days of the submission deadline, the applicant should contact Jacquea Howard-Brock at (202) 690–4789 or electronically at *jacquea.howard-brock@rma.usda.gov.*

Part V—Application Review Process

A. General

Each application will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that past performances were satisfactorily met and 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.

Second, a review panel will consider the merits of all applications that meet the requirements in the announcement. A panel of not less than three independent reviewers will evaluate each application. Reviewers will be drawn from USDA, other Federal agencies, and others representing public and private organizations, as needed. The project description (Only the first 25 pages of the project description will be evaluated) and any appendices submitted by applicant will be used by the review panel to evaluate the merits of the project being proposed for funding. The panel will examine and score applications based on each of the four criteria contained in paragraph B of this part "Evaluation Criteria and Weights".

The panel will be looking for the specific elements listed with each criterion when evaluating the applications and scoring them. For each application, panel members will assign a point value up to the maximum for each criterion. After all reviewers have evaluated and scored each of the applications, the scores for the entire panel will be averaged to determine an application's final score.

After assigning points for each criterion, applications will be listed in initial rank order and presented, along with funding level recommendations, to the Manager of FCIC, who will make the final decision on awarding of a partnership agreement. Applications will then be funded in final rank order until all available funds have been expended. Applicants must score 50 points or more to be considered for funding. If there are unused remaining funds, RMA may conduct another round of competition through the announcement of another RFA.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the programs described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding under this announcement is sufficiently similar to a project that has been funded or has been recommended to be funded under another FCIC or RMA education or outreach program, then the Manager may elect to not fund that application in whole or in part.

B. Evaluation Criteria and Weights

1. Project Benefits—Maximum 40 Points

The applicant must demonstrate that the project benefits to limited resource, socially disadvantaged and other traditionally underserved producers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Reasonably estimate the number of producers reached through the project; (b) justify the estimates with clear specifics related to the delivery plan; (c) identify the actions producers will likely be able to take as a result of the project; and (d) identify specific measures for evaluating the success of the project. Reviewers' scoring will be based on the scope and reasonableness of the applicants' estimate of the number of producers reached through the project, clear descriptions of specific expected project benefits for producers, and well-constructed plans for measuring the project's effectiveness.

2. 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 using the appropriate language service that assist limited resource, socially disadvantaged and other traditionally underserved producers. If the applicant has been a recipient of other Federal or other government grants, cooperative agreements, or contracts, the applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. Applicants that will employ, or have access to personnel who have experience in directing agricultural programs or providing education programs that benefit producers will receive higher rankings. Higher scores will be awarded to applicants with no more than two on-going projects funded by RMA under this program in previous years.

3. Collaborative Partnering—Maximum 20 Points

The applicant must demonstrate experience and capacity to partner with and gain the support of other agencies, grower organizations, agribusiness professionals, and agricultural leaders to enhance the quality and effectiveness of the program. Applicants will receive higher scores to the extent that they can document and demonstrate: (a) That partnership documented commitments are in place for the express purpose of delivering the program in this announcement; (b) that the project will incorporate training on the benefits and implementation of utilizing risk management tools; (c) that the project promotes producer eligibility for numerous USDA programs; (d) that a broad and diverse group of farmers and ranchers will be reached; and (e) that a substantial effort has been made to partner with organizations that can meet the needs of producers that are small, have limited resources, are minorities, or are beginning farmers and ranchers.

4. Delivery Plan—Maximum 20 Points

The applicant must demonstrate that its program delivery plan is clear and specific. For each of the applicant's responsibilities contained in the description of the program, the applicant must demonstrate that it can identify specific tasks and provide reasonable time lines that further the purpose of this program. Applicants

will obtain a higher score to the extent that the tasks of the project are specific, measurable, and reasonable, have specific periods for completion, relate directly to the required activities, the program objectives described in this announcement, and use the appropriate language service.

5. Diversity

Management reserves the right to award additional points to applications that promote diversity.

Part VI—Award Administration

A. Notification of Award

Following approval by the RMA awarding official, 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 partnership agreements with applicants whose applications are judged to be most meritorious under the procedures set forth in this announcement. The agreements provide the amount of Federal funds for use in the project period, the terms and conditions of the award and the time period for the project.

The effective date of the agreement is the date the agreement is executed by both parties. RMA will extend to award recipients, in writing, the authority to draw down funds for 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.

Applicants that are not funded will be notified within 120 days after the submission deadline.

B. Access to Panel Review Information

Upon written request from the applicant, your score 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.

C. Confidential Aspects of Proposals and Awards

When an application results in a partnership agreement, it 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 a proposal 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 proposals not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to award.

D. Reporting Requirements

Applicants awarded partnership agreements will be required to submit electronic quarterly progress reports through a results verification system and financial reports (OMB Standard Form 425, formerly OMB Standard Form 269A) throughout the project period, as well as a final program and financial report no later than 90 days after the end of the project period.

E. Administration

All partnership agreements are subject to the requirements of 7 CFR part 3015.

F. Prohibitions and Requirements With Regard to Lobbying

All partnership agreements are subject to the requirements of 7 CFR part 3018. A copy of the certification and disclosure forms must be submitted with the application.

G. Applicable OMB Circulars

All partnership and cooperative agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

H. Confidentiality

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will 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.

I. Civil Rights Training

All recipients of federally assisted programs are required to comply with Federal civil rights laws and regulations. USDA/RMA policies and procedures require recipients of federally assisted programs to attend mandatory civil rights training sponsored by RMA, to become fully aware of civil rights requirements and responsibilities. Applicants should include in their budgets reasonable travel costs associated with attending at least two, two-day RMA designated events that include a Project Directors meeting and required civil rights training.

Part VII—Additional Information

A. Requirement To Use Program Logo

Applicants awarded partnership agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials.

B. Requirement To Provide Project Information to an RMA Representative

Applicants awarded partnership agreements will be required to assist RMA in evaluating the effectiveness of its outreach program by providing documentation of outreach activities and related information to any contractor selected by RMA for program evaluation purposes. This requirement also includes providing demographic data on program participants.

C. Private Crop Insurance Organizations and Potential Conflict 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. Such entities will also 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.

D. Dun and Bradstreet (D&B Data Universal Numbering System)

A Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of businesses worldwide. A **Federal Register** notice of final policy issuance (68 FR 38402) requires a DUNS number in every application (i.e., hard copy and electronic) for a grant or cooperative agreement. Therefore, potential applicants should verify that they have a DUNS number or take 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.

E. Required Registration for Grants.gov

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 via grants.gov (a DUNS number is needed for CCR registration). For information about how to register in the CCR, visit *http://www.grants.gov.* Allow a minimum of 5 days to complete the CCR registration.

Signed in Washington, DC, on February 23, 2010.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2010–4111 Filed 2–26–10; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc# AMS–TM–09–0088; TM–09–09]

Notice of Funds Availability (NOFA) Inviting Applications for the 2010 Farmers' Market Promotion Program (FMPP)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) announces funding of approximately $5 million in competitive grant funds for fiscal year (FY) 2010 to increase domestic consumption of agricultural commodities by expanding direct producer-to-consumer market opportunities. Examples of direct producer-to-consumer market opportunities include new farmers' markets, roadside stands, community supported agriculture programs, agri-tourism activities, and other direct producer-to-consumer infrastructures. AMS hereby requests proposals from eligible entities from the following categories: an agricultural cooperative or a producer network or association, local governments, nonprofit corporations, public benefit corporations, economic development corporations, regional farmers' market authorities, and Tribal governments. The minimum award per grant is $2,500 and the maximum award per grant is $100,000. No matching funds are required.

DATES: Applications should be received at the address below and must be postmarked not later than April 15, 2010. Applications bearing a postmark after the deadline will not be considered.

ADDRESSES: Submit proposals and other required materials to the 2010 Farmers' Market Promotion Program (FMPP) Grant Program, Agricultural Marketing Service (AMS), USDA, Room 3012–South Tower, 1800 M Street, NW., Washington, DC, 20036–5831, phone 202–694–4000.

For hard-copy (paper) submissions, all forms, narrative, letters of support, and other required materials must be forwarded in one application package. AMS will not accept application packages by e-mail; electronic applications will be accepted only if submitted via *http://www.Grants.gov.* AMS strongly recommends that each applicant visit the AMS Web site at *http://www.ams.usda.gov/FMPP* to review a copy of the FMPP Guidelines and application package preparation information to assist in preparing the proposal narrative and application.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen Humphrey, Branch Chief, Marketing Grants and Technical Services Branch, Marketing Services Division, Transportation and Marketing Programs, AMS, USDA, on 202–694–4000, fax 202–694–5949. State that your request for information refers to Docket No. TM–09–09.

SUPPLEMENTARY INFORMATION: This solicitation is issued pursuant to Section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001–3006) as amended by Section 10605 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) authorizing the establishment of the Farmers' Market Promotion Program (7 U.S.C. 3005)(FMPP) and as amended by section 10106 of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246). The amended act states that the purposes of the FMPP are "(A) to increase domestic consumption of agricultural commodities by improving and expanding, or assisting in the improvement and expansion of, domestic farmers' markets, roadside stands, community-supported agriculture programs, agri-tourism activities and other direct producer-to-consumer market opportunities; and (B) to develop, or aid in the development of, new farmers' markets, roadside stands, community-supported agriculture programs, agri-tourism activities, and other direct producer-to-consumer marketing opportunities."

Detailed program guidelines may be obtained at *http://www.ams.usda.gov/FMPP* or from the contact listed above. In accordance with the Secretary's Statement of Policy (36 FR 13804), it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to engage in further public participation under 5 U.S.C. 553 because the applications for the FMPP need to be made available as soon as possible as the program season approaches.

Background

AMS will grant awards for projects that continue developing, promoting, and expanding direct marketing of agricultural commodities from farmers to consumers. Eligible FMPP proposals should support marketing entities where agricultural farmers or vendors sell their own products directly to consumers, and the sales of these farm products should represent the core business of the entity.

All eligible entities shall be domestic entities, *i.e.,* those owned, operated, and located within one or more of the 50 United States and the District of Columbia only. Entities located within U.S. territories are not eligible.

Additionally, under this program eligible entities must apply for FMPP funds on behalf of direct marketing operators that include two or more agricultural farmers/vendors that produce and sell their own products through a common distribution channel. For example, a sole proprietor of a roadside farm market would not be eligible for this program. Individual agricultural producers, including farmers and farmers' market vendors, roadside stand operators, community-supported agriculture participants, and other individual direct marketers are not eligible for FMPP funds.

All electronic benefits transfers (EBT) will be considered for FMPP funding. Not less than 10 percent of the total available funds will be used to support the use of electronic benefits transfer (EBT) for Federal nutrition programs at

farmers' markets. Additionally, these new EBT projects must demonstrate a plan to continue to provide EBT card access at one (1) or more farmers' markets following the completion of the FMPP grant. To be included in this allotment of funds the application narrative must designate the applicant's competition for FMPP as a new EBT project. See the FMPP Guidelines at *http://www.ams.usda.gov/FMPP* for more information. FMPP funds shall be provided to eligible entities that demonstrate a plan to continue to provide EBT card access at one (1) or more farmers' markets following the receipt of the grant.

FMPP grant funds must be applied to the specific programs and objectives identified in the application. Proprietary projects and projects that benefit one agricultural producer or individual will not be considered.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the FMPP information collection was previously approved by OMB and was assigned OMB control number 0581–0235.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA) that requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

How To Submit Proposals and Applications

Each applicant must follow the application preparation and submission instructions provided within the FMPP Guidelines at *http://www.ams.usda.gov/FMPP.* Electronic forms, proposals, letters of support, or any other application materials e-mailed directly to AMS–FMPP or USDA–AMS staff will not be accepted.

Following are the options available for submitting proposals and applications to AMS:

Paper Submissions—For paper submissions, an original and one copy of the proposal, required forms, narrative, letters of support, and all required materials must be submitted in one package, preferably via express mail.

Electronic Submissions via Grants.gov—Applicants may apply electronically for grants through Grants.gov at *http://www.Grants.gov* (insert 10.168 in grant search) and are strongly encouraged to initiate the electronic submission process at least two weeks prior to application deadline. Grants.gov applicants who submit their FMPP proposals via the Federal grants Web site are not required to submit any paper documents to FMPP.

FMPP is listed in the "Catalog of Federal Domestic Assistance" under number 10.168 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all federally assisted programs.

Dated: February 18, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–4056 Filed 2–26–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000, as amended, (Pub. L. 110–343), the Boise, Payette, and Sawtooth National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting. The meeting is open to the public.

DATES: Thursday, March 18, 2010, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Dale Olson, Designated Federal Official, at (208) 347–0322 or e-mail *dolson07@fs.fed.us.*

Dated: February 19, 2010.

Suzanne C. Rainfille,

Forest Supervisor, Payette National Forest.

[FR Doc. 2010–3983 Filed 2–26–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

ACTION: Notice of upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for April 2010

The following Sunset Reviews are scheduled for initiation in April 2010 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

	Department contact
Antidumping Duty Proceedings	
Hot-Rolled Carbon Steel Flat Products from Brazil (A–351–828) (2nd Review)	Dana Mermelstein (202) 482–1391
Hot-Rolled Carbon Steel Flat Products from Japan (A–588–846) (2nd Review)	Dana Mermelstein (202) 482–1391
Countervailing Duty Proceedings	
Hot-Rolled Carbon Steel Flat Products from Brazil (C–351–829) (2nd Review)	Dana Mermelstein (202) 482–1391

	Department contact
Suspended Investigations	
Hot-Rolled Carbon Steel Flat Products from Russia (A–821–809) (2nd Review)	Sally Gannon (202) 482–0162

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) . The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 22, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–4179 Filed 2–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Region Scale and Catch Weighing Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 30, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, at (907) 586–7008 or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The scale and catch weighing requirements address performance standards designed to ensure that all catch delivered to the processor is accurately weighed and accounted for. Scale and catch-weighing monitoring is required for Western Alaska Community Development Quota Program (CDQ) catcher/processors, American Fisheries Act (AFA) catcher/processors, AFA motherships, AFA shoreside processors and stationary floating processors, non-AFA trawl catcher/processors regulated under the annual Groundfish Retention Standard, and Crab Rationalization crab catcher/processors and Registered Crab Receivers.

National Marine Fisheries Service (NMFS) has identified three primary objectives for monitoring catch. First, monitoring must ensure independent verification of catch weight, species composition, and location data for every delivery by a catcher vessel or every pot by a catcher/processor. Second, all catch must be weighed accurately using NMFS-approved scales to determine the weight of total catch. Third, the system must provide a verifiable record of the weight of each delivery. In addition, operators of these vessels must ensure that each haul is observed by a NMFS-approved observer for verification that all fish are weighed. To effectively manage fisheries, NMFS must have data that will provide reliable independent estimates of the total catch.

The catch weighing and monitoring system developed by NMFS for catcher/processors and motherships is based on the vessel meeting a series of design criteria. Because of the wide variations in factory layout for inshore processors, NMFS requires a performance-based catch monitoring system for inshore processors.

II. Method of Collection

For those items not connected with a scale, respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0330.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households and business or other for-profit

Estimated Number of Respondents: 113.

Estimated Time per Response: 21 hours for scale type evaluation; 45 minutes for records for daily flow scale tests; 45 minutes for records for daily automatic hopper scale tests; 1 minute for printed output, at-sea scales; 6 minutes for at-sea inspection request; 2 hours for at-sea scale approval report/sticker; 2 hours for observer sampling station inspection request; 1 hour for video monitoring system; 2 hours for bin monitoring inspection request; 2 minutes to notify observer of scale tests; 5 minutes to notify observer of offload schedule for BSAI pollock; 16 hours for crab catch monitoring plan; 40 hours for inshore catch monitoring and control plan (CMCP); 5 minutes for inshore CMCP inspection request; 1 minute for Alaska State scale printed output; and 8 hours for inshore CMCP addendum.

Estimated Total Annual Burden Hours: 5,209.

Estimated Total Annual Cost to Public: $628,504.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 24, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–4108 Filed 2–26–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Identification of Northeast Regional Ocean Council Information Network Using Social Network Analysis

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 30, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Chris Ellis, (843) 740–1195; *Chris.Ellis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Northeast Regional Ocean Council (NROC) is a State and Federal partnership with the goal of engaging in regional protection and balanced use of ocean and coastal resources. NROC's coordinated approach reaches across State boundaries to find and implement solutions to the region's most pressing ocean and coastal issues. NROC's membership includes New England coastal State agencies and Federal agencies.

The work of the Council focuses primarily on coastal hazards resilience and ocean energy planning and management. NROC's members come from varied expertise and work on these issues in many capacities. A social network analysis will serve to identify the network of people working on NROC's key issues, both within and outside of the organization.

NROC members will be queried regarding their communications on NROC issues and value derived from membership. The resulting information can be used to evaluate the efficiency of the network, where gaps may exist, and additional partnerships that would benefit the Council's work.

II. Method of Collection

Respondents will be surveyed electronically. Submission results will be online.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local, or Tribal government; Federal government.

Estimated Number of Respondents: 45.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 11 hours, 25 minutes.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 24, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–4101 Filed 2–26–10; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU54

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Coastal Sharks Fishery

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

ACTION: Notice of non-compliance referral.

SUMMARY: NMFS announces that on February 4, 2010, the Atlantic States Marine Fisheries Commission (Commission) found the State of New Jersey out of compliance with the Commission's Interstate Fishery Management Plan (ISFMP) for Coastal Sharks. Subsequently, the Commission referred the matter to NMFS, under delegation of authority from the Secretary of Commerce, for federal non-compliance review under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). The Atlantic Coastal Act mandates that NMFS must review the Commission's non-compliance referral and make specific findings within 30 days after receiving the referral. If NMFS determines that New Jersey failed to carry out its responsibilities under the Coastal Sharks ISFMP, and if the measures it failed to implement are necessary for conservation, then, according to the Atlantic Coastal Act, NMFS must declare a moratorium on fishing for coastal sharks in New Jersey waters.

DATES: NMFS intends to make a determination on this matter by March 10, 2010, and will publish its findings in the **Federal Register** immediately thereafter.

ADDRESSES: Written comments should be sent to Alan Risenhoover, Director,

Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope "Comments on Coastal Shark Non-Compliance." Comments may also be sent via fax to (301) 713–0596.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, NMFS Office of Sustainable Fisheries, (301) 713–2334.

SUPPLEMENTARY INFORMATION: The Coastal Shark ISFMP includes management measures for several species of Atlantic sharks. The implementation of these regulations is necessary to rebuild depleted shark stocks, ensure sustainable harvest of others, and provide protection for sharks in state nursing and pupping grounds. The Commission's Technical Committee has identified Delaware Bay as one of the most important nursing grounds for depleted sandbar sharks on the Atlantic Coast. Included in the 22 commercial and recreational regulations in the FMP is a seasonal closure from Virginia north through New Jersey to protect pupping sandbar sharks. On February 4, 2010, the Commission found the State of New Jersey out of compliance for not fully and effectively implementing and enforcing the Coastal Shark ISFMP. The Commission subsequently referred its non-compliance finding to NMFS.

Federal response to a Commission non-compliance referral is governed by the Atlantic Coastal Act. Under the Atlantic Coastal Act, the Secretary of Commerce (Secretary) must make two findings within 30 days after receiving the non-compliance referral. First, the Secretary must determine whether the state in question (in this case, New Jersey) has failed to carry out its responsibilities under the ISFMP. Second, the Secretary must determine whether the measures that the State has failed to implement or enforce are necessary for the conservation of the fishery in question. If the Secretary of Commerce makes affirmative findings on both criteria, then the Secretary must implement a moratorium on fishing in the fishery in question (in this case coastal sharks) within the waters of the non-complying state (in this case, New Jersey). Further, the moratorium must become effective within six months of the date of the Secretary's non-compliance determination. To the extent that the allegedly offending state later implements the involved measure, the Atlantic Coastal Act allows the state to petition the Commission that it has come back into compliance, and if the Commission concurs, the Commission will notify the Secretary and, if the Secretary concurs, the moratorium will be withdrawn. The Secretary has delegated Atlantic Coastal Act authorities to the Assistant Administrator for Fisheries at NMFS.

NMFS has notified the State of New Jersey, the Commission, the Mid-Atlantic Fishery Management Council, and the New England Fishery Management Council, in separate letters, of its receipt of the Commission's non-compliance referral. In the letters, NMFS solicits comments from the Commission and Councils to the extent either entity is interested in providing such comments. NMFS also indicates to the State of New Jersey that the State is entitled to meet with and present its comments directly to NMFS if the State so desires.

NMFS intends to make its non-compliance determination on or about March 10, 2010, which is 30 days after receipt of the Commission's non-compliance referral. NMFS will announce its determination by **Federal Register** notice immediately thereafter. To the extent that NMFS makes an affirmative non-compliance finding, NMFS will announce the effective date of the moratorium in that **Federal Register** notice.

Authority: 16 U.S.C. 5101 *et seq.*

Dated: February 24, 2010.

James P. Burgess,

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

[FR Doc. 2010–4185 Filed 2–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers from the People's Republic of China: Extension of Time Limit for the Final Results of the 2007–2008 Antidumping Duty Administrative Review

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

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

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or David Layton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0182 and (202) 482–0371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2009, the Department of Commerce ("Department") published the preliminary results of the administrative review of the antidumping duty order on certain helical spring lock washers ("lock washers") from the People's Republic of China, covering the period October 1, 2007 through September 30, 2008. *See Certain Helical Spring Lock Washers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 57653 (November 9, 2009). The final results of this administrative review were originally due no later than March 9, 2010. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the final results of this review is currently March 16, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

In the instant review, the Department requires additional time to address the issues raised by interested parties regarding surrogate values for factors of production and to analyze additional surrogate value information filed by both the petitioner and respondent. In their case briefs and rebuttal briefs both parties have raised concerns about the selection of a surrogate value for steel wire rod, the key input for the production of lock washers. In addition, parties have presented arguments backed up by the timely filed surrogate value information regarding the selection of surrogate values for

chemical inputs and financial ratios that the Department needs additional time to consider. Thus, it is not practicable to complete this review by March 16, 2010, and the Department is, therefore, extending the time limit for completion of the final results by an additional 60 days, as permitted by section 751(a)(3)(A) of the Act. The final results are now due no later than May 17, 2010.[1]

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 22, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–4169 Filed 2–26–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

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

FOR FURTHER INFORMATION CONTACT: Brandon Petelin or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–8173 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2009, the Department of Commerce ("the Department") published the initiation of the administrative review of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China ("PRC"). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review,* 74 FR 37690 (July 29, 2009). This review covers the period June 1, 2008, through May 31, 2009. The preliminary results of the review were due no later than March 2, 2010. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now March 9, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results of the administrative review of chlorinated isocyanurates from the PRC within this time limit. Specifically, due to complex issues, *e.g.,* factors of production and surrogate value selections, we find that additional time is needed to complete these preliminary results. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 60 days from March 9, 2010, until May 8, 2010. However, because May 8, 2010, falls on a weekend, the actual due date will be the first business day following the weekend, *i.e.,* May 10, 2010.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 23, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–4174 Filed 2–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

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

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year review ("Sunset Review") of the antidumping duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* March 1, 2010

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission, at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the sunset reviews of the following antidumping duty orders:

[1] May 15, 2010 is the actual 60-day extended deadline. As May 15 is a Saturday, the new final results deadline will be May 17, 2010, the first business day after that weekend.

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–570–896	731–TA–1071	China	Magnesium Metal	Jennifer Moats (202) 482–5047.
A–821–819	731–TA–1072	Russia	Magnesium Metal	Dana Mermelstein (202) 482–1391.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: "*http://ia.ita.doc.gov/sunset/*." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: February 24, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–4280 Filed 2–26–10; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU61

Marine Mammals; File No. 15153

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Dolphin Quest Hawaii, 69–425 Waikoloa Beach Drive, Waikoloa, HI 96738 has been issued a permit to import two bottlenose dolphins (*Tursiops truncatus*) for public display.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kristy Beard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On December 2, 2009, notice was published in the **Federal Register** (74 FR 63120) that a request for a public display permit to import two male bottlenose dolphins from Dolphin Quest in Hamilton, HM FX, Bermuda to Dolphin Quest Hawaii, Waikoloa, HI, had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: February 23, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–4189 Filed 2–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with 19 CFR 351.213 of the Department of Commerce's ("the Department") regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review ("POR"). We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the initiation **Federal Register** notice.

Opportunity To Request A Review: Not later than the last day of March 2010 [1], interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

	Period of review
Antidumping Duty Proceeding Period of Review	
Brazil: Certain Hot-Rolled Carbon Steel Flat Products, A–351–828	3/1/09–2/28/10
Orange Juice, A–351–840	3/1/09–2/28/10
Canada: Iron Construction Castings, A–122–503	3/1/09–2/28/10
France: Brass Sheet & Strip A–427–602	3/1/09–2/28/10
Germany: Brass Sheet & Strip, A–428–602	3/1/09–2/28/10
India: Sulfanilic Acid, A–533–806	3/1/09–2/28/10
Italy: Brass Sheet & Strip, A–475–601	3/1/09–2/28/10
Japan: Stainless Steel Butt-Weld Pipe Fittings, A–588–702	3/1/09–2/28/10
Russia: Silicon Metal, A–821–817	3/1/09–2/28/10
Spain: Stainless Steel Bar, A–469–805	3/1/09–2/28/10
Taiwan: Light-Walled Rectangular Welded Carbon Steel Pipe & Tube, A–583–803	3/1/09–2/28/10
Thailand: Welded Carbon Steel Pipe & Tube, A–549–502	3/1/09–2/28/10
The People's Republic of China: Circular Welded Austenitic Stainless Pressure Pipe, A–570–930	9/5/08–2/28/10
Chloropicrin, A–570–002	3/1/09–2/28/10
Glycine, A–570–836	3/1/09–2/28/10
Sodium Hexametaphosphate, A–570–908	3/1/09–2/28/10
Tissue Paper Products, A–570–894	3/1/09–2/28/10
Countervailing Duty Proceeding	
India: Sulfanilic Acid, C–533–807	1/1/09–12/31/09
Iran: In-Shell Pistachios Nuts, C–507–501	1/1/09–12/31/09
The People's Republic of China: Circular Welded Austenitic Stainless Pressure Pipe, C–570–931	7/10/08–12/31/09
Turkey: Welded Carbon Steel Pipe & Tube C–489–502	1/1/09–12/31/09
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in Room 3065 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of March 2010. If the Department does not receive, by the last day of March 2010, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 22, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–4182 Filed 2–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–957]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination

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

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain seamless carbon and alloy steel standard, line, and pressure pipe from the People's Republic of China. For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice. The Department of Commerce further preliminarily determines that critical circumstances exist with respect to imports of the subject merchandise.

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

FOR FURTHER INFORMATION CONTACT: Shane Subler, Yasmin Nair, Joseph Shuler, or Matthew Jordan, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0189, (202) 482–3813, (202) 482–4162, (202) 482–1293, and (202) 482–1540, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the Department of Commerce's ("Department") notice of initiation in the **Federal Register.** *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 74 FR 52945 (October 15, 2009) ("*Initiation Notice*"), and the accompanying Initiation Checklist.

On November 4, 2009, the Department selected two Chinese producers/exporters of certain seamless carbon and alloy steel standard, line, and pressure pipe ("seamless pipe") as mandatory respondents: (1) Hengyang Steel Tube Group Int'l Trading Inc., Hengyang Valin Steel Tube Co., Ltd., Hengyang Valin MPM Tube Co., Ltd., and their affiliate, Xigang Seamless Steel Tube Co., Ltd. (collectively, "Hengyang"); and (2) Tianjin Pipe (Group) Corporation ("TPCO"). *See* Memorandum to Edward Yang, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection Memo" (November 4, 2009). This memorandum is on file in the Department's Central Records Unit ("CRU") in Room 1117 of the main Department building.

On November 6, 2009, the U.S. International Trade Commission ("ITC") published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports of seamless pipe from the People's Republic of China ("PRC"). *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From China,* 74 FR 57521 (November 6, 2009).

On November 9, 2009, we issued a questionnaire to the Government of the People's Republic of China ("GOC"), Hengyang, and TPCO. On December 3, 2009, the Department published a postponement of the deadline for the preliminary determination in this investigation until February 16, 2010. *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 74 FR 63391 (December 3, 2009).

In December 2009 and January 2010, we received responses to our questionnaire from the GOC, Hengyang, and TPCO. *See* the GOC's Original Questionnaire Response (January 7, 2010) ("GQR"), Hengyang's Original Questionnaire Response (January 5, 2010) ("HQR"), and TPCO's Original Questionnaire Response (December 31, 2009) ("TQR"). We sent supplemental questionnaires to TPCO on January 27, 2010, and February 4, 2010. We received responses to these

supplemental questionnaires on February 3, 2010, and February 12, 2010. We sent supplemental questionnaires to Hengyang on January 28, 2010, and February 4, 2010. We received responses to these supplemental questionnaires on February 4, 2010, and February 12, 2010. We sent a supplemental questionnaire to the GOC on January 28, 2010, and received a response to this questionnaire on February 4, 2010 ("G1SR").

On January 7, 2010, United States Steel Corporation ("U.S. Steel"), V&M Star L.P., TMK IPSCO, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, "Petitioners") filed an allegation of critical circumstances with regard to seamless pipe from the PRC. On January 22, 2010, we requested that Hengyang and TPCO submit shipment data related to this allegation. TPCO and Hengyang submitted these data on February 2, 2010.

On January 7 and January 13, 2010, Petitioners submitted new subsidy allegations requesting the Department to expand its countervailing duty ("CVD") investigation to include additional subsidy programs.[1] On February 17, 2010, the Department issued a memorandum initiating certain of these new subsidy allegations. *See* Memorandum from Yasmin Nair, International Trade Compliance Analyst, Office 1 to Susan H. Kuhbach, Director, Office 1, "New Subsidy Allegations" (February 17, 2010).

On January 11, 2010, we issued a letter requesting that the GOC update its original questionnaire response for the cross-owned affiliates for which the respondent companies filed questionnaire responses. The GOC filed its response on January 25, 2010.

On January 14, 2010, we issued a letter notifying the GOC that it did not provide responses to certain questions in the original questionnaire. In response to this letter, on January 25, 2010, the GOC filed a submission with information pertaining to the provision of steel rounds.

On February 12, 2010, Petitioners submitted comments for the preliminary determination.

The Department originally extended the deadline for this preliminary determination until February 16, 2010. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary determination of this investigation is now February 22, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

[1] *See* Petitioners' new subsidy allegations dated January 7, 2010, and January 13, 2010.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997), and *Initiation Notice,* 74 FR at 52945. We did not receive comments concerning the scope of the antidumping duty ("AD") and CVD investigations of seamless pipe from the PRC.

Scope of the Investigation

The scope of this investigation consists of certain seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (*e.g.,* hot-finished or cold-drawn), end finish (*e.g.,* plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (*e.g.,* bare, lacquered or coated). Redraw hollows are any unfinished carbon or alloy steel (other than stainless steel) pipe or "hollow profiles" suitable for cold finishing operations, such as cold drawing, to meet the American Society for Testing and Materials ("ASTM") or American Petroleum Institute ("API") specifications referenced below, or comparable specifications. Specifically included within the scope are seamless carbon and alloy steel (other than stainless steel) standard, line, and pressure pipes produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, ASTM A–1024, and the API 5L specifications, or comparable specifications, and meeting the physical parameters described above, regardless of application, with the exception of the exclusion discussed below.

Specifically excluded from the scope of the investigation are unattached couplings.

The merchandise covered by the investigation is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, and 7304.59.8070.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Period of Investigation

The period for which we are measuring subsidies, *i.e.,* the period of investigation ("POI"), is January 1, 2008, through December 31, 2008.

Critical Circumstances

In their January 7, 2010, submission, Petitioners alleged that critical circumstances exist with respect to imports of seamless pipe from the PRC. Section 703(e)(1) of the Tariff Act of 1930, as amended ("the Act") states that if the petitioner alleges critical circumstances, the Department will determine, on the basis of information available to it at the time, if there is a reason to believe or suspect that: (A) The alleged countervailable subsidy is inconsistent with the World Trade Organization ("WTO") Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), and (B) there have been massive imports of the subject merchandise over a relatively short period.

In accordance with 19 CFR 351.206(c)(2)(i), because Petitioners submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination. *See, e.g., Change in Policy Regarding Timing of Issuance of*

Critical Circumstances Determinations, 63 FR 55364 (October 15, 1998).

As discussed in the "Analysis of Programs" section below, the Department has preliminarily determined that TPCO and Hengyang received countervailable export subsidies during the POI. For "all other" exporters, we are basing our finding on the experience of TPCO and Hengyang and, therefore, we find that "all others" benefitted from export subsidies. Export subsidies are inconsistent with the SCM Agreement. Therefore, the criterion of section 703(e)(1)(A) of the Act has been satisfied. *See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada,* 66 FR 43186, 43189–90 (August 17, 2001); unchanged in *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada,* 67 FR 36070 (May 22, 2002).

In determining whether there are "massive imports" over a "relatively short period" pursuant to section 703(e)(1)(B) of the Act, the Department normally compares shipments of the subject merchandise for three months immediately preceding the filing of the petition (*i.e.,* the "base period") with the three months following the filing of the petition (*i.e.,* the "comparison period"). In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Finally, 19 CFR 351.206(i) defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later.

In accordance with 19 CFR 351.206(i), we are using the three months preceding the filing of the petition (*i.e.,* July to September 2009) as the base period and the three months following the filing of the petition (*i.e.,* October to December 2009) as the comparison period. Because Petitioners filed their petition on September 16, 2009, which is the second half of the month, September is included in the base period.

Based upon the monthly shipment data submitted by TPCO, we preliminarily find that TPCO's shipments did not reach the minimum threshold necessary for finding that imports have been massive over a relatively short period. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of seamless pipe from TPCO. For further discussion, *see* the Memorandum to the File, "Critical Circumstances Analysis" (February 22, 2010) ("Critical Circumstances Analysis Memo"), on file in the Department's CRU.

Based upon the monthly shipment data submitted by Hengyang, we preliminarily find that Hengyang's seamless pipe imports increased more than 15 percent during the "relatively short period," as required by 19 CFR 351.206(h)(2). *See* Critical Circumstances Analysis Memo. Further, as explained above, we find that Hengyang received an export subsidy, *i.e.,* a subsidy inconsistent with the SCM Agreement. Therefore, we preliminarily determine that the requirements of section 703(e)(1)(B) of the Act have been satisfied, and that critical circumstances exist for Hengyang.

For "all other" exporters, we are basing our finding on data from USITC Dataweb.[2] We preliminarily determine that there were massive imports over a relatively short period for "all other" producers/exporters of seamless pipe from the PRC. For further discussion, *see* Critical Circumstances Analysis Memo. Further, as explained above, we find that "all other" producers and exporters received a subsidy inconsistent with the SCM Agreement. Therefore, we preliminarily determine that the requirements of section 703(e)(1)(B) of the Act have been satisfied, and that critical circumstances exist for "all others."

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) ("*CFS from the PRC*"), and the accompanying Issues and Decision Memorandum ("CFS Decision Memorandum"). In *CFS from the PRC,* the Department found that

> given the substantial difference between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as (a) bar to proceeding with a CVD investigation involving products from China.

See CFS Decision Memorandum, at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations. *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 73 FR 31966 (June 5, 2008), and accompanying Issues and Decision Memorandum ("CWP Decision Memorandum"), at Comment 1.

Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the WTO, as the date from which the Department will identify and measure subsidies in the PRC. *See* CWP Decision Memorandum, at Comment 2.

Use of Facts Otherwise Available and Adverse Inferences

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

GOC—Steel Rounds

The Department is investigating the alleged provision of steel rounds for less than adequate remuneration by the GOC. We requested information from the GOC about the PRC's steel rounds industry in general and the specific companies that produced the steel rounds purchased by the mandatory respondents. In both respects, the GOC has failed to provide the requested information within the established deadlines.

At pages 87–89 of the GQR, the GOC responded, "No such information is available," to the following questions on the steel rounds industry in the PRC. The GOC provided no further explanation on the following requested information:

- The number of producers of steel rounds (*e.g.,* billets, blooms);
- the total volume and value of domestic production of steel rounds that is accounted for by companies in which

[2] *http://dataweb.usitc.gov/*

the GOC maintains an ownership or management interest either directly or through other government entities; [3]

- the total volume and value of domestic *consumption* of steel rounds and the total volume and value of domestic *production* of steel rounds;
- the percentage of domestic consumption accounted for by domestic production; and
- the names and addresses of the top ten steel rounds companies—in terms of sales and quantity produced—in which the GOC maintains and ownership or management interest, and identification of whether any of these companies have affiliated trading companies that sell imported or domestically produced steel rounds.

On page 91 of the GQR, the GOC responded that it was still gathering information in response to the following question:

> Are there trade publications which specify the prices of the good/service within your country and on the world market? Provide a list of these publications, along with sample pages from these publications listing the prices of the good/service within your country and in world markets during the period of investigation.

With respect to the specific companies that produced the steel rounds purchased by the mandatory respondents, we asked the GOC to provide particular ownership information for these producers so that we could determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. Specifically, we stated in our questionnaire that the Department normally treats producers that are majority owned by the government or a government entity as "authorities." Thus, for any steel rounds producers that were majority government-owned, the GOC needed to provide the following ownership information if it wished to argue that those producers were not authorities:

- Translations of the most recent capital verification report predating the POI and, if applicable, any capital verification reports completed during the POI. Translation of the most recent articles of association, including amendments thereto.
- The names of the ten largest shareholders and the total number of shareholders, a statement of whether any of these shareholders have any government ownership (including the percentage of ownership), and an explanation of any other affiliation between these shareholders and the government.
- The total level (percentage) of state ownership, either direct or indirect, of the company's shares; the names of all government entities that own shares in the company; and the amount of shares held by each.
- Any relevant evidence to demonstrate that the company is not controlled by the government, *e.g.,* that the private, minority shareholder(s) controls of the company.

For any suppliers that the GOC claimed were directly, 100-percent owned by individual persons during the POI, we requested the following:

- Translated copies of source documents that demonstrate the supplier's ownership during the POI, such as capital verification reports, articles of association, share transfer agreements, or financial statements.
- Identification of the owners, members of the board of directors, or managers of the suppliers who were also government or Chinese Communist Party ("CCP") officials during the POI.
- A discussion of whether and how operational or strategic decisions that are made by the management or board of directors are subject to government review or approval.

For input suppliers with some direct corporate ownership or less-than-majority state ownership during the POI, we explained that it was necessary to trace back the ownership to the ultimate individual or state owners. For these suppliers, we requested the following:

- The total level (percentage) of state ownership of the company's shares; the names of all government entities that own shares, either directly or indirectly, in the company; whether any of the owners are considered "state-owned enterprises" by the government; and the amount of shares held by each government owner.
- For each level of ownership, a translated copy of the section(s) of the articles of association showing the rights and responsibilities of the shareholders and, where appropriate, the board of directors, including all decision making (voting) rules for the operation of the company.
- For each level of ownership, identification of the owners, members of the board of directors, or managers of the suppliers who were also government or CCP officials during the POI.
- A discussion of whether and how operational or strategic decisions that are made by the management or board of directors are subject to government review or approval.
- A statement of whether any of the shares held by government entities have any special rights, priorities, or privileges, *e.g.,* with regard to voting rights or other management or decision-making for the company; a statement of whether there are any restrictions on conducting, or acting through, extraordinary meetings of shareholders; whether there are any restrictions on the shares held by private shareholders; and the nature of the private shareholders' interest in the company, *e.g.,* operational, strategic, or investment-related, *etc.*

On page 92 of the GQR, the GOC stated that it had not obtained complete ownership information for the suppliers to the mandatory respondents. The GOC further stated that it expected to provide such information when the Department determined which cross-owned affiliates of the mandatory respondents would be required to file responses.

On January 11, 2010, we issued a letter requesting that the GOC update its initial questionnaire response to include the cross-owned affiliates for which the respondent companies filed questionnaire responses. After the GOC requested an extension to the deadline for filing this response, we set a final deadline of January 25, 2010.

On January 14, 2010, we issued a separate letter noting that the GOC had failed to provide the information requested in the original questionnaire regarding the ownership of the firms that produce the steel rounds/billets used by the mandatory respondents. We pointed out that the GOC had not requested, and the Department had not granted, an extension of the deadline for submitting this information. We stated that the requested information must be submitted by January 25, 2010.

On January 25, 2010, the GOC submitted a list of producers of the steel rounds that respondents purchased during the POI. The GOC identified the producers as state-owned enterprises ("SOEs"), foreign-invested enterprises ("FIEs"), privately-held, or "to be updated." The GOC also submitted certain documentation on the ownership of many of the producers designated as FIEs or privately-held. However, for producers that the GOC claimed to be privately-owned, the GOC did not answer the question on whether owners, members of the board of directors, or managers of the suppliers were also government or CCP officials during the POI. The GOC also did not discuss whether and how operational or strategic decisions that are made by the management or board of directors are subject to government review or approval. For producers with some

[3] Includes governments at all levels, including townships and villages, ministries, or agencies of those governments including state asset management bureaus, state-owned enterprises and labor unions.

direct corporate ownership or less-than-majority state ownership during the POI, the GOC did not respond to our requests for the following information:

- The total level (percentage) of state ownership of the company's shares; the names of all government entities that own shares, either directly or indirectly, in the company; whether any of the owners are considered "state-owned enterprises" by the government; and the amount of shares held by each government owner.
- For each level of ownership, identification of the owners, members of the board of directors, or managers of the suppliers who were also government or CCP officials during the POI.
- A discussion of whether and how operational or strategic decisions that are made by the management or board of directors are subject to government review or approval.
- A statement of whether any of the shares held by government entities have any special rights, priorities, or privileges, *e.g.,* with regard to voting rights or other management or decision-making for the company; a statement of whether there are any restrictions on conducting, or acting through, extraordinary meetings of shareholders; whether there are any restrictions on the shares held by private shareholders; and the nature of the private shareholders' interest in the company, *e.g.,* operational, strategic, or investment-related, *etc.*

Based on the above, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our preliminary determination. *See* sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act.

With respect to the GOC's failure to provide requested information about the production and consumption of steel rounds or billets generally, we are assuming adversely that the GOC's dominance of the market in the PRC for this input results in significant distortion of the prices and, hence, that use of an external benchmark is warranted. With respect to the GOC's failure to provide certain requested ownership information about the producers of the steel rounds purchased by the respondents, we are assuming adversely that all of the respondents' non-cross-owned suppliers of steel rounds are "authorities."

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 at 870 (1994).

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See, e.g.,* SAA, at 870. The Department considers information to be corroborated if it has probative value. *See id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See* SAA, at 869.

To corroborate the Department's treatment of the companies that produced the steel rounds and billets purchased by the mandatory respondents as authorities and our finding that the GOC dominates the domestic market for this input, we are relying on *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 70961 (November 24, 2008) ("*Line Pipe from the PRC*"). In that case, the Department determined that the GOC owned or controlled the entire hot-rolled steel industry in the PRC. *See Line Pipe from the PRC* and accompanying Issues and Decision Memorandum at Comment 1. Evidence on the record of this investigation shows that many steel producers in the PRC are integrated, producing both long products (rounds and billets) and flat products (hot-rolled steel). *See* Memorandum to the File, "Additional Information on Steel Rounds," dated February 22, 2010. Consequently, government ownership in the hot-rolled steel industry is a reasonable proxy for government ownership in the steel rounds and billets industry.

For details on the calculation of the subsidy rate for the respondents, *see* below at section I.C., "Provision of Steel Rounds for Less Than Adequate Remuneration."

GOC—Electricity

The GOC also did not provide a complete response to the Department's November 9, 2009 questionnaire regarding its alleged provision of electricity for less than adequate remuneration. Specifically, the Department requested that the GOC explain how electricity cost increases are reflected in retail price increases. The GOC responded that it was gathering this information, but it did not request an extension from the Department for submitting this information after the original questionnaire deadline date. On January 14, 2010, the Department reiterated its request for this information and notified the GOC that this information would be accepted if the GOC submitted it by January 25, 2010. However, the GOC's subsequent supplemental questionnaire responses did not address the missing information. Consequently, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our preliminary determination. *See* section 776(a)(1), section 776(a)(2)(A), and section 776(a)(2)(B) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information as it did not respond by the deadline dates, nor did it explain why it was unable to provide the requested information, with the result that an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act. In drawing an adverse inverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We have also relied on an adverse inference in selecting the

benchmark for determining the existence and amount of the benefit. *See* section 776(b)(2) of the Act and section 776(b)(4) of the Act. The benchmark rates we have selected are derived from information submitted by the GOC in the countervailing duty investigation of "Certain Kitchen Appliance Shelving and Racks from the People's Republic of China" and information from the record of the instant review. *See* Memorandum to File from Yasmin Nair, International Trade Compliance Analyst, Office 1, "Electricity Rate Data" (February 22, 2010).

For details on the calculation of the subsidy rate for the respondents, *see* below at section I.D., "Provision of Electricity for Less Than Adequate Remuneration."

GOC—TPCO's Other Subsidies

At pages 143–144 of TPCO Group's 2008 Audit Report in Exhibit 6 of the TQR and at page 14 of its February 16, 2010 supplemental questionnaire response, TPCO reported receipt of countervailable grants. In our January 26, 2010, supplemental questionnaire to TPCO, we instructed TPCO to provide information regarding other subsidies identified in its 2008 financial statements and to provide the GOC with the names of the programs under which these subsidies were given.

The Department requested that the GOC provide information about these grants in the initial questionnaire and the January 27, 2010 supplemental questionnaire. In the GOC's February 4, 2010, supplemental response, at page 10, the GOC did not provide the requested information, asserting that it needed additional time to gather the data. Although the GOC responded that it was gathering this information, it did not request an extension from the Department for submitting this information after the supplemental questionnaire deadline date.

Because the GOC did not provide the requested information concerning these grants, we preliminarily determine that necessary information is not on the record and that the GOC did not provide requested information by the submission deadline. Accordingly, the use of facts otherwise available is appropriate. *See* sections 776(a)(1) and (2)(B) of the Act. Also, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information as it did not respond by the deadline dates, nor did it explain why it is unable to provide the requested information, with the result that an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act.

For details on the calculation of the subsidy rate for TPCO, *see* below at section I.G., "Other Subsidies Received by TPCO."

Subsidies Valuation Information

Allocation Period

The average useful life ("AUL") period in this proceeding, as described in 19 CFR 351.524(d)(2), is 15 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. *See* U.S. Internal Revenue Service Publication 946 (2008), *How to Depreciate Property,* at Table B–2: Table of Class Lives and Recovery Periods. No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(iv) direct the Department to attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, or produce an input that is primarily dedicated to the production of the downstream product. In the case of a transfer of a subsidy between cross-owned companies, 19 CFR 351.525(b)(6)(v) directs the Department to attribute the subsidy to the sales of the company that receives the transferred subsidy.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade ("CIT") has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi v. United States,* 166 F. Supp. 2d 593, 600–604 (CIT 2001).

TPCO

TPCO responded to the Department's original and supplemental questionnaires on behalf of itself, Tianjin Pipe Iron Manufacturing Co., Ltd. ("TPCO Iron"); Tianguan Yuantong Pipe Product Co., Ltd. ("Yuantong"); Tianjin Pipe International Economic and Trading Co., Ltd. ("TPCO International"); and TPCO Charging Development Co., Ltd. ("Charging"). These companies are cross-owned within the meaning 19 CFR 351.525(b)(6)(vi) because of TPCO's substantial ownership position in each of them. *See* the TQR at page 2 and Exhibits 1–3.

TPCO stated that TPCO Iron provides "pig iron and direct reduced iron" to TPCO and that Yuantong provides "threading and other finishing processes to {TPCO's} seamless pipe production."[4] Because TPCO Iron produced an input that is primarily dedicated to the production of the downstream product, we are preliminarily attributing subsidies received by TPCO Iron to TPCO, in accordance with 19 CFR 351.525(b)(6)(iv). Yuantong had direct involvement in the production of subject merchandise during the POI. Thus, we are preliminarily attributing subsidies received by Yuantong to TPCO, in accordance with 19 CFR 351.525(b)(6)(ii).[5]

Regarding TPCO International, TPCO stated, "{TPCO International} is the trading company through which {TPCO} exports all subject merchandise." Because TPCO International exported subject merchandise during the POI, we are preliminarily cumulating the benefit from subsidies received by TPCO International with subsidies provided to TPCO, in accordance with 19 CFR 351.525(c). We are preliminarily using TPCO's consolidated sales as the denominator for subsidies to TPCO International. On page 12 of the TQR, TPCO stated that TPCO consolidates directly-owned subsidiaries in which it holds an equity share of more than 50 percent. On page 9 of the TQR, TPCO stated that the consolidated sales totals in its financial statements are net of

[4] *See* TQR at 5.

[5] *See Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination,* 74 FR 47210, 47215 (September 15, 2009) (unchanged in *Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009) ("*OCTG from the PRC*")).

inter-company sales. Thus, TPCO's consolidated sales already include TPCO International's sales (net of inter-company sales). By using TPCO's consolidated sales as the denominator for subsidies to TPCO International, we do not double-count TPCO International's sales in the calculation of the subsidy rate.

With regard to Charging, TPCO stated on pages 4–5 of the TQR that Charging acts as a trading company that purchased and provided steel rounds to TPCO during the POI. If the GOC provided steel rounds to Charging for less than adequate remuneration during the POI, the supplier relationship between Charging and TPCO may fall under 19 CFR 351.525(b)(6)(iv) (subsidies to cross-owned input suppliers) or 19 CFR 351.525(b)(6)(v) (transfer of subsidies). As we stated in the previous paragraph, however, TPCO consolidates the sales of directly-owned subsidiaries in which it holds an equity share of more than 50 percent (net of inter-company sales). Because TPCO consolidates Charging's sales into its own sales, the attribution of the subsidy for TPCO's purchases through Charging is identical under 19 CFR 351.525(b)(6)(iv) or 19 CFR 351.525(b)(6)(v). Under both sections of the regulations, the attribution of the subsidy is to TPCO's consolidated sales. Thus, we are preliminarily attributing any subsidies under the provision of steel rounds to Charging for less than adequate remuneration to TPCO's consolidated sales, which includes Charging's sales.

On page 3 of our January 26, 2010, supplemental questionnaire to TPCO, we asked TPCO to explain why it did not provide a response on behalf of Tianjin TEDA Investment Holding Co., Ltd. ("TEDA"), Tianjin Pipe Investment Holding Co., Ltd. ("TPCO Holding"), and China Cinda Asset Management Corporation ("Cinda"), which have held majority interests in TPCO since December 11, 2001. Under 19 CFR 351.525(b)(6)(iii), we would normally attribute to TPCO any subsidies that these owners received while each was cross-owned with TPCO. In its response dated February 16, 2010, TPCO responded that TEDA, a government agency, is primarily involved in the operation and management of assets and public infrastructure, and TPCO Holding was originally established by the Tianjin SASAC ("State-owned Assets Supervision and Administration Commission of the State Council") for the sole purpose of holding the assets of TPCO. In TPCO's explanation of why it did not file a response for Cinda, it refers to the Department's finding in *OCTG from the PRC,* in which the Department found that TEDA and TPCO Holding were government agencies.[6] TPCO states "for the same reasons," TPCO did not file a response for Cinda, which was specifically established to restructure debt and non-performing assets. Based on TPCO's response, we preliminarily determine that these entities were government agencies since December 11, 2001. Thus, we are preliminarily countervailing subsidies that these entities provided to TPCO, rather than any subsidies that these entities may have received. Moreover, as agencies of the government, we preliminarily determine these entities to be "government authorities."

In the January 26, 2010, supplemental questionnaire, we also asked TPCO questions about certain affiliates that may have met the cross-ownership standard under 19 CFR 351.525(b)(6)(vi) and one or more of the attribution standards under 19 CFR 351.525(b)(6)(ii)–(v). TPCO provided responses to these questions in its February 12, 2010, response at pages 5–6. Based on TPCO's responses, we preliminarily determine that none of these affiliates met both the cross-ownership standard of 19 CFR 351.525(b)(6)(vi) and one or more of the attribution standards under 19 CFR 351.525(b)(6)(ii)–(v). Thus, we have not included any subsidies to these companies in the subsidy calculation.

For other affiliated companies that TPCO identified in Exhibits 1 and 2 of the TQR, TPCO either held a small ownership share during the POI or identified the companies as having no involvement with subject merchandise. Thus, we have not included any subsidies to these companies in the subsidy calculation.

Regarding the sales denominator for calculating TPCO's subsidy rate, we note that the Department will attribute subsidies bestowed on a parent or holding company to the consolidated sales of the parent or holding company and its subsidiaries under 19 CFR 351.525(b)(6)(iii). TPCO was a parent company to other companies during the POI. On page 12 of the TQR, TPCO stated, "{TPCO} consolidated those directly owned subsidiaries in which it holds more than 50% equity shares, as well as those indirectly owned subsidiaries in which its wholly-owned subsidiaries hold more than 50% equity shares." In accordance with 19 CFR 351.525(b)(6)(iii), we are preliminarily attributing subsidies to TPCO to the consolidated sales of TPCO and its subsidiaries.

Therefore, based on information currently on the record, we preliminarily determine that cross-ownership within the meaning of 19 CFR 351.525(b)(6)(vi) exists between TPCO, TPCO Iron, Yuantong, TPCO International, and Charging. Moreover, pursuant to 19 CFR 351.525(b)(6)(iii), we are preliminarily attributing subsidies received by TPCO to the consolidated sales of TPCO and its subsidiaries (net of inter-company sales). TPCO Iron, Yuantong, and Charging are consolidated into TPCO's sales; thus, we are preliminarily attributing subsidies received by TPCO Iron, Yuantong, and Charging to TPCO's consolidated sales (net of inter-company sales). For TPCO International, we preliminarily have cumulated TPCO International's subsidy benefits with TPCO's subsidy benefits. *See* 19 CFR 351.525(c). We have preliminarily used TPCO's consolidated sales net of inter-company sales as the denominator for subsidies to TPCO International.

Hengyang

As of this preliminary determination, Hengyang has responded to the Department's original and supplemental questionnaires on behalf of Hengyang Steel Tube Group International Trading, Inc. ("Hengyang Trading"), Hengyang Valin Steel Tube Co., Ltd. ("Hengyang Valin"), and Hengyang Valin MPM Tube Co., Ltd. ("Hengyang MPM"), and their affiliated parties Xigang Seamless Steel Tube Co., Ltd. ("Xigang Seamless"), Wuxi Seamless Special Pipe Co., Ltd. ("Special Pipe"), Wuxi Resources Steel Making Co., Ltd. ("Resources Steel"), and Jiangsu Xigang Group Co., Ltd. ("Xigang Group"). These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of common ownership.[7]

Hengyang reports the following roles for each of the seven companies:[8]

- *Hengyang Valin:* a parent company to Hengyang MPM and Hengyang Trading, and a producer of subject merchandise;
- *Hengyang MPM:* a producer of subject merchandise, as well as a producer and supplier of an input to Hengyang Valin for production of subject merchandise;
- *Hengyang Trading:* an exporter of subject merchandise on behalf of Hengyang Valin and Hengyang MPM;
- *Xigang Seamless:* a producer and exporter of subject merchandise;

[6] *See OCTG from the PRC,* and accompanying Issues and Decision Memorandum at 9 and Comment 40.

[7] *See* HQR at 2.

[8] *See* HQR at 2 and HQR at Vol. 5 p. 1–2.

• *Special Pipe:* a producer of subject merchandise;

• *Resources Steel:* a producer and supplier of an input to Xigang Seamless and Special Pipe for production of subject merchandise; and

• *Xigang Group:* a holding company, and the parent of Xigang Seamless, Special Pipe, and Resources Steel.

Because Hengyang Valin, Hengyang MPM, Xigang Seamless, and Special Pipe are producers of subject merchandise, we are preliminarily attributing subsidies received by any of these companies to the sales of all four (excluding sales between the companies), in accordance with 19 CFR 351.525(b)(6)(ii).

During the POI, Hengyang Trading exported subject merchandise produced by Hengyang Valin and Hengyang MPM. Thus, we are preliminarily cumulating the benefit from subsidies received by Hengyang Trading with the benefit from subsidies provided to Hengyang Valin and MPM, in accordance with 19 CFR 351.525(c).

Hengyang identified Resources Steel as a producer and supplier of steel billet to Xigang Seamless and Special Pipe. Because steel billet is primarily dedicated to the production of the downstream product, we are preliminarily attributing subsidies received by Resources Steel to Resources Steel, Xigang Seamless, and Special Pipe, in accordance with 19 CFR 351.525(b)(6)(iv).

Xigang Group was the parent of Xigang Seamless, Special Pipe, and Resources Steel during the POI. Thus, we are preliminarily attributing subsidies received by Xigang Group to the consolidated sales of Xigang Group and its subsidiaries, in accordance with 19 CFR 351.525(b)(6)(iii).

In a supplemental questionnaire dated January 28, 2010, we asked Hengyang to provide responses on behalf of certain affiliates that met the cross-ownership standard under 19 CFR 351.525(b)(6)(vi) and one or more of the attribution standards under 19 CFR 351.525(b)(6)(ii)–(v). Hengyang is scheduled to provide this response on February 22, 2010. We intend to address this response in a post-preliminary determination.

At Volume 1, page 7 of the HQR, Hengyang stated that Hengyang Trading also exports subject merchandise produced by an unaffiliated producer, although Hengyang stated that Hengyang Trading did not export this merchandise to the United States during the POI. At Volume 5, pages 7–8 of the HQR, Hengyang stated that Xigang Seamless purchased and exported subject merchandise produced by unaffiliated companies during the POI. Although any subsidies to the unaffiliated producers would normally be cumulated with subsidies provided to these trading companies pursuant to 19 CFR 351.525(c), the Department has, in some instances, limited the number of producers it examines where their merchandise was not exported to the United States during the POI or accounted for a very small share of respondent's exports to the United States. In this investigation, we have not sent CVD questionnaires to the unaffiliated suppliers because their merchandise was not exported to the United States during the POI or accounted for a minor share of Hengyang's exports to the United States.[9] See, *e.g., Pasta From Italy,* in which one of the mandatory respondents was a trading company that exported pasta produced by multiple pasta manufacturers, but the Department limited its analysis to the two major pasta manufacturers that supplied the trading company during the period of review. *See Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review,* 66 FR 64214 (December 12, 2001) ("*Pasta from Italy*"), and accompanying Issues and Decision Memorandum at "Attribution."

Benchmarks and Discount Rates

Benchmarks for Short-Term RMB Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.[10] If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."[11]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons explained in *CFS from the PRC,*[12] loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada,* the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.[13]

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC*[14] and more recently updated in *LWTP from the PRC.*[15] This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes ("GNIs") similar to the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to the state-imposed distortions in the banking sector discussed above.

Following the methodology developed in *CFS from the PRC,* we first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries.[16] As explained in *CFS from the PRC,* this pool of countries

[9] Hengyang Trading did not export subject merchandise produced by unaffiliated producers to the United States during the POI. *See* the HQR at Volume 1, page 7. The percentage of Xigang Seamless's exports of subject merchandise to the United States from unaffiliated producers is business proprietary information. *See* the HQR at Volume 5, page 8.

[10] *See* 19 CFR 351.505(a)(3)(i).

[11] *See* 19 CFR 351.505(a)(3)(ii).

[12] *See* CFS Decision Memorandum at Comment 10.

[13] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada,* 67 FR 15545 (April 2, 2002) ("*Softwood Lumber from Canada*") and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

[14] *See* CFS Decision Memorandum at Comment 10.

[15] See *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) ("*LWTP from the PRC*") and accompanying Issues and Decision Memorandum ("LWTP Decision Memorandum") at 8–10.

[16] *See* The World Bank Country Classification, *http://econ.worldbank.org/.*

captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics ("IFS"). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "low middle income" by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.

The resulting inflation-adjusted benchmark lending rates are provided in the respondents' preliminary calculation memoranda. *See* Memorandum to File, "Preliminary Determination Calculation Memorandum for (TPCO)," (February 22, 2010) ("TPCO Calculation Memo"); *see also* Memorandum to File, "Preliminary Determination Calculation Memorandum for (Hengyang)," (February 22, 2010) ("Hengyang Calculation Memo"). Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondents' interest payments for inflation. This was done using the PRC inflation figure as reported in the IFS. *See* TPCO Calculation Memo and Hengyang Calculation Memo.

Benchmarks for Long-Term Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. *See, e.g., Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination,* 73 FR 35642 (June 24, 2008) and accompanying Issues and Decision Memorandum ("LWRP Decision Memo") at 8. In *Citric Acid from the PRC,* this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 13, 2009) ("*Citric Acid from the PRC*") and accompanying Issues and Decision Memorandum ("Citric Acid Decision Memorandum") at Comment 14. Finally, because these long-term rates are net of inflation as noted above, we adjusted the PRC respondents' payments to remove inflation.

Benchmarks for Foreign Currency-Denominated Loans

For foreign currency-denominated short-term loans, the Department used as a benchmark the one-year dollar interest rates for the London Interbank Offering Rate ("LIBOR"), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. *See* LWTP Decision Memo at 10. For long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government agreed to provide the subsidy.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Policy Loans to the Seamless Pipe Industry

The Department is examining whether seamless pipe producers receive preferential lending through state-owned commercial or policy banks. According to the allegation, preferential lending to the seamless pipe industry is supported by the GOC through the issuance of national and provincial five-year plans; industrial plans for the steel sector; catalogues of encouraged industries, and other government laws and regulations. Based on our review of the information and responses of the GOC, we preliminarily determine that loans received by the seamless pipe industry from state-owned commercial banks ("SOCBs") were made pursuant to government directives.

Record evidence demonstrates that the GOC, through its directives, has highlighted and advocated the development of the seamless pipe industry. At the national level, the GOC has placed an emphasis on the development of high-end, value-added steel products through foreign investment as well as through technological research, development, and innovation. In laying out this strategy, the GOC has identified the specific products it has in mind. For example, an "objective" of *The 10th Five-Year Plan for the Metallurgical Industry (*"*Plan*") was to develop key steel types that were mainly imported; high strength, anticrushing and corrosion resistant petroleum pipe was among the listed products. Moreover, among the "Policy Measures" set out in the *Plan* for achieving its objectives was the encouragement of enterprises to cooperate with foreign enterprises, particularly in the production and development of high value-added products and high-tech products. *See* Memorandum to File from Yasmin Nair, Analyst regarding "Additional Documents Placed on the Record" (February 22, 2010) ("Additional Documents Memo").

Similarly, in the *Development Policies for the Iron and Steel Industry* (July 2005) at Article 16, the GOC states that it will "* * * enhance the R&D, design, and manufacture level in relation to the key technology, equipment and facilities for the Chinese steel industry." To accomplish this, the GOC states it will provide support to key steel projects relying on domestically produced and newly developed equipment and facilities, through tax and interest assistance, and scientific research expenditures. *See* Petition at Exhibit III–

10. Later in 2005, the GOC implemented the *Decision of the State Council on Promulgating the* "*Interim Provisions on Promoting Industrial Structure Adjustment*" *for Implementation* (No. 40 (2005)) ("*Decision 40*") in order to achieve the objectives of the Eleventh Five-Year Plan. *See* Additional Documents Memo. *Decision 40* references the *Directory Catalogue on Readjustment of Industrial Structure (*"*Industrial Catalogue*"*),* which outlines the projects which the GOC deems "encouraged," "restricted," and "eliminated," and describes how these projects will be considered under government policies. Steel tube for oil well pipe, high-pressure boiler pipe, and long-distance transmission pipe was named in the *Industrial Catalogue* as an "encouraged project." *See* Petition at Exhibit III–44. For the "encouraged" projects, Decision 40 outlines several support options available to the government, including financing.

Turning to the provincial and municipal plans, the Department has described the inter-relatedness of national level plans and directives with those at the sub-national level. *See* LWTP Decision Memo at Comment 6. Based on our review of the sub-national plans submitted by the GOC in this investigation, we find that they mirror the national government's objective of supporting and promoting the production of innovative and high-value added products, including seamless pipe. Examples from the five-year plans of the provinces and/or municipalities where each of the respondents is located follow:

Outline of the 10th Five-Year Plan for the National Economic and Social Development of Tianjin Municipality: "For metallurgical industry, we attach importance to the development of high quality and efficiency steel products and high grade metal products, such as seamless steel tube and cold rolled sheet, and carry out the oil steel pipe extension and east-movement project of steel." *See* GQR at Exhibit GOC–12.

Outline of the 11th Five-Year Program of Social and Economic Development of Tianjin Municipality: "Build a pipe production base, mainly producing seamless pipes * * * Develop a production capacity of 2600 seamless pipes, 10 million plates, and 1 million first class metal products by 2010." *See* GQR at Exhibit GOC–13.

10th Five-Year Plan for Industrial Development in Tianjin: "Surrounding the object of establishing a national manufacturing base for seamless steel tube and metallic products, metallurgy industries will actively optimize structure, properly adjust layout, and develop advantageous products. We shall let the backward techniques and facilities give way to latest applicable technologies to treat pollution properly, promote development of quality steel and metallic products with high added value and huge domestic demand represented by seamless steel tube and cold rolled sheet * * *" *See* GQR at Exhibit GOC–16.

Outline of the 11th Five-Year Program for the Development of the Industrial Economy of Tianjin: "Development objective: * * * Production capacities of major products: * * * production of rolled steel exceeds 30 million tons, including 2.6 million tons of seamless steel tubes * * * One of the world largest technical equipment leading seamless steel tube production base and important domestic high grade sheet and metal products production base shall be established here * * * Key projects and investment: There shall be a total investment of 32.5 billion Yuan during the period of the 11th Five-Year Program, mainly including the project of seamless steel tube, stainless steel tube and heavy caliber welding steel tubes with a total investment of 3.6 billion Yuan contributed by TPCO, Shuangjie Steel Tubes and other companies * * *" *See* GQR at Exhibit GOC–17.

Outline of the 10th Five-Year Plan for National Economy and Social Development of Tianjin Binhai New Area: "Complete the eastward movement of Tianjin Steel Factory relying on the current conditions of Steel Pipe Company and No.3 Gas Factory, establish the manufacturing base and metallurgical casting base for steel of quality and efficiency and its hot-processed products." *See* G1SR at Exhibit 1.

Notice of Tianjin Municipal People's Government Concerning the Printing and Distribution of the Outline for the 11th Five-Year Program for the National Economic and social Development in Tianjin Binhai New Area: "4. Constructing deep processing base of petroleum steel pipe and high quality steel material—We shall quicken technology innovation and structural adjustment, extend industrial link, enhance the concentration effort, strive the commanding point of the industry, consolidate and develop the leading position of deep processing of petroleum steel pipe and high quality steel material." *See* G1SR at Exhibit 2.

Outlines of the 10th and 11th Five-Year Program for Industrial Structural Adjustment and Development in Jiangsu: "Emphasize on the development of high-quality steel products with high added value and high technological content such as motor plates, shipbuilding steel plates, * * * pinion steel, oil well billet, special pipes and sticks, and highly qualified high-carbon hard wires." *See* GQR at Exhibit GOC–14 and 15.

Outline of the 11th Five-Year Plan of Social and Economic Development of Jiangsu Province: "We shall lay emphasis upon the development of competitive industries * * * By setting up industrial bases of integrated circuit, photoelectric display, petrochemical industry, metallurgy, shipbuilding, and paper making, we shall increase shares of competitive industries in the manufacturing industry. Focus shall be put on developing special metallurgy, petrochemical, new building material and other basic industries. We shall actively speed up development of special steel, * * *" *See* GQR at Exhibit GOC–9.

Outline of the 10th Five-Year Plan of Social and Economic Development of Wuxi Municipality: "We should insist on the guidance of market, support the consumer products with big market share, fill the blanket area in domestic market, replace the exported products, high class facility class, upgrade and update products with competitive and high added value, new products with good industrialization base and comparative relativeness and dragging force, endeavor to construct 10 distinctive product group of electronic devices, * * * steel & iron and metal products and form a batch of international renowned brand and brands famous in China and Jiangsu." *See* GQR at Exhibit GOC–10.

Outline of the 11th Five-Year Plan of Social and Economic Development of Wuxi Municipality: "We will take such industries as metallurgy, chemical industry and so on as the foundation, prioritize products of several domains such as new composition material and high polymer material, new ceramic material, special steel and product, * * *" *See* GQR at Exhibit GOC–11.

Outline of the 10th Five-Year Plan of Social and Economic Development of Hunan Province: "We shall optimize the structure, form the characteristics and enlarge the production of high quality plate and strip material, seamless tube, rigid line, manganese and other deep processing and special alloy products." *See* GQR at Exhibit GOC–4.

Outline of the 11th Five-Year Program of Social and Economic Development of Hunan Province: "We shall vigorously import advanced technological equipment and production techniques * * *; concentrate on development of high-quality excellent steel materials such as plates, tubes and bars etc * * *" *See* GQR at Exhibit GOC–5.

Outline of the 10th Five-Year Plan of Social and Economic Development of Hengyang Municipality: "Focus shall be put on singling out these six pillar industries for support such as metallurgy, machinery, * * * We shall attach great importance to ten key enterprises and ten knock-out products. The ten key enterprises include: * * * Hengyang Steel Tube Group Corporation * * *" *See* GQR at Exhibit GOC–6.

Outline of the 11th Five-Year Program of Social and Economic Development of Hengyang Municipality: "We shall stress the development of such major industries such as iron and steel smelting and tube processing, * * * we shall introduce international strategic investment, promote tube processing and manufacturing * * * Up to 2010, the smelting of steel and iron and the output for affiliated industrial clusters of tube processing shall reach 14 billion." *See* GQR at Exhibit GOC–7.

As noted in *Citric Acid from the PRC:*[17]

In general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support those objectives or goals. Where

[17] *See Citric Acid from the PRC,* and Citric Acid Decision Memo, at Comment 5.

such plans or policy directives exist, then we will find a policy lending program that is specific to the named industry (or producers that fall under that industry).[18] Once that finding is made, the Department relies upon the analysis undertaken in *CFS from the PRC*[19] to further conclude that national and local government control over the SOCBs results in the loans being a financial contribution by the GOC.[20]

Therefore, on the basis of the record information described above, we preliminarily determine that the GOC has a policy in place to encourage the development of production of seamless pipe through policy lending. The loans to seamless pipe producers from Policy Banks and SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (*see* section 771(5)(E)(2) of the Act). Finally, we determine that the loans are *de jure* specific within the meaning of section 771 of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the seamless pipe industry.

To calculate the benefit under the policy lending program, we used the benchmarks described under "Subsidies Valuation—Benchmarks and Discount Rates" above. *See also* 19 CFR 351.505(c). On this basis, we preliminarily determine that Hengyang received a countervailable subsidy of 1.44 percent *ad valorem* and TPCO received a countervailable subsidy of 0.88 percent *ad valorem.*

B. Export Loans From the Export-Import Bank of China

TPCO

On page 20 of the GQR, the GOC reported that the Export-Import Bank of China ("EIBC") provided TPCO with three loans that were outstanding during the POI. The GOC claimed that none of the loans related to exportation of subject merchandise.

Based on the proprietary description of these loans at page 21 of the GOC's response, however, we preliminarily find that one of the loans is a countervailable export loan from the EIBC.[21] As a loan from a government policy bank, this loan constitutes a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act. We further determine that the export loan is specific under section 771(5A)(B) of the Act because receipt of the financing is contingent upon export. Also, we determine that the export loan confers a benefit within the meaning of section 771(5)(E)(ii) of the Act.

To calculate the benefit under this program, we compared the amount of interest paid against the export loan to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the "Benchmarks and Discount Rates" section. To calculate the net countervailable subsidy rate, we divided the benefit by TPCO's export sales value for the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.08 percent *ad valorem.*

Hengyang

On page 14 of the HQR, Hengyang reported two loans made to Hengyang Valin that are "contingent on the loans being used for anticipated activities that generate exports of high-tech products."[22] On page 15 of the HQR, Hengyang stated that all of Hengyang Valin's exports benefit from these loans.

On page 28 of the GQR, the GOC stated, "Hengyang Valin received {proprietary amount of} export contingent loans from {the EIBC}."

We preliminarily find that Hengyang's loans from the EIBC that were outstanding during the POI are countervailable export loans. As a loan from a government policy bank, these loans constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act. We further determine that the export loans are specific under section 771(5A)(B) of the Act because receipt of the financing is contingent upon export. Also, we determine that the export loans confer a benefit within the meaning of section 771(5)(E)(ii) of the Act.

To calculate the benefit under this program, we compared the amount of interest paid against the export loans to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the "Benchmarks and Discount Rates" section. To calculate the net countervailable subsidy rate, we divided the benefit by Hengyang's export sales value for the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 1.03 percent *ad valorem.*

C. Provision of Steel Rounds for Less Than Adequate Remuneration

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are preliminarily relying on "adverse facts available" ("AFA") for our analysis regarding the GOC's provision of steel rounds and billets to seamless pipe producers. First, as a result of the GOC's failure to provide requested ownership information for the companies that produced the steel rounds and billets purchased by the mandatory respondents in this investigation, we are treating all unaffiliated producers of steel rounds and billets as "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily determine that seamless pipe producers have received a financial contribution from the government in the form of the provision of a good. *See* section 771(5)(D)(iii) of the Act.

To determine whether this financial contribution results in a subsidy to the seamless pipe producers, we followed 19 CFR 351.511(a)(2) for identifying an appropriate market-based benchmark for measuring the adequacy of the remuneration for the steel rounds and billets. The potential benchmarks listed in this regulation, in order of preference are: (1) Market prices from actual transactions within the country under investigation for the government-provided good (*e.g.,* actual sales, actual imports, or competitively run government auctions) ("tier one" benchmarks); (2) world market prices that would be available to purchasers in the country under investigation ("tier two" benchmarks); or (3) prices consistent with market principles based on an assessment by the Department of the government-set price ("tier three" benchmarks). As we explained in *Softwood Lumber from Canada,* the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See Softwood Lumber from Canada* and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage

[18] *See* CFS Decision Memorandum, at 49; and LWTP Decision Memorandum, at 98.

[19] *See* CFS Decision Memorandum, at Comment 8.

[20] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008) ("*OTR Tires from the PRC*"), and the accompanying Issues and Decision Memorandum ("OTR Tires Decision Memo") at 15; and LWTP Decision Memorandum, at 11.

[21] We have addressed the proprietary details of this loan in the TPCO Calculation Memo.

[22] *See* HQR at 14.

Programs Determined to Confer Subsidies, Benefit."

Beginning with tier one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the CVD Preamble: "Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy." *See Countervailing Duties; Final Rule,* 63 FR 65348, 65377 (November 25, 1998) ("CVD Preamble"). The CVD Preamble further recognizes that distortion can occur when the government provider constitutes a majority, or in certain circumstances, a substantial portion of the market.

As explained under "Use of Facts Otherwise Available and Adverse Inferences," above, we are preliminarily relying on AFA to determine that GOC authorities play a predominant role in the PRC market for steel rounds and billets. Because of the predominant role played by GOC authorities in the production of steel rounds and billets, we preliminarily determine that the prices actually paid in the PRC for steel rounds and billets during the POI are not appropriate tier one benchmarks under our regulations.

Turning to tier two benchmarks, *i.e.,* world market prices available to purchasers in the PRC, we have placed on the record the benchmark price information that we used in the final determination of *OCTG from the PRC. See OCTG from the PRC,* and accompanying Issues and Decision Memorandum at Comment 13a; *see also* Memorandum to the File dated February 22, 2010, "Steel Rounds Benchmark Prices." The benchmark price that we used in *OCTG from the PRC* is a compilation of the following prices: Export prices from *Steel Business Briefing* ("*SBB*") for billet from Latin America, Turkey, the Black Sea/Baltic region; SBB East Asia import prices; and two series of London Metal Exchange prices.

The benchmark price from *OCTG from the PRC* represents an average of commercially-available world market prices for steel rounds and billets that would be available to purchasers in the PRC. We note that, in addition to *OCTG from the PRC,* the Department has relied on pricing data from industry publications such as *SBB* in other recent CVD proceedings involving the PRC. *See, e.g.,* CWP Decision Memorandum at 11 and LWRP Decision Memo at 9. Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, we have averaged the prices to calculate an overall benchmark.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have included the freight charges that would be incurred to deliver steel rounds to the respondents' plants. We have also added import duties, as reported by the GOC, and the value-added tax ("VAT") applicable to imports of steel rounds and billet into the PRC. We have compared these prices to the respondents' actual purchase prices, including any taxes and delivery charges incurred to deliver the product to the respondents' plants.

Comparing the adjusted benchmark prices to the prices paid by the respondents for their steel rounds and billet, we preliminarily determine that the GOC provided steel rounds and billet for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark and what the respondents paid. *See* 19 CFR 351.511(a).

Finally, with respect to specificity, the GOC at page 91 of the GQR stated, "Steel rounds (billets in round shape that can be used to produce seamless pipe) are {used} by the seamless pipe industry." Therefore, we preliminarily determine that this subsidy is specific because the recipients are limited in number. *See* section 771(5A)(D)(iii)(I) of the Act.

Based on the above, we preliminarily determine that the GOC conferred a countervailable subsidy on TPCO and Hengyang through the provision of steel rounds for less than adequate remuneration. To calculate the subsidy, we took the difference between the delivered world market price and what each respondent paid for steel rounds, including delivery charges, during the POI. On this basis, we preliminarily calculated a net countervailable *ad valorem* subsidy rate of 4.98 percent for TPCO and 2.82 percent for Hengyang.

D. Provision of Electricity for Less Than Adequate Remuneration

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Facts Available" section above, we are basing our determination regarding the government's provision of electricity in part on AFA.

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable.

Consistent with this practice, the Department finds that the GOC's provision of electricity confers a financial contribution, under section 771(5)(D)(iii) of the Act, and is specific, under section 771(5A) of the Act. To determine the existence and amount of any benefit from this program, we relied on the companies' reported information on the amounts of electricity they purchased and the amounts they paid for electricity during the POI. We compared the rates paid by TPCO and Hengyang for their electricity to the highest rates that they would have paid in the PRC during the POI. Specifically, we have selected the highest rates for "large industrial users" for the peak, valley and normal ranges. The valley and normal ranges were selected from the GQR at Exhibit 85, Electricity Sale Rate Schedule of Zhejiang Grid. The peak rate is the electricity rate for Dongguan City as reported in the GOC's March 12, 2009 supplemental questionnaire response at Exhibit S2–4 in the CVD investigation of "Certain Kitchen Appliance Shelving and Racks from the People's Republic of China." *See* Memorandum to File from Yasmin Nair, International Trade Compliance Analyst, Office 1, "Electricity Rate Data" (February 22, 2010). This benchmark reflects the adverse inference we have drawn as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.

On this basis, we preliminarily determine the countervailable subsidy to be 1.53 percent *ad valorem* for TPCO and 3.91 percent *ad valorem* for Hengyang.

E. The State Key Technology Project Fund

TPCO reported that it received funds from the State Key Technology Renovation Fund in 2003. In Exhibit V–

1 of the GQR, the GOC provided the notice for implementation of the fund. The notice states that the purpose of the program is to "support the technological renovation of key industries, key enterprises and key products * * *" The notice also states, "The enterprises shall be mainly selected from large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the leading enterprises of the industries."

The Department has previously found this program to be countervailable. *See, e.g., Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances,* 73 FR 40480 (July 15, 2008), and the accompanying Issues and Decision Memorandum at page 23 and Comment G.7.

We preliminarily determine that TPCO received a countervailable subsidy under the State Key Technology Renovation Fund. We find that this grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). Further, we preliminarily determine that the grant provided under this program is limited as a matter of law to certain enterprises; *i.e.,* large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises. Hence, we preliminarily find that the subsidy is specific under section 771(5A)(D)(i) of the Act.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. *See* 19 CFR 351.524(b). Because the grant exceeded 0.5 percent of TPCO's sales in the year the grant was approved (*i.e.,* 2003), we have allocated the benefit over the 15-year AUL using the discount rate described under the "*Benchmarks and Discount Rates*" section above. On this basis, we preliminarily determine the countervailable subsidy to be 0.01 percent *ad valorem* for TPCO.

F. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area

TPCO reported that it used two programs for companies in the Tianjin Binhai New Area ("TBNA"): the Science and Technology Fund Program and the Accelerated Depreciation Program. TPCO received a grant under the Science and Technology Fund Program and paid reduced income taxes under the Accelerated Depreciation Program. TPCO also reported that it purchased land-use rights and rented land-use rights for different plots of land within the TBNA during the POI and prior to the POI.

Science and Technology Fund

The GOC's measures for the Science and Technology Fund, which the GOC provided at 134 of the GQR, describe the fund's purpose as follows: (1) Promote the construction of the science-technology infrastructure in TBNA; (2) enhance science-technology renovation and service abilities; (3) improve the business environment of renovation entrepreneurship; and 4) construct a new science-technology renovation system. On page 138 of the GQR, the GOC stated that eligibility for the program is limited to enterprises within the TBNA Administrative Committee's jurisdiction.

We preliminarily determine that TPCO received a countervailable subsidy during the POI under the TBNA Science and Technology Fund Program. We find that this grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). We further determine preliminarily that grants under this program are limited to enterprises located in a designated geographic region (*i.e.,* the TBNA). Hence, the grants are specific under section 771(5A)(D)(iv) of the Act.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. *See* 19 CFR 351.524(b). Because the benefit was less than 0.5 percent of TPCO's consolidated sales during the POI, we have preliminarily expensed the entire amount to the POI. *See* 19 CFR 351.524(b)(2). On this basis, we preliminarily determine the countervailable subsidy to be 0.03 percent *ad valorem* for TPCO.

Accelerated Depreciation Program

Regarding the Accelerated Depreciation program, the GOC circular for the program (Exhibit 109 of the GQR) stipulates that enterprises in the TBNA may shorten the depreciation period of certain fixed assets by a maximum of 40 percent of the present depreciation period. On page 147 of the GQR, the GOC stated that eligibility for the program is limited to enterprises within the TBNA.

We preliminarily determine that TPCO received a countervailable subsidy during the POI under the Accelerated Depreciation program. The Accelerated Depreciation program constitutes a financial contribution in the form of revenue forgone that is otherwise due within the meaning of section 771(5)(D)(ii) of the Act, with the benefit equaling the income tax savings (*see* 19 CFR 351.509(a)). The program affected TPCO's income taxes for the 2007 tax year. Thus, under the normal standard in 19 CFR 351.509(b), TPCO received a benefit from this program in 2008, when it filed its 2007 annual tax return. Further, we determine preliminarily that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we divided the reduction in TPCO's income taxes resulting from the program by TPCO's consolidated sales, in accordance with 19 CFR 351.524(c)(1) and 19 CFR 351.525(b)(6)(iii). On this basis, we preliminarily determine the countervailable subsidy to be 0.58 percent *ad valorem* for TPCO.

Land

Regarding land, TPCO and its reporting cross-owned affiliates are all located in the TBNA, and TPCO, TPCO Iron, and Yuantong have purchased "granted" land-use rights within the TBNA. At page 86 of the GQR, the GOC reported that TPCO obtained its land-use rights in accordance with Article 11 of Decree 21 of the Ministry of Land and Resources. Article 11, at Exhibit 73 of the GQR, establishes provisions for the "agreement-based assignment of the right to use state-owned land." Article 11 states that the "agreement-based assignment of the right to use state-owned land" refers to the land user's right to use state-owned land for a certain period, and to the land user's payment of a fee to the state for the land-use right. TPCO and TPCO Iron purchased their land-use rights from the Dongli District Land and Resource Administration Bureau, and Yuantong purchased its land-use rights from the Tianjin Port Bonded Zone Land and Resource Administration Bureau.

The Department determined in *LWS* that the provision of land-use rights constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act.[23] The Department also found that when the land is in an industrial park located

[23] *See Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances,* 73 FR 35639 (June 24, 2008) ("*LWS*"), and the accompanying Issues and Decision Memorandum at Comment 8.

within the seller's (*e.g.,* county's or municipality's) jurisdiction, the provision of the land-use rights is regionally specific (*see* section 771(5A)(D)(iv) of the Act).[24] In the instant investigation, the TBNA is a designated area within the jurisdictions that provided land-use rights to TPCO and its cross-owned affiliates since December 11, 2001. Therefore, consistent with *LWS,* we preliminarily find that TPCO's purchases of granted land-use rights give rise to countervailable subsidies to the extent that the purchases conferred a benefit. We will continue to evaluate for the final determination the circumstances under which TPCO received land for LTAR pursuant to its location in this zone.

To determine whether TPCO received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we look to whether there are market-determined prices within the country. *See* 19 CFR 351.511(a)(2)(i). In *LWS,* the Department determined that "Chinese land prices are distorted by the significant government role in the market" and, hence, that usable tier one benchmarks do not exist.[25] The Department also found that tier two benchmarks (world market prices that would be available to purchasers in the PRC) are not appropriate.[26] *See* 19 CFR 351.511(a)(2)(ii). Therefore, the Department determined the adequacy of remuneration by reference to tier 3 and found that the sale of land-use rights in the PRC was not consistent with market principles because of the overwhelming presence of the government in the land-use rights market and the widespread and documented deviation from the authorized methods of pricing and allocating land.[27] *See* 19 CFR 351.511(a)(2)(iii). There is insufficient new information on the record of this investigation to warrant a change from the findings in *LWS.*

For these reasons, we are not able to use Chinese or world market prices as a benchmark. Therefore, we are preliminarily comparing the price that TPCO paid for its granted land-use rights with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of, the PRC. Specifically, we are preliminarily comparing the price TPCO paid to sales of certain industrial land in industrial estates, parks, and zones in Thailand, consistent with *LWS.*

To calculate the benefit, we computed the amount that TPCO would have paid for its granted land-use rights and subtracted the amount TPCO actually paid for each purchase. For purchases in which the subsidy amount exceeded 0.5 percent of TPCO's sales in the year of purchase, we have used the discount rate described under the *Benchmarks and Discount Rates* section above to allocate the benefit over the life of the land-use rights contract. For these purchases, we divided the amount allocated to the POI by TPCO's consolidated sales during the POI. For purchases in which the benefit was less than 0.5 percent of TPCO's consolidated sales in the year of the purchase, we have preliminarily expensed the entire amount to the year in which TPCO purchased the land-use rights. *See* 19 CFR 351.524(b)(2). On this basis, we preliminarily determine the total countervailable subsidy for all of TPCO's land-use rights purchases to be 0.11 percent *ad valorem* during the POI.

TPCO also reported that it rented certain land parcels within the TBNA from TPCO Holding during the POI. Specifically, on pages 45–46 of the TQR, TPCO reported that it operates on the largest of these three parcels under a lease agreement that it signed with TPCO Holding in 2005. TPCO also stated that it will compensate TPCO Holding for the lease of two other parcels under terms that TPCO and TPCO Holding will memorialize in 2009. Finally, TPCO explained that it rented office space in the TBNA from another party during the POI.[28]

As we explained above in the "Attribution of Subsidies" section, we preliminarily determine that TPCO Holding was an authority within the meaning of section 771(5)(B) of the Act at the time of the lease agreement and throughout the POI. Moreover, we preliminarily determine that this subsidy is *de facto* specific because it is limited to TPCO (section 771(5A)(D)(iii)(I) of the Act). Therefore, consistent with *OTR Tires from the PRC,* we preliminarily find that TPCO's lease of land under the 2005 lease gives rise to a countervailable subsidy to the extent that the lease conferred a benefit.[29]

To determine whether TPCO received a benefit, we are following the same steps outlined above for the purchase of land-use rights. Specifically, we are preliminarily comparing the rent TPCO paid to industrial rental rates for factory space in Thailand during the POI. We are preliminarily attributing the subsidy to TPCO's consolidated sales, in accordance with 19 CFR 351.525(b)(6)(iii).

On this basis, we preliminarily determine the countervailable subsidy to be 2.55 percent *ad valorem* for TPCO.

G. Other Subsidies Received by TPCO

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Facts Available" section above, we are basing our determination regarding the government's provision of other subsidies received by TPCO in part on AFA.

The information submitted by TPCO in its February 16, 2010, response regarding these subsidies is business proprietary. Consequently, we have addressed these subsidies in the TPCO Calculation Memo.

We preliminarily determine that TPCO received countervailable subsidies. We find that these subsidies are a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. See 19 CFR 351.504(a). We determine, in the absence of a response from the GOC, that the subsidies received under this program are limited to TPCO. Hence, we find that these subsidies are specific under section 771(5A)(D)(i) of the Act.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. *See* 19 CFR 351.524(b). Because the benefit was less than 0.5 percent of TPCO's consolidated sales during the POI, we have preliminarily expensed the entire amount to the POI. *See* 19 CFR 351.524(b)(2). On this basis, we preliminarily determine the countervailable subsidy to be 0.03 percent *ad valorem* for TPCO.

H. Import Tariff and VAT Exemptions for FIEs Using Imported Equipment in Encouraged Industries

Enacted in 1997, the *Circular of the State Council on Adjusting Tax Policies on Imported Equipment* (GUOFA No. 37) (Circular No. 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. The National Development and Reform Commission or its provincial branch provides a certificate to enterprises that receive the exemption. The objective of

[24] *Id.* at Comment 9.

[25] *Id.* at Comment 10.

[26] *Id.* at section IV.A.1, "Analysis of Programs—Government Provision of Land for Less Than Adequate Remuneration."

[27] *Id.* at Comment 10.

[28] The information on this party is business proprietary. Thus, we have addressed this information in the TPCO Calculation Memo.

[29] *See* OTR Tires Decision Memo at Comment F.12.

the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.

TPCO Group, through TPCO International, received VAT and tariff exemptions under this program. TPCO received these exemptions due to its status as a qualified domestic enterprise that received a Certificate for State-Encouraged Projects, according to the GQR at page 70. Hengyang Valin and Hengyang MPM also reported using this program during the POI.

We preliminarily determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipient in the amount of the VAT and tariff savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

As described above, FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program. In *CFS from the PRC,* the Department found the beneficiaries of this program to be specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. *See* CFS Decision Memorandum at Comment 16 (discussing and affirming the preliminary determination that this program is specific under section 771(5A)(D)(iii)(I) of the Act despite the fact that the "pool of companies eligible for benefits is larger than FIEs"). No information has been provided in this investigation to demonstrate that the beneficiary companies are a non-specific group. Therefore, consistent with the determination in *CFS from the PRC,* we preliminarily find that the VAT and tariff exemptions extended under this program are provided to a group of industries and that the subsidy is specific.

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate the benefits to the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

In the instant investigation, TPCO and Hengyang have provided a list of VAT and tariff exemptions that they received for imported capital equipment during the 15-year AUL period. In light of our preliminary determination to find subsidies only after December 11, 2001, we have not examined VAT and tariff exemptions prior to this date. To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. *See* 19 CFR 351.524(b). For certain years prior to the POI, TPCO and Hengyang reported VAT and tariff exemptions that were more than 0.5% of their sales. Based on TPCO's and Hengyang's information, we preliminarily determine that the VAT and tariff exemptions were for capital equipment. We have allocated the benefit over the 15-year AUL using the discount rate described under the "*Benchmarks and Discount Rates*" section above.

For TPCO and Hengyang, the total amount of VAT and tariff exemptions received during the POI did not exceed 0.5% of their POI sales. Based on TPCO's and Hengyang's information, we preliminarily determine that the VAT and tariff exemptions were for capital equipment. Thus, we have preliminarily expensed the entire amount to the POI. *See* 19 CFR 351.524(b)(2).

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. *See* 19 CFR 351.524(b). Specifically, we used the discount rate described above in the "Benchmarks and Discount Rates" section to calculate the amount of the benefit for the POI. On this basis, we preliminarily determine that a countervailable benefit of 0.18 percent *ad valorem* exists for TPCO, and that a countervailable benefit of 0.44 percent *ad valorem* exists for Hengyang.

I. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment

According to the *Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation* {*Projects*} (CAI SHU ZI {1999} No. 290), a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year.[30] The Department has previously found this program countervailable. *See, e.g., Line Pipe from the PRC* and accompanying Issues and Decision Memorandum at 25–26.

Hengyang reported that Hengyang MPM received this benefit during the POI. *See* HQR at 24.

We preliminarily determine that income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue forgone by the government and provide a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Hengyang MPM as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings by the combined total sales of Hengyang Valin, Hengyang MPM, Xigang Seamless, and Special Pipe, minus inter-company sales, during the POI. On this basis, we preliminarily determine that a countervailable subsidy of 0.34 percent *ad valorem* exists for Hengyang under this program.

J. "Two Free, Three Half" Program

Under Article 8 of the *FIE Tax Law,* an FIE that is "productive" and is scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years. *See* GOC's January 25, 2010, cross-owned companies submission at Exhibit P–1. The Department has previously found this program countervailable. *See, e.g.,* CFS Decision Memorandum at 10–11.

Hengyang reported that Special Pipe and Resources Steel used this program during the POI.[31]

We preliminarily determine that the exemption or reduction of the income tax paid by productive FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.,* "productive" FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. *See* CFS Decision Memorandum at Comment 14.

[30] *See* GQR at 51.

[31] *See* HQR at Volume 5, page 37.

To calculate the benefit, we treated the income tax savings enjoyed by Special Pipe and Resources Steel as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the income tax rate the above companies would have paid in the absence of the program with the income tax rate the company actually paid. We divided Special Pipe's tax savings during the POI by the combined sales of Special Pipe, Xigang Seamless, Hengyang Valin, and Hengyang MPM (exclusive of inter-company sales). We divided Resources Steel's tax savings during the POI by the combined sales of Resources Steel, Special Pipe, and Xigang Seamless (exclusive of inter-company sales). On this basis, we preliminarily determine that Hengyang received a countervailable subsidy of 0.27 percent *ad valorem* under this program.

K. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs

Under Article 9 of the *FIE Tax Law,* the provincial governments have the authority to exempt FIEs from the local income tax of three percent. *See* the GOC's January 25, 2010, cross-owned companies submission at Exhibit P–1.

The Department has previously found this program to be countervailable. *See, e.g.,* CFS Decision Memorandum at pages 12–13; *see also* Citric Acid Decision Memorandum at page 21.

Hengyang reported that Seamless Pipe and Resources Steel used this program during the POI.[32]

We preliminarily determine that the exemption from or reduction in the local income tax received by "productive" FIEs under this program confers a countervailable subsidy. The exemption or reduction is a financial contribution in the form of revenue forgone that is otherwise due by the government, and it provides a benefit to the recipient in the amount of the tax savings, per section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption or reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.,* "productive" FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit for Special Pipe and Resources Steel, we treated the income tax savings enjoyed by the companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the local income tax rate that the companies would have paid in the absence of the program (*i.e.,* three percent) with the income tax rate the companies actually paid (*i.e.,* zero percent).

For Special Pipe, we divided the company's tax savings received during the POI by the combined POI sales of Special Pipe, Xigang Seamless, Hengyang Valin, and Hengyang MPM, minus inter-company sales. For Resources Steel, we divided the company's tax savings received during the POI by the combined sales of Resources Steel, Special Pipe, and Xigang Seamless. On this basis, we preliminarily determine that Hengyang received a countervailable subsidy of 0.07 percent *ad valorem.*

L. Government Debt Forgiveness

TPCO

On pages 26–27 of the TQR, TPCO reported that in 2006 and 2008 it settled claims related to loans that continued to be outstanding after a debt-to-equity transaction occurring in 2001. TPCO settled debt held by China Orient Asset Management Corporation and Cinda. *See* TPCO Calculation Memo.

We preliminarily determine that through this settlement the GOC forgave debt owed by TPCO and, thus, provided a financial contribution to TPCO in the form of a direct transfer of funds (section 771(5)(D)(i) of the Act). The benefit to TPCO is the amount of the debt forgiven (section 771(5)(D)(i) of the Act and 19 CFR 351.508(a)). Additionally, we preliminarily determine that this subsidy is *de facto* specific because it is limited to TPCO (section 771(5A)(D)(iii)(I) of the Act).

Forgiveness of part of the debt occurred in 2006, and approval for forgiveness of the remainder of the debt occurred in 2008. To calculate the countervailable subsidy for the debt forgiveness approved in each year, we used our standard methodology for non-recurring benefits. *See* 19 CFR 351.524(b). Because the amount of the 2006 portion of the debt forgiveness exceeded 0.5 percent of TPCO's sales in 2006, we have allocated the benefit over the 15-year AUL using the discount rate described under the *Benchmarks and Discount Rates* section above. We attributed the subsidy amount for the POI to TPCO's consolidated sales. On this basis, we preliminarily determine the countervailable subsidy to be 0.04 percent *ad valorem* for TPCO.

For the debt forgiveness approved in 2008, the benefit was less than 0.5 percent of TPCO's consolidated sales during the POI. Thus, we have preliminarily expensed the entire amount to the POI. *See* 19 CFR 351.524(b)(2). On this basis, we preliminarily determine the countervailable subsidy to be 0.11 percent *ad valorem* for TPCO. The Department may seek further information following this preliminary determination regarding the extent of forgiveness.

Hengyang

In the HQR at Volume 5, pages 24–27, Hengyang reported that Xigang Group and Resources Steel underwent loan restructurings since December 11, 2001, through the POI. The information on these loan restructurings is business proprietary. Thus, we have addressed the information in the Hengyang Calculation Memo.

We preliminarily determine that through this settlement the GOC forgave debt owed by Xigang Group and Resources Steel and, thus, provided a financial contribution to Xigang Group and Resources Steel in the form of a direct transfer of funds (section 771(5)(D)(i) of the Act). The benefit to Xigang Group and Resources Steel is the amount of the debt forgiven (19 CFR 351.508(a)). Additionally, we preliminarily determine that this subsidy is *de facto* specific as it is limited to Xigang Group and Resources Steel (section 771(5A)(D)(iii)(I) of the Act).

Approval for forgiveness of debt occurred in 2005, 2006, 2007, and 2008. To calculate the countervailable subsidy for the debt forgiveness approved in each year, we used our standard methodology for non-recurring benefits. *See* 19 CFR 351.524(b). Because the amount of the 2005 and 2007 portions of the debt forgiveness exceeded 0.5 percent of Xigang Group's sales in 2005 and 2007, respectively, we have allocated the benefit for each year over the 15-year AUL using the discount rate described under the *Benchmarks and Discount Rates* section above. We attributed the subsidy amount for the POI to Xigang Group's consolidated sales.

For the debt forgiveness approved in 2006, the benefit was less than 0.5 percent of Xigang Group's consolidated sales. Thus, we have preliminarily expensed the entire amount to 2006. *See* 19 CFR 351.524(b)(2).

For the debt forgiveness approved during the POI, the benefit was less than 0.5 percent of Xigang Group's and Resources Steel's consolidated sales during the POI. Thus, we have preliminarily expensed the entire amount to the POI. *See* 19 CFR 351.524(b)(2).

On this basis, we preliminarily determine the countervailable subsidy

[32] *See* HQR at Volume 5, page 39.

to be 2.66 percent *ad valorem* for Hengyang. The Department may seek further information following this preliminary determination regarding the extent of forgiveness.

II. Program Preliminarily Determined Not Countervailable

A. Export Restrictions on Coke

Petitioners alleged that the GOC imposed export restrictions on coke in the form of export quotas, related export licensing and export duties. Petitioners maintain that such export restraints had a direct and discernible effect on the Chinese domestic prices of coke, thereby, artificially lowering them compared to world market prices. Accordingly, petitioners asserted that the GOC's export restraints on coke provided a countervailable subsidy to Chinese seamless pipe producers during the POI.

The Department has countervailed export restraint allegations in only a limited number of cases. In *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Leather From Argentina,* 55 FR 40212 (October 2, 1990), we found an embargo on hide exports to provide a countervailable subsidy to Argentine leather producers based on a long-term historical price comparison that demonstrated a clear link between the imposition of the embargo and the divergence of prices. In *Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination,* 72 FR 60642 (October 25, 2007), and accompanying Issues and Decision Memorandum at Comment 24, we found that a log embargo provided a countervailable benefit to paper producers, in part, based upon independent studies that stated that the log embargo provided a subsidy to downstream producers.

At Exhibit 31 of their February 12, 2010, pre-preliminary determination comments, Petitioners submitted an economic study from the Brattle Group on the economic effects of export restraints on the price of coke in the PRC. Given the relatively recent submission date, the Department has not had sufficient time to fully consider the information presented in this study. However, based on an initial analysis of this study as well as the other record evidence, we preliminarily find that the record does not support a finding that this program is countervailable. The study provides an economic model that explains, in theory, how export restraints might have an impact on quantities and prices. The economic model and the other limited data on the record do not demonstrate that the GOC is entrusting or directing private entities to provide coke to the respondents and, therefore, the record does not support a finding of a government financial contribution. Moreover, the record evidence does not sufficiently demonstrate a link between the particular export restraints pertaining to coke and the historic trends in domestic and world coke supply and prices, and does not address other possible contributing factors behind the trends in those quantities and prices. In particular, the study provides data for the period January 2006 through May 2009 for Chinese domestic coke prices and Chinese export coke prices. Although the data show that domestic Chinese prices have been lower than export prices from the PRC, the data do not show a connection between the export restraints and this price difference. Therefore, consistent with our findings in *OCTG from the PRC,*[33] we preliminarily continue to find the program to be not countervailable.

B. Export Incentive Payments Characterized as "VAT Rebates"

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." *See* 19 CFR 351.517(a); *see also* 19 CFR 351.102 (for a definition of "indirect tax").

To determine whether the GOC provided a benefit under this program, we compared the VAT exemption upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. On page 39 of the GQR, the GOC reported that the VAT levied on seamless pipe sales in the domestic market (17 percent) exceeded the amount of VAT exempted upon the export of seamless pipe (13 percent). There is, therefore, no excess VAT exemption. Thus, we preliminarily determine that the VAT exempted on the export of seamless pipe is not countervailable.

III. Program for Which More Information Is Required

Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring

In Hengyang's February 16, 2010, supplemental questionnaire response at page 14, Hengyang reported that Hengyang Valin received a one-time benefit from this program. Because Hengyang did not report this potential subsidy until its February 16, 2010, submission, we did not have enough time to request further information from the GOC regarding this program. Further, to determine whether any potential benefit from this program exceeded 0.5 percent of Hengyang's sales in the year of approval, we requested Hengyang's 2003 sales figures.[34] We granted Hengyang an extension until February 22, 2010, to submit this information.[35] Because we lack necessary information from the GOC and Hengyang, we intend to address the countervailability of this program in a post-preliminary determination.

IV. Programs Preliminarily Determined To Be Not Used by Respondents or To Not Provide Benefits During the POI

A. Sub-central Government Programs To Promote Famous Export Brands and China World Top Brands

TPCO reported that it received a grant under this program in 2007. On page 50 of the TQR, TPCO stated that the program relates to TPCO's trademark and does not relate to any specific merchandise.

We preliminarily determine that the total amount of the grant was less than 0.5 percent of TPCO's consolidated and unconsolidated sales in 2007. Thus, without prejudice to whether this is a countervailable subsidy, we preliminarily have allocated the benefit exclusively to 2007 pursuant to 19 CFR 351.524(b)(2). As a result, we preliminarily determine that TPCO received no benefit from this program during the POI.

B. Exemptions for SOEs From Distributing Dividends to the State

In the HQR at Vol. 5, page 23, Hengyang reported a potential exemption under this program. All of the details of this potential exemption, including the Hengyang company that received the benefit, are business proprietary. Thus, we have addressed the information in the Hengyang Calculation Memo.

We preliminarily determine that the benefit from this potential exemption was less than 0.5 percent of the appropriate sales denominator in the year of approval, which was prior to the

[33] *See OCTG from the PRC,* and accompanying Issues and Decision Memorandum at Comment 32.

[34] *See* the Department's February 16, 2010, letter to Hengyang, "Third Supplemental Questionnaire."

[35] *See* the Department's February 17, 2010, letter to Hengyang, "Request for Extension of Time to File a Response to the Department's Supplemental Questionnaire."

POI. Thus, without prejudice to whether this is a countervailable subsidy, we preliminarily have allocated any benefit exclusively to the year of approval pursuant to 19 CFR 351.524(b)(2). As a result, we preliminarily determine that Hengyang received no benefit from this program during the POI.

C. Other Programs

Based upon responses by the GOC, TPCO, and Hengyang, we preliminarily determine that TPCO and Hengyang did not apply for or receive benefits during the POI under the programs listed below.

1. *Preferential Loan Programs*
   a. *Treasury Bond Loans to Northeast*
   b. *Preferential Loans for State-Owned Enterprises*
   c. *Preferential Loans for Key Projects and Technologies*
   d. *Preferential Lending to Seamless Pipe Producers and Exporters Classified as* "*Honorable Enterprises*"
   e. *Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program*
2. *Equity Programs*
   a. *Debt-to-Equity Swap for TPCO*
   b. *Equity Infusion in TPCO*
   c. *Exemptions for SOEs From Distributing Dividends to the State*
   d. Loan and Interest Forgiveness for SOEs [36]
3. *Tax Benefit Programs*
   a. *Preferential Income Tax Policy for Enterprises in the Northeast Region*
   b. *Forgiveness of Tax Arrears For Enterprises in the Old Industrial Bases of Northeast China*
   c. *Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax*
   d. *Preferential Tax Programs for Foreign-Invested Enterprises Recognized as High or New Technology Enterprises*
   e. *Income Tax Reductions for Export-Oriented Foreign-Invested Enterprises*
4. *Tariff and Indirect Tax Programs*
   a. *Stamp Exemption on Share Transfers Under Non-Tradable Share Reform*
   b. *Export Incentive Payments Characterized as* "*VAT Rebates*"
5. *Land Grants and Discounts*
   a. *Provision of Land to SOEs for Less Than Adequate Remuneration*
6. *Provision of Inputs for Less than Adequate Remuneration*
   a. *Provision of Electricity and Water at Less than Adequate Remuneration to Seamless Pipe Producers Located in Jiangsu Province*
   b. *Provision of Coking Coal for Less than Adequate Remuneration*
7. *Grant Programs*
   a. *Foreign Trade Development Fund (Northeast Revitalization Program)*
   b. *Export Assistance Grants in Zhejiang Province*
   c. *Program to Rebate Antidumping Fees in Zhejiang Province Subsidies for Development of Famous Export Brands and China World Top Brands*
   d. *Grants to Loss-Making SOEs*
   e. *Export Interest Subsidies in Liaoning Province*
8. *Other Regional Programs*
   a. *High-Tech Industrial Development Zones*

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated a rate for each individually investigated producer/exporter of the subject merchandise. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an "all others" rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Notwithstanding the language of section 705(c)(1)(B)(i)(I) of the Act, we have not calculated the "all others" rate by weight averaging the rates of TPCO and Hengyang, because doing so risks disclosure of proprietary information. Therefore, we have calculated a simple average of the two responding firms' rates. Since both TPCO and Hengyang received countervailable export subsidies and the "all others" rate is a simple average based on the individually investigated exporters and producers, the "all others" rate includes export subsidies.

We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/manufacturer	Net subsidy rate
Tianjin Pipe (Group) Co., Tianjin Pipe Iron Manufacturing Co., Ltd., Tianguan Yuantong Pipe Product Co., Ltd., Tianjin Pipe International Economic and Trading Co., Ltd., and TPCO Charging Development Co., Ltd.	11.06
Hengyang Steel Tube Group Int'l Trading, Inc., Hengyang Valin Steel Tube Co., Ltd., Hengyang Valin MPM Tube Co., Ltd., Xigang Seamless Steel Tube Co., Ltd., Wuxi Seamless Special Pipe Co., Ltd., Wuxi Resources Steel Making Co., Ltd., and Jiangsu Xigang Group Co., Ltd.	12.97
All Others	12.02

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, we are directing U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of seamless pipe from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register,** and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above. Moreover, in accordance with section 703(e)(2)(A) of the Act, for Hengyang and "all other" Chinese exporters of seamless pipe, we are directing CBP to apply the suspension of liquidation to any unliquidated entries entered, or withdrawn from warehouse for consumption, on or after the date 90 days prior to the date of publication of this notice in the **Federal Register.**

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either

[36] We have found company-specific debt forgiveness for TPCO and Hengyang under the *Government Debt Forgiveness* program, as described above.

publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Due to the anticipated timing of verification and issuance of verification reports, case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c)(i) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. *See* 19 CFR 351.309(c)(2) and (d)(2).

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Acting Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. *See id.*

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 22, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–4192 Filed 2–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial China Clean Energy Business Development Mission; Application Deadline Extended

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The Commerce Department's Office of Business Liaison and the International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

Recruitment for this mission will begin immediately upon approval. Applications can be completed on-line at the Clean Energy Business Development Missions' Web site at *http://www.trade.gov/CleanEnergyMission* or can be obtained by contacting the U.S. Department of Commerce Office of Business Liaison (202–482–1360 or *CleanEnergyMission@doc.gov).* The application deadline has been extended to Friday, March 12, 2010. Completed applications should be submitted to the Office of Business Liaison. Applications received after Friday, March 12, 2010 will be considered only if space and scheduling constraints permit.

Contacts

The Office of Business Liaison, 1401 Constitution Avenue, NW., Room 5062, Washington, DC 20230, Tel: 202–482–1360, Fax: 202–482–4054, E-mail: *CleanEnergyMission@doc.gov.*

Sean Timmins,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–4104 Filed 2–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial Indonesia Clean Energy Business Development Mission: Application Deadline Extended

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The Commerce Department's Office of Business Liaison and the International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

Recruitment for this mission will begin immediately upon approval. Applications can be completed on-line at the Clean Energy Business Development Missions' Web site at *http://www.trade.gov/CleanEnergyMission* or can be obtained by contacting the U.S. Department of Commerce Office of Business Liaison (202–482–1360 or *CleanEnergyMission@doc.gov*). The application deadline has been extended to Friday, March 12, 2010. Completed applications should be submitted to the Office of Business Liaison. Applications received after Friday, March 12, 2010 will be considered only if space and scheduling constraints permit.

Contacts

The Office of Business Liaison, 1401 Constitution Avenue, NW., Room 5062, Washington, DC 20230, Tel: 202–482–

1360, Fax: 202–482–4054, E-mail: *CleanEnergyMission@doc.gov.*

Sean Timmins,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–4127 Filed 2–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 09–28]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–28 with attached transmittal, and policy justification.

Dated: February 23, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

FEB 18 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-28, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Pakistan for defense articles and services estimated to cost $78 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeanne Farmer

Jeanne L. Farmer
Acting Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 09-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Pakistan

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$78 million
TOTAL	$78 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: refurbishment of one OLIVER HAZARD PERRY Class Frigate, USS MCINERNEY (FFG-8) being provided as Excess Defense Articles (grant EDA notification is being submitted separately) with onboard spares, spare and repairs parts, support equipment, publications and technical data, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) Military Department: Navy (SCA)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: FEB 18 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Pakistan – Refurbishment of FFG-8 Class Frigate

The Government of Pakistan has requested a possible sale for refurbishment of one OLIVER HAZARD PERRY Class Frigate, USS MCINERNEY (FFG-8), being provided as Excess Defense Articles (grant EDA notification is being submitted separately) with onboard spares, spare and repairs parts, support equipment, publications and technical data, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost of the refurbishment, training and support is $78 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be a partner in combating insurgents in Pakistan.

Pakistan requires the capabilities of USS McINERNEY (FFG-8) to participate in U.S. and coalition led counter-narcotics and counter-piracy operations and to assist with Pakistan's efforts to secure its maritime border. Pakistan will have no difficulty absorbing the ship into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor is unknown at this time. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government and contractor representatives to Pakistan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2010–4134 Filed 2–26–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Advisory Council on Dependents' Education; Open Meeting

AGENCY: Department of Defense Education Activity (DoDEA).

ACTION: Open meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Advisory Council on Dependents' Education will meet on April 30, 2010, in Wiesbaden, Germany. Subject to the availability of space, the meeting is open to the public.

DATES: The meeting will be held on April 30, 2010, from 8 a.m. to 4 p.m. Central European Summer Time.

ADDRESSES: The meeting will be held at the Oranien Hotel, Platter Strasse 2, 65193 Wiesbaden, Germany; 49–611–1882–0 (phone).

FOR FURTHER INFORMATION CONTACT: Ms. Leesa Rompre, tel. (703) 588–3128, 4040 North Fairfax Drive, Arlington, VA 22203, e-mail: *Leesa.Rompre@hq.dodea.edu.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

Recommend to the Director, DoDEA, general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense.

Agenda

The meeting agenda will include the current operational qualities of schools, the continuous improvement processes, and other educational matters.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Advisory Council on Dependents' Education about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of the planned meeting of the Advisory Council on Dependents' Education.

All written statements shall be submitted to the Designated Federal Officer for the Advisory Council on Dependents' Education, Mr. Charles Toth, telephone (703) 588–3105, 4040 North Fairfax Drive, Arlington, VA 22203; e-mail: *Charlie.Toth@hq.dodea.edu.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer (*see* **FOR FURTHER INFORMATION CONTACT**) at least 14 calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Advisory Council on Dependents' Education until its next meeting.

The Designated Federal Officer will review all timely submissions with the Advisory Council on Dependents' Education Chairpersons and ensure they are provided to all members of the Advisory Council on Dependents' Education before the meeting that is the subject of this notice.

Oral Statements by the Public to the Membership

Pursuant to 41 CFR 102–3.140(d), time will be allotted for public comments to the Advisory Council on Dependents' Education. Individual comments will be limited to a maximum of five minutes duration. The total time allotted for public comments will not exceed 30 minutes.

Dated: February 23, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–4133 Filed 2–26–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0020]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on March 31, 2010 unless comments are received which would result in a contrary determination.

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

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: February 23, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S434.87

SYSTEM NAME:

Debt Records for Individuals (November 14, 2007; 72 FR 64050)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Financial Services and Accounting Division, Accounting Operations Branch, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2745, Fort Belvoir, VA 22060–6221 and the Financial Services Offices at the Defense Logistics Agency (DLA) Primary Level Field Activities. Official mailing addresses can be obtained from the System Manager identified below."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Requests should include the individuals full name, Social Security Number (SSN), mailing address, and a telephone number where they may be reached."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Requests should include the individuals full name, Social Security Number (SSN), mailing address, and a telephone number where they may be reached."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

S434.87

SYSTEM NAME:

Debt Records for Individuals.

SYSTEM LOCATION:

Financial Services and Accounting Division, Accounting Operations Branch, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2745, Fort Belvoir, VA 22060–6221 and the Financial Services Offices at the Defense Logistics Agency (DLA) Primary Level Field Activities. Official mailing addresses can be obtained from the System Manager identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian employees and military personnel (including those who have retired) who are indebted to the Defense Logistics Agency (DLA). Also included are those individuals who are indebted to other Federal agencies for which DLA has assumed collection responsibility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Debtors name, Social Security Number (SSN), debt principal amount, interest and penalty amount, if any, debt reason, debt status, demographic information such as grade or rank, sex, date of birth, phone number, duty and home address, various dates identifying the status changes occurring in the debt collection process, documents furnished by individual concerning financial condition, personnel actions, and requests for waiver of indebtedness.

Correspondence with other Federal agencies to initiate the collection of debts through voluntary or involuntary offset procedures against the indebted employees' salaries or compensation due a retiree.

Correspondence with other Federal agencies requesting administrative offset from payments owed to the debtor. These records may include individual's name, rank, date of birth, Social Security Number (SSN), debt amount, documentation establishing overpayment status, military pay records, financial status affidavits, credit references, and substantiating documents such as military pay orders, pay adjustment authorizations, military master pay account printouts, records of travel payments, financial record data folders, miscellaneous vouchers, debtor financial records, credit reports, promissory notes, and debtor financial statements.

Information on U.S. Treasury Department, Internal Revenue Service (IRS), U.S. Department of Justice, and U.S. General Accounting Office (GAO) inquiries, judicial proceedings regarding bankruptcy, pay account histories, and token payment information.

Applications for waiver of erroneous payment or for remission of indebtedness with supporting documents including statements of financial status (personal income and expenses), statements of commanders or Defense Accounting Officers, correspondence with debtors, or records of overpayments of Survivor Benefit Plan benefits.

Reports from probate courts regarding the estates of deceased debtors.

Reports from bankruptcy courts regarding claims of the U.S. Government against debtors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134); 5 U.S.C. 5514, Installment Deduction of Indebtedness; 31 U.S.C. 3711, Collection and Compromise; 31 U.S.C. 3716, Administrative Offset; 10 U.S.C. 136; 4 CFR 101.1–105.5, Federal Claims Collection Standards; 5 CFR 550.1101–1108, Collection by Offset from Indebted Government Employees; Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982, March 30, 1983 (48 FR 15556, April, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of Management and Budget, Department of the Treasury, Office of Personnel Management and the Department of Defense, April 1987); and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The purpose for this system of records is to support the DLA debt management program in identifying, recovering and collecting debts owed by individuals to the U.S. Government, as appropriate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Government Accountability Office, the U.S. Department of Justice, Internal Revenue Service, U.S. Department of the Treasury, or other Federal agencies for further collection action on any delinquent account when circumstances warrant.

To commercial credit reporting agencies for the purpose of adding debt payment or non-payment data to a credit history file on an individual for use in the administration of debt collection. Delinquent debt information may be furnished for the purpose of establishing an inducement for debtors to pay their obligations to the U.S. Government.

To any Federal agency where the debtor is employed or receiving some type of payment from that agency for the purpose of collecting debts owed the U.S. Government by non-centralized offset. Non-centralized offset encompasses an offset program administered by any Federal agency other than the U.S. Department of the Treasury. The agency holding the payment subject to offset will use the indebtedness information for collection purposes after counseling the debtor. The collection may be accomplished either voluntarily or involuntarily by initiating administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, as amended by Pub. L. 104–134, the Debt Collection Improvement Act of 1996).

To the U.S. Department of the Treasury (DOT) for centralized administrative or salary offset, including the offset of Federal income tax refunds, for the purpose of collecting debts owed the U.S. Government; to the DOT contracted private collection agencies for the purpose of obtaining collection services, including administrative wage garnishment (AWG) in accordance with the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), 31 U.S.C. 3720D, and 31 CFR part 285, to recover moneys owed to the U.S. Government.

To any Federal agency for the purpose of accomplishing the administrative procedures to collect or dispose of a debt owed to the U.S. Government. This includes, but is not limited to, the Office of Personnel Management for personnel management functions and the Internal Revenue Service to obtain a mailing address of a taxpayer for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer pursuant to 26 U.S.C. 1603(m)(2), and in accordance with 31 U.S.C. 3711, 3217, and 3718. The Internal Revenue Service may also request locator service for delinquent accounts receivable in order to report closed out accounts as taxable income, including amounts compromised or terminated, and accounts barred from litigation due to age.

The DoD "Blanket Routine Uses" apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system of records to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper in file folders.

RETRIEVABILITY:

Records are retrieved by the debtor's name and Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in controlled facilities where physical entry is restricted by the use of locks, guards, and/or to authorized personnel only. Access to records is limited to person(s) responsible for servicing the records in the performance of their official duties and who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after final action is terminated.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Accounting Operations Branch, Financial Services and Accounting Division, Office of Comptroller, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2745, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Requests should include the individuals full name, Social Security Number (SSN), mailing address, and a telephone number where they may be reached.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Requests should include the individuals full name, Social Security Number (SSN), mailing address, and a telephone number where they may be reached.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Individual debtor, DLA Financial Services Offices documents, personnel offices, and documents from other Federal agencies for which DLA has assumed collection responsibility.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–4129 Filed 2–26–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committee; Ocean Research Advisory Panel

AGENCY: Department Of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

SUMMARY: Under the provisions of 10 U.S.C. 7903, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Ocean Research Advisory Panel (hereafter referred to as the Panel).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Panel is a non-discretionary Federal advisory committee established to provide independent scientific Advice and recommendations to the National Ocean Research Leadership Council (hereafter referred to as the Council).

The Panel shall, (a) provide advice on policies and procedures to implement the National Oceanographic Partnership Program, (b) provide advice on selection of partnership projects and allocation of funds for partnership projects for implementation under the program, (c) provide advice on matters relating to national oceanographic data requirements, and (d) fulfill any additional responsibilities that the Council considers appropriate.

The Panel under the provisions of 10 U.S.C. 7903, shall consist of no less than 10 and no more than 18 members, representing the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine, ocean industries, State Governments, academia and others including individuals who are eminent in the fields of marine science, marine policy or related fields including ocean resource management. Panel members appointed by the Secretary of Defense who are not full-time or permanent part-time Federal officers or employees, shall serve as special government employees under the authority of 5 U.S.C. 3109 and shall serve without compensation except for travel and per diem for official Panel related travel.

Panel members, shall be appointed by the Secretary of Defense, and shall serve no more than four years. Their appointments will be renewed on an annual basis by the Secretary of Defense. The Panel membership shall select the Chairperson and Vice-Chairperson of the Panel for renewable one-year terms. In addition, the Secretary of Defense or designated representative may invite other distinguished Government officers to serve as non-voting observers of the Panel, and appoint consultants, with special expertise to assist the Panel on an ad hoc basis.

Non-voting observers and those non-voting experts and consultants appointed by the Secretary of Defense shall not count toward the Panel's total membership.

With DoD approval, the Panel is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C 552b, as amended), and other appropriate Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Panel, and shall report all their recommendations and advice to the Panel for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Panel nor can they report directly to the Department of Defense or any Federal officers or employees who are not Panel members.

Subcommittee members, who are not Panel members, shall be appointed in the same manner as the Panel members.

The Panel shall meet at the call of the Panel's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Board meetings is three per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings, however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested

organizations may submit written statements to the Ocean Research Advisory Panel's membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Ocean Research Advisory Panel.

All written statements shall be submitted to the Designated Federal Officer for the Ocean Research Advisory Panel, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Ocean Research Advisory Panel Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Ocean Research Advisory Panel. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: February 23, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–4130 Filed 2–26–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Everglades Restoration Transition Plan—Phase 1

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement (EIS) for the Everglades Restoration Transition Plan (ERTP)—Phase 1. The ERTP will supersede the 2006 IOP for the Cape Sable Seaside Sparrow which currently regulates operations for Central & South Florida (C&SF) project features in the south Dade area. The ERTP Phase 1 aims to implement operational flexibilities based on multi-species management. This project is "phase 1" in anticipation of subsequent operational modifications that will be needed to move towards Everglades restoration. Development of the plan will include evaluation of relevant new species information and hydrological data. The ERTP Draft EIS will evaluate the anticipated affects of implementation of operations to support the recommendations of the U. S. Fish and Wildlife Service (FWS) Biological Opinion.

ADDRESSES: U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL, 32232–0019.

FOR FURTHER INFORMATION CONTACT: Mrs. Susan Conner at 904–232–1782 or e-mail at *Susan.l.Conner@.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

a. *Background*—In 1999, the FWS issued a Final Biological Opinion for the Modified Water Deliveries to Everglades National Park Project (MWD Project), the C–111 Project, and the Experimental Water Deliveries to Everglades National Park Project. FWS concluded that the operations, if continued, would likely jeopardize the continued existence of the endangered Cape Sable seaside sparrow and adversely modify its critical habitat. In response, the Corps implemented an Interim Structural and Operational Plan (ISOP) in March 2000, followed by the Interim Operating Plan (IOP) in July 2002. These operations were designed to protect the sparrow pending completion of construction of the MWD Project and the C–111 Project. Because of the urgency to implement IOP in time for the next sparrow breeding season, the IOP Final Environmental Impact Statement (FEIS) was completed prior to conclusion of modeling that supported the selected plan. Pursuant to a March 2006 order by the United States District Court for the Southern District of Florida, the Corps prepared a supplement to the IOP FEIS. The Supplemental Environmental Impact Statement (SEIS), which was completed in December 2006, updated the IOP FEIS with modeling for the selected alternative and actual data collected since the May 2002 FEIS. The IOP was intended to be continued until the completion of the MWD project. However, Modified Water Deliveries project has not been fully completed, the IOP Biological Opinion will expire in November 2010, and new scientific information pertaining to listed wildlife species has become available.

b. *Scoping*—A scoping letter was sent to invite comments on ERTP—Phase I from Federal, State, and local agencies, affected Indian Tribes, and other interested private organizations and individuals. The scoping letter was sent out in December 2009. That scoping period closed on February 1, 2010. Based on those comments and team analysis to date, USACE has determined that an EIS is appropriate. Subsequently, scoping comments will be accepted for 30 days past the date of this NOI.

c. *Coordination and Public Involvement:* The Corps will serve as the lead Federal agency in the preparation of the Draft EIS. The Corps is in close coordination with the FWS. The Corps intends to coordinate and/or consult with an interagency team of Federal, State and Local agencies as well as affected Indian Tribes during scoping and preparation of the Draft EIS.

d. *Other Environmental Review and Consultation:* The proposed action would involve evaluation for compliance with the Endangered Species act. The USACE will be submitting a Biological Assessment to the FWS and the FWS will prepare a Biological Opinion. All other applicable Environmental regulations will be complied with and reviews will be completed.

e. *Draft EIS Preparation:* The Draft EIS is expected to be published in June 2010.

Dated: February 17, 2010.

Eric Summa,

Chief, Environmental Branch.

[FR Doc. 2010–4116 Filed 2–26–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Cancellation of Open Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of cancellation.

SUMMARY: The Department of the Navy published a document in the **Federal Register** (75 FR 7453) of February 19, 2010, announcing The CNO Executive Panel was scheduled to meet on March 11, 2010, to deliberate on the findings and proposed recommendations of the Subcommittee on Improved Concept Generation Development. The meeting has been canceled.

SUPPLEMENTARY INFORMATION: The canceled meeting was scheduled to be held on March 11, 2010, at 9 a.m. in the Boardroom, CNA, 4825 Mark Center Drive, Alexandria, VA 22311–1846. The matters to be discussed included: Navy's concept generation and concept development processes and procedures.

FOR FURTHER INFORMATION CONTACT: Ms. Bree A. Hartlage, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311–1846, 703–681–4907.

Dated: February 23, 2010.

A.M. Vallandingam,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–4190 Filed 2–26–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 30, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 24, 2010.

Sheila Carey,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Extension.

Title: Impact Study: Lessons in Character Program.

Frequency: One time.

Affected Public: Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 34,906.

Burden Hours: 15,460.

Abstract: This OMB package requests clearance for data collection instruments to be used in a four-year evaluation of Lessons in Character (LIC) program. This study is based on an experimental design that utilizes the random assignment. LIC is an English Language Arts (ELA)-based character education curriculum that is expected to have positive impacts on student academic performance, attendance, school motivation, and endorsement of universal values consistent with character education. The evaluation will be conducted by REL West, one of the National Regional Education Laboratories administered by the Institute of Education Sciences of the U.S. Department of Education. Evaluation measures include student archived data (e.g., state mandated standardized test scores); follow-up surveys for students; teacher and parent rating/observation on various student aspects (e.g., student social skills); baseline and follow-up surveys for teachers; and teacher/administrator interviews. Baseline data collection will take place in 2007; follow-up data collection will take place in 2008, 2009, and 2010.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4220. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–4162 Filed 2–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Assistive Technology Act of 1998, as Amended—National Activities—National Assistive Technology Public Internet Site; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.224B–2.

Dates:

Applications Available: March 1, 2010.

Deadline for Transmittal of Applications: April 30, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Under section 6 of the Assistive Technology Act of 1998, as amended (AT Act), the Secretary is authorized to provide grants to support national activities to improve the administration of the AT Act. The purpose of this program is to fulfill the requirement to support a national assistive technology public Internet site to improve awareness of and access to assistive technology (AT).

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 6(b)(4) of the AT Act (29 U.S.C. 3001, *et seq.*).

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:

National Assistive Technology Public Internet Site.

Under this priority, the Department will support an eligible entity to renovate, update, and maintain the National Assistive Technology Public Internet Site (National AT Internet Site) in accordance with section 6(b)(4) of the AT Act. The National AT Internet Site provides to the public comprehensive, up-to-date information on resources

related to AT and programs supported under the AT Act.

Program Authority: 29 U.S.C. 3001, *et seq.*

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: Cooperative agreement.

Estimated Available Funds: $100,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Maximum Project Period: We will reject any application that proposes a project period exceeding 60 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register.**

III. Eligibility Information

1. *Eligible Applicants:* Public or private nonprofit or for-profit organizations, including institutions of higher education, that—

(a) Emphasize research and engineering;

(b) Have a multidisciplinary research center; and

(c) Have demonstrated expertise in—

(i) Working with assistive technology and intelligent agent interactive information dissemination systems;

(ii) Managing libraries of assistive technology and disability-related resources;

(iii) Delivering to individuals with disabilities education, information, and referral services, including technology-based curriculum-development services for adults with low-level reading skills;

(iv) Developing cooperative partnerships with the private sector, particularly with private-sector computer software, hardware, and Internet services entities; and

(d) Developing and designing advanced Internet sites.

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/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. 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.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA Number 84.224B–2.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:*

Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 24 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. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- 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 Part I, the Application for Federal Assistance; Part IV, the assurances and certifications; or the one-page abstract, the eligibility statement, the curriculum vitae, the bibliography, the letters of recommendation, or the information on the protection of human subjects. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 1, 2010.

Deadline for Transmittal of Applications: April 30, 2010.

Applications for grants under this program 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 program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program 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 National Activities program—CFDA Number 84.224B–2 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 program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you 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 acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of 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 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

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: Robert Groenendaal, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5025, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7590.

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 84.224B–2) 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 84.224B–2) 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

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

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 specified by the Secretary in 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The goal of the National AT Internet Site is to provide the public with comprehensive, up-to-date information on resources related to AT and programs supported under the AT Act. In order to assess the success of the grantee in meeting this goal, in addition to the annual performance report provided by the grantee, a biannual review of the site will be conducted by a panel of individuals with relevant expertise. This panel will report to the Rehabilitation Services Administration and the grantee on the—

(1) Effectiveness of the site at linking visitors to appropriate resources related to AT;

(2) Comprehensiveness and relevance of resources and information available on the site;

(3) Availability of content or features unique to the site;

(4) Effectiveness at supporting and promoting programs supported under sections 4, 5, and 6 of the AT Act and other AT resources not funded under the AT Act;

(5) Responsiveness to the input of stakeholders;

(6) Responsiveness to the recommendations of previous biannual reviews; and

(7) Other factors relevant to determining the performance of the grantee.

VII. Agency Contact

For Further Information Contact: Robert Groenendaal, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5025, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7393 or by e-mail: *robert.groenendaal@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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 23, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–4175 Filed 2–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Assistive Technology Act of 1998, as Amended—National Activities—State Training and Technical Assistance for Assistive Technology Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.224B–1.

Dates: *Applications Available:* March 1, 2010.

Deadline for Transmittal of Applications: April 30, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Under section 6 of the Assistive Technology Act of 1998, as amended (AT Act), the Secretary is authorized to provide grants to support national activities to improve the administration of the AT Act. The purpose of this program is to fulfill the requirement to support training and technical assistance to the entities funded under the AT Act to improve the effectiveness of their programs and to entities not funded under the AT Act to improve awareness of and access to assistive technology (AT).

Note: Entities funded under the AT Act include comprehensive, statewide assistive technology programs (Statewide AT Programs) and protection and advocacy for assistive technology programs (PAAT Programs) that increase access to and acquisition of AT devices and services for individuals with disabilities. The AT Act also authorized additional grants, in FY 2005, to support alternative financing programs (AFPs) that provide financial loans to allow individuals with disabilities and their families to purchase AT devices and services.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 6(b)(3) of the AT Act (29 U.S.C. 3001, *et seq.*).

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:

State Training and Technical Assistance for Assistive Technology Programs

Under this priority, training and technical assistance must be provided to entities funded under the AT Act and entities not funded under the AT Act in accordance with section 6(b)(3) of the AT Act.

Program Authority: 29 U.S.C. 3001, *et seq.*

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: Cooperative agreement.

Estimated Available Funds: $640,000.

Maximum Award: We will reject any application that proposes a budget exceeding $640,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Maximum Project Period: We will reject any application that proposes a project period exceeding 60 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

III. Eligibility Information

1. *Eligible Applicants:* Public or private nonprofit or for-profit organizations, including institutions of higher education, that have (directly or through a grant or contract)—

(a) Experience and expertise in administering programs, including developing, implementing, and administering the required and discretionary activities described in sections 4 and 5 of the AT Act;

(b) Experience and expertise in providing technical assistance; and

(c) Documented experience in and knowledge about banking, finance, and microlending.

Note: An eligible entity can demonstrate its experience and expertise on its own or through proposed subcontracts with other entities that demonstrate the relevant experience and expertise.

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/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. 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.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA Number 84.224B–1.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 24 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. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- 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 Part I, the Application for Federal Assistance; Part IV, the assurances and certifications; or the one-page abstract, the eligibility statement, the curriculum vitae, the bibliography, the letters of recommendation, or the information on the protection of human subjects. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 1, 2010.

Deadline for Transmittal of Applications: April 30, 2010.

Applications for grants under this program 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 in 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 program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program 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 National Activities program—CFDA Number 84.224B–1 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 program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you 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 acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of 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 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

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: Robert Groenendaal, U.S. Department of Education, 400 Maryland Avenue, SW., room 5025, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7590.

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 84.224B–1), 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 84.224B–1), 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

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

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 specified by the Secretary in 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The goal of State Training and Technical Assistance for Assistive Technology Programs is to provide support to entities funded under the AT Act that improve the effectiveness of their programs and support to entities not funded under the AT Act to improve awareness of and access to assistive technology. In order to assess the success of the grantee in meeting these goals, in addition to other information, the grantee's annual performance report must include—

(1) A description of State-specific and national technical assistance and training provided to support the improvement of Statewide AT Programs, PAAT programs, and AFPs, and the result of that technical assistance or training as evidenced by changes in the operation of Statewide AT Programs, PAAT programs, or AFPs or other relevant and identifiable changes;

(2) A description of collaboration between the grantee and other entities involved in AT, and the result of that collaboration as evidenced by changes in the operation of the grantee or other entities, or other relevant and identifiable changes;

(3) A description of the collaboration between the grantee and any entities to

which the grantee provides a subcontract or subgrant, and the result of that collaboration as evidenced by improved delivery of technical assistance and training and improved collaboration between entities funded under the AT Act at the national and State level or other relevant and identifiable improvements; and

(4) A description of how the technical assistance and training needs of entities funded under the AT Act and entities not funded under the AT Act are identified and met, and the result of meeting those needs as evidenced by resolution of State-specific and national issues or other relevant and identifiable outcomes.

VII. Agency Contact

For Further Information Contact: Robert Groenendaal, U.S. Department of Education, 400 Maryland Avenue, SW., room 5025, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7393 or by e-mail: *robert.groenendaal@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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 24, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–4176 Filed 2–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Letter From Secretary of Energy Accepting Defense Nuclear Facilities Safety Board (Board) Recommendation 2009–2

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) is making available the February 2, 2010, Secretary's letter to the Board accepting the Board's recommendation 2009–2 regarding seismic safety at the Los Alamos National Laboratory Plutonium Facility.

ADDRESSES: U.S. Department of Energy, HS–1.1, 1000 Independence Ave, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: DOE is making this letter available for public information and solicits comments from the public. Comments may be sent to the address above. The text of the document is below. It may also be viewed at: *http://www.hss.energy.gov/deprep/default.asp.*

Issued in Washington, DC, on February 23, 2010.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

February 2, 2010.

The Honorable John E. Mansfield, Vice Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

Dear Mr. Vice Chairman: The Department of Energy (DOE) acknowledges receipt of Defense Nuclear Facilities Safety Board (Board) Recommendation 2009–2, *Los Alamos National Laboratory Plutonium Facility Seismic Safety*, issued on October 26, 2009, and I accept the recommendation.

In December 2008, the National Nuclear Security Administration (NNSA) Los Alamos Site Office (LASO) approved a new Documented Safety Analysis (DSA) for the Plutonium Facility at Los Alamos National Laboratory (LANL), the first major upgrade to the Plutonium Facility's Safety Basis since 1996. The DSA conservatively describes potentially high mitigated consequences to the maximally exposed off-site individual (i.e., the public) from a first-floor fire following a seismic event, approximately two orders of magnitude higher than our evaluation guideline for selecting safety class controls.

Approval of the DSA included recognition of weaknesses in the facility's control set and the need to upgrade a number of safety systems in order to meet DOE nuclear safety policies. As a result, Los Alamos National Security (LANS) has initiated a number of improvements to address safety issues identified in the DSA, including transitioning to an active confinement ventilation strategy.

LANS recently submitted to LASO an update of the facility's DSA that includes revised seismic accident scenarios to more accurately, but conservatively, evaluate the consequences of such scenarios. The DSA annual update, to be reviewed and approved by LASO, includes about a factor of 15 reduction from the previous DSA of the mitigated consequences to the maximally exposed off-site individual from a post-seismic fire. This proposed reduction is accomplished by establishing stricter limits to the overall material at risk allowed in the facility and by defining specific material quantity limits for various forms of material such as liquid, metal, and oxide and for heat-source plutonium. However, additional upgrades will be needed in order to meet DOE nuclear safety policies.

A significant number of actions have been completed recently or are planned in the near future that improve the safety posture of the facility. For example, in the near term, NNSA will incentivize LANS to accomplish the following in FY 10:

- Install an automatic seismic shutdown capability for non-vital laboratory room electrical loads that provides an engineered control to reduce laboratory room electrical ignition sources;
- Develop conceptual designs for potential seismic upgrades to key active confinement ventilation subsystems and to the fire suppression system;
- Robustly package or otherwise disposition greater than 250 kilograms of plutonium-equivalent material;
- Reduce first floor material at risk limit by 40 percent; and
- Complete safety class encapsulation of the existing inventory of heat-source plutonium currently stored in Russian Product Containers (RPCs) that will subsequently be stored in the vault water baths.

NNSA has also provided additional funding to LANS for FY 10 to support the repackaging and disposition of material, risk reduction activities, and new generation container development. Also, for FY 10, LASO and LANS have developed performance-based incentives of about $1.3M for materials repackaging and disposition, updated seismic analyses, and safety upgrades to the Plutonium Facility. These actions in

FY 10 build upon actions taken by LANS in FY 09 and early FY 10, including the following:

- Removed nearly 11 tons of combustible material from the facility, primarily first-floor laboratory rooms;
- Repackaged 60 existing RPCs with pressure safety concerns into new safety class containers;
- Replaced 195 high efficiency particulate air (HEPA) filters with 500°F-rated HEPA filters; and
- Developed a hydraulic model of the Fire Suppression System that identified weaknesses that are being addressed and will be used to inform decision-making for making this system safety class.

A more comprehensive summary of key actions is provided in the enclosure to this letter.

As noted above, the changes to the DSA currently under review would reduce the potential consequences at the site boundary due to a post-seismic fire event by a factor of 15. Approving updates to the DSA and Technical Safety Requirements is the binding mechanism by which DOE directs changes to the nuclear safety posture of its facilities. DOE is expediting its review of the updated DSA to achieve its implementation at the earliest feasible date.

I have assigned Mr. James J. McConnell, Acting Assistant Deputy Administrator for Nuclear Safety and Operations, Office of Defense Programs, NNSA, to be the Department's responsible manager for developing the Implementation Plan. He can be reached at (202) 586–4379.

Sincerely,

Steven Chu

[FR Doc. 2010–4128 Filed 2–26–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–64–000]

Tennessee Gas Pipeline Company; Notice of Application

February 19, 2010.

Take notice that on February 9, 2010, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon in place an inactive supply lateral designed as Line No. 527A–1300 and associated appurtenances located in Federal waters offshore Louisiana. Tennessee states that the subject facilities incurred extensive damage during Hurricane Gustav and have since been inactive, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Thomas G. Joyce, Manager, Certificates, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–3299, by facsimile at (713) 420–1605, or by e-mail at *tom.joyce@elpaso.com;* or Kathy Cash, Principal Analyst, Rates and Regulatory Affairs, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–3290, by facsimile at (713) 420–1605, or by e-mail at *kathy.cash@elpaso.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: March 1, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–4090 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

February 18, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–383–000.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Co submits Ninth Revised Sheet No. 1 *et al.* to FERC Gas Tariff, Sixth Revised Volume No. 1.

Filed Date: 02/16/2010.

Accession Number: 20100217–0223.

Comment Date: 5 p.m. Eastern Time on Monday, March 1, 2010.

Docket Numbers: RP10–384–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits petition for

a limited waiver of FSS Rate Schedule Section 4(d) of Columbia's FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 02/17/2010.

Accession Number: 20100217–0235.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 23, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–4151 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

February 22, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–361–000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline, LLC submits an amended and restated Non-Conforming Contract, Sixteenth Revised Sheet No. 10 to FERC Gas Tariff, Second Revised Volume No. 1.

Filed Date: 02/03/2010.

Accession Number: 20100204–0201.

Comment Date: 5 p.m. Eastern Time on Thursday, February 25, 2010.

Docket Numbers: RP10–385–000.

Applicants: Northern Border Pipeline Company.

Description: Northern Border Pipeline Company submits Sixth Revised Sheet No 0 *et al.* to FERC Gas Tariff, First Revised Volume No 1.

Filed Date: 02/18/2010.

Accession Number: 20100219–0208.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 02, 2010.

Docket Numbers: RP10–386–000.

Applicants: Elba Express Company, L.L.C.

Description: Elba Express Company, L.L.C. Negotiated Rate Filing under RP10–386 *et al.*

Filed Date: 01/29/2010.

Accession Number: 20100129–5079.

Comment Date: 5 p.m. Eastern Time on Thursday, February 25, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–4150 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

February 18, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–340–001.

Applicants: Wyoming Interstate Company, Ltd.

Description: Wyoming Interstate Co, Ltd submits the updated quarterly fuel and lost and unaccounted-for reimbursement percentages.

Filed Date: 02/03/2010.

Accession Number: 20100204–0202.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 23, 2010.

Docket Numbers: RP04–274–022.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits pro forma tariff sheets and supporting schedules.

Filed Date: 02/01/2010.

Accession Number: 20100202–0237.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 23, 2010.

Docket Numbers: RP10–272–001.

Applicants: Millennium Pipeline Company, L.L.C.

Description: Millennium Pipeline Co, LLC submits Substitute Second Revised Sheet No. 233 to FERC Gas Tariff, Original Volume No. 1, effective February 1, 2010.

Filed Date: 02/01/2010.

Accession Number: 20100202–0238.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 16, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Secretary.

[FR Doc. 2010–4149 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

February 23, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–387–000.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits for filing and acceptance amendments to three negotiated rate letter agreements with ExxonMobil Gas & Power Marketing Company and amendments to the Service Agreements.

Filed Date: 02/19/2010.

Accession Number: 20100222–0207.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 03, 2010.

Docket Numbers: RP10–388–000.

Applicants: Questar Southern Trails Pipeline Company.

Description: Questar Southern Trails Pipeline Company submits for acceptance Seventh Revised Sheet 1 et al. to FERC Gas Tariff, Original Volume 1, to be effective 3/24/10.

Filed Date: 02/22/2010.

Accession Number: 20100222–0224.

Comment Date: 5 p.m. Eastern Time on Monday, March 08, 2010.

Docket Numbers: RP10–389–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC Annual Report on Operational Transactions.

Filed Date: 02/22/2010.

Accession Number: 20100222–5054.

Comment Date: 5 p.m. Eastern Time on Monday, March 08, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–4148 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 19, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–1633–007; ER04–1099–007; ER03–25–006; ER00–38–010; ER00–1115–011; ER00–3562–012; ER06–755–006; ER04–831–008; ER02–1367–007; ER03–446–008; ER03–342–008; ER03–341–007; ER06–749–006; ER03–209–008; ER05–819–006; ER05–820–006; ER06–751–007; ER02–1959–008; ER06–753–005; ER02–2227–010; ER06–441–005; ER02–600–011; ER99–1983–009; ER01–2688–013; ER02–2229–009; ER09–1084–003; ER06–741–006; ER03–24–009; ER06–756–006; ER04–1221–006; ER05–67–006; ER01–480–009; ER06–750–006; ER06–742–006; ER09–71–003; ER05–68–006; ER04–1081–006; ER06–752–006; ER03–838–009; ER03–49–008; ER99–970–010; ER03–1288–006; ER07–

1335–006; ER01–2887–010; ER04–1100–007; ER02–1319–009

Applicants: Calpine Energy Services, L.P., CARVILLE ENERGY LLC, Columbia Energy LLC, Bethpage Energy Center 3, LLC, TBG COGEN PARTNERS, Santa Rosa Energy Center, LLC, Blue Spruce Energy Center, LLC, South Point Energy Center, LLC, Delta Energy Center, LLC, Calpine Construction Finance Company, LP, Calpine Newark, LLC, Calpine Philadelphia, Inc, KIAC PARTNERS,NISSEQUOGUE COGEN PARTNERS, Geysers Power Company, LLC, Otay Mesa Energy Center, LLC, Calpine Power America—CA, LLC, Calpine Power America—OR, LLC,CES Marketing IX, LLC,CES Marketing V, L.P.,CES Marketing X, LLC, PCF2, LLC, Mankato Energy Center, LLC, Riverside Energy Center, LLC, RockGen Energy, LLC, Auburndale Peaker Energy Center, L.L.C., Zion Energy LLC, Rocky Mountain Energy Center, LLC, Pine Bluff Energy, LLC, Pastoria Energy Center, LLC, Morgan Energy Center, LLC, MOBILE ENERGY LLC, Metcalf Energy Center, LLC, Los Medanos Energy Center LLC, Los Esteros Critical Energy Facility LLC, Hermiston Power, LLC, Goose Haven Energy Center, LLC, Gilroy Energy Center, LLC, Decatur Energy Center, LLC, Creed Energy Center, LLC,CPN Pryor Funding Corporation, Calpine Oneta Power, LP, Calpine Gilroy Cogen, L.P., BROAD RIVER ENERGY LLC, Power Contract Financing, L.L.C., CPN BETHPAGE 3RD TURBINE, INC

Description: Supplement to Clarify October 30, 2009 Quarterly Report Pursuant to 18 CFR 35.42(d) on behalf of Auburndale Peaker Energy Center, L.L.C., *et al.*

Filed Date: 02/16/2010.

Accession Number: 20100216–5230.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010

Docket Numbers: ER02–1633–006; ER04–1099–006; ER03–25–005; ER00–38–009; ER00–1115–009, ER00–3562–010; ER06–755–004; ER04–831–007; ER02–1367–006; ER03–446–007; ER03–342–006; ER03–341–006; ER06–749–005; ER03–209–007; ER05–819–005; ER05–820–005; ER06–751–006; ER02–1959–007; ER06–753–004; ER02–2227–008; ER06–441–004; ER02–600–009; ER99–1983–007; ER01–2688–011; ER02–2229–007; ER09–1084–002; ER06–741–005; ER03–24–007; ER06–756–004; ER04–1221–005; ER05–67–004; ER01–480–008; ER06–750–005; ER06–742–005; ER09–71–001; ER05–68–004; ER04–1081–005; ER06–752–005; ER03–838–007; ER03–49–007; ER99–970–009; ER03–1288–005; ER07–1335–005; ER01–2887–008; ER04–1100–006; ER02–1319–008

Applicants: Calpine Energy Services, L.P.,CARVILLE ENERGY LLC, Columbia Energy LLC, Bethpage Energy Center 3, LLC, Santa Rosa Energy Center, LLC, Blue Spruce Energy Center, LLC, South Point Energy Center, LLC, Delta Energy Center, LLC, Calpine Construction Finance Company, LP, Calpine Newark, LLC, Calpine Philadelphia, Inc, KIAC PARTNERS, NISSEQUOGUE COGEN PARTNERS, Geysers Power Company, LLC, Otay Mesa Energy Center, LLC, Calpine Power America—CA, LLC, Calpine Power America—OR, LLC, CES Marketing IX, LLC, CES Marketing V, L.P., CES Marketing X, LLC, PCF2, LLC, POWER CONTRACT FINANCING, LLC, Mankato Energy Center, LLC, Riverside Energy Center, LLC, Auburndale Peaker Energy Center, L.L.C., TBG COGEN PARTNERS, Zion Energy LLC, Rocky Mountain Energy Center, LLC, ROCKGEN ENERGY LLC, Pine Bluff Energy, LLC, Pastoria Energy Center, LLC, Morgan Energy Center, LLC, MOBILE ENERGY LLC, Metcalf Energy Center, LLC, Los Medanos Energy Center LLC, Los Esteros Critical Energy Facility LLC, Hermiston Power, LLC, Goose Haven Energy Center, LLC, Gilroy Energy Center, LLC, Decatur Energy Center, LLC, Creed Energy Center, LLC, CPN Pryor Funding Corporation, CPN Bethpage 3rd Turbine Inc., Calpine Oneta Power, LP, Calpine Gilroy Cogen, L.P., BROAD RIVER ENERGY LLC

Description: Supplement to Clarify July 30, 2009 Quarterly Report Pursuant to 18 CFR 35.42(d) of Auburndale Peaker Energy Center, L.L.C., *et al.*

Filed Date: 02/16/2010.

Accession Number: 20100216–5214.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 9, 2010.

Docket Numbers: ER08–313–006; ER08–923–005; ER08–1307–004; ER08–1308–006; ER08–1357–004; ER08–1358–004; ER08–1359–004.

Applicants: Xcel Energy Services Inc.

Description: Compliance Refund Report of Xcel Energy Services Inc.

Filed Date: 02/18/2010.

Accession Number: 20100218–5083.

Comment Date: 5 p.m. Eastern Time on Thursday, March 11, 2010.

Docket Numbers: ER10–253–000; EL10–14–000.

Applicants: Primary Power, LLC.

Description: Primary Power, LLC submits response to the 1/7/10 letter issued re Request for Information.

Filed Date: 02/12/2010.

Accession Number: 20100216–0056.

Comment Date: 5 p.m. Eastern Time on Friday, March 5, 2010.

Docket Numbers: ER10–382–001.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits an amendment to the 12/2/09 filing of an agreement with Seminole Electric Coop. Inc, which was designated Rate Schedule 211 etc.

Filed Date: 02/17/2010.

Accession Number: 20100217–0237.

Comment Date: 5 p.m. Eastern Time on Monday, March 1, 2010.

Docket Numbers: ER10–715–000; ER10–715–002.

Applicants: Llano Estacado Wind, LLC.

Description: On 1/28/2010 Llano Estacado Wind LLC submits a notice of succession and on 2/18/2010 submits updated market based rate tariff to reflect its conversion from a limited partnership to a limited liability company effective as of 12/31/09.

Filed Date: 01/28/2010, 2/18/2010.

Accession Number: 20100203–0214; 20100219–0202.

Comment Date: 5 p.m. Eastern Time on Thursday, March 11, 2010.

Docket Numbers: ER10–717–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits First Revised Sheets 23 *et al.* to Rate Schedule 326 *et al.*

Filed Date: 02/03/2010.

Accession Number: 20100204–0211.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 24, 2010.

Docket Numbers: ER10–726–000.

Applicants: DPL Energy Resources, Inc.

Description: DPL Energy Resources, Inc. submits an application for market based rate authorization and request for waivers and blanket approvals.

Filed Date: 02/18/2010.

Accession Number: 20100219–0213.

Comment Date: 5 p.m. Eastern Time on Thursday, March 11, 2010.

Docket Numbers: ER10–728–000.

Applicants: Viridian Energy NJ LLC.

Description: Viridian Energy NJ LLC submits the petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 02/17/2010.

Accession Number: 20100218–0204.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 10, 2010.

Docket Numbers: ER10–735–000.

Applicants: S.J. Energy Partners, Inc.

Description: S.J. Energy Partners, Inc. Petition for Acceptance of Initial Tariff, Waivers and Blanket Authorization, Rate Schedule FERC 1, to be effective 4/20/10.

Filed Date: 02/18/2010.

Accession Number: 20100219–0212.

Comment Date: 5 p.m. Eastern Time on Thursday, March 11, 2010.

Any person desiring to intervene or to protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–4147 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–32–002]

DCP Raptor Pipeline, LLC; Notice of Compliance Filing

February 22, 2010.

Take notice that on January 28, 2010, DCP Raptor Pipeline, LLC (Raptor) filed its Statement of Operating Conditions in compliance with the January 27, 2010 Letter Order (January 27th Letter Order) in Docket Nos. PR09–32–000 and PR09–32–001. Raptor states that it made revisions to include a statement of rates, as required by the January 27th Letter Order.

Any person desiring to participate in this proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time Friday, March 1, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–4094 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 606–027–CA]

Kilarc-Cow Creek Hydroelectric Project; Notice of Intention To Prepare an Environmental Impact Statement

February 19, 2010.

The Federal Energy Regulatory Commission (FERC) has received an application for surrender of license for the Kilarc-Cow Creek Hydroelectric Project, FERC No. 606. The project contains two developments and is located on Old Cow Creek and South Cow Creek in Shasta County, northern California.

In the March 13, 2009 application, Pacific Gas and Electric Company (licensee) proposes to surrender the license, decommission and remove project facilities, as described in its proposed decommissioning plan. In general, (1) diversion dams would be removed to stop water diversions and to allow for free passage of fish and sediment; (2) some diversion dam abutments and foundations would be left in place to protect stream banks and provide grade control; (3) both powerhouse structures would be secured and left in place during decommissioning and an option for future reuse of the powerhouse structures would be preserved; (4) electric generators, turbines and other equipment would be removed; (5) both forebays would be graded and filled; and (6) canal segments would be left in place, breached, or filled in consultation with affected landowners, and metal and wood flume structures would be removed. The licensee consulted with federal, state, local agencies, and other parties with potential interest, during the license surrender application process.

As a result of the public scoping process and environmental site review, the FERC staff has determined that the proposed license surrender would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the surrendering of the hydroelectric project

in lieu of an environmental assessment (EA). The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA).

Scoping

The FERC staff prepared a scoping document and held public scoping meetings on October 19, 2009 in Palo Cedro, CA and October 22, 2009 in Redding, CA. FERC staff held public environmental site reviews of the project on October 20 and 21, 2009. The public meetings and environmental site reviews assisted staff in identifying the scope of the environmental issues that should be analyzed. The results of the scoping were extensive and indicate than an EIS should be prepared for this project rather than an EA, as staff had initially anticipated. The upcoming EIS will reflect input received at the scoping meetings and justify why staff has determined that an EIS should be prepared.

Process

The FERC staff will first issue and circulate a draft EIS to all of the interested parties for comment. All comments filed on the draft EIS will be analyzed by the FERC staff and considered in the final EIS pursuant to NEPA. The FERC staff will also hold a public meeting in California before issuing the final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in the order reaching its final decision.

For further information please contact the project coordinator, CarLisa Linton at (202) 502–8416 or *carlisa.linton-peters@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–4093 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF10–5–000]

Western Area Power Administration; Notice of Filing

February 19, 2010.

Take notice that on February 2, 2010, the Deputy Secretary of the Department of Energy, under the authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 00–037.00, submitted Rate Order No. WAPA–149, the power rate formula for the Provo River Project, for confirmation and final approval to be effective April 1, 2010, and ending March 31, 2015.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–4091 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1354–081]

Pacific Gas & Electric Company; Notice of Availability of Final Environmental Assessment

February 19, 2010.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR Part 380), Commission staff has prepared a Final Environmental Assessment (FEA) regarding Pacific Gas & Electric Company's (PG&E) proposal to perform seismic remediation work at Crane Valley Dam, part of the Crane Valley Hydroelectric Project. The project occupies approximately 738 acres of federal lands within Sierra National Forest, approximately 40 miles northeast of the city of Fresno in Modesto County, California. Crane Valley Dam is located on North Fork Willow Creek, in the San Joaquin River Basin. The FEA analyzes the environmental effects of the seismic remediation proposal, PG&E's resource protection and mitigation plans, and recommends further measures to minimize any environmental effects. The FEA concludes that the proposed seismic remediation and resource plans, with the recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the FEA is available for review at the Commission's Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number (P–1354) in the docket number field to access the document. For assistance, call (202) 502–8222, or (202) 502–8659 (for TTY).

For further information on this notice, please contact B. Peter Yarrington at (202) 502–6129.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–4092 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM07–10–002]

Transparency Provisions of Section 23 of the Natural Gas Act; Notice of Form No. 552 Technical Conference

February 22, 2010.

Take notice that on March 25, 2010, a technical conference will be convened to consider certain issues concerning Form No. 552, related to Order Nos. 704, 704–A and 704–B.[1] The technical conference will be held in the

[1] *Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704, FERC Stats. & Regs. ¶ 31,260 (2007) (Final Rule); Transparency *Provisions of Section 23 of the Natural Gas Act,* Order No. 704–A, FERC Stats. & Regs. ¶ 31,275 (2008); and *Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704–B, 125 FERC ¶ 61,302 (2008).

Commission Meeting Room at the headquarters of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, from 9 a.m. to 2 p.m. (EDT). The conference will be open to the public; there is no registration to attend.[2]

On December 26, 2007, the Commission issued Order No. 704, Transparency Provisions of Section 23 of the Natural Gas Act. The Final Rule, among other things, requires natural gas market participants to report sales and purchase volumes of physical natural gas that use, contribute to, or may contribute to the formation of a price index during a calendar year. On September 18, 2008, the Commission issued Order 704–A Order on Rehearing and Clarification and on December 18, 2008 the Commission issued Order 704–B, Order Dismissing Rehearing Request as Deficient, Denying Reconsideration, and Granting and Denying Clarification.

On October 9, 2009 and November 3, 2009, the American Gas Association and Pacific Gas & Electric Company, respectively, submitted supplemental comments requesting clarification of certain reporting requirements in Form No. 552. Staff has also identified other areas in the form that require clarification and inconsistencies in reporting physical natural gas transactions that arose during data collection and outreach. The inconsistencies and issues identified and discussed below will be the subject of the technical conference for Form No. 552. The Commission may elect to modify Form No. 552 following reviews of the supplemental comments requesting clarification and its own clarifications after the technical conference.

The technical conference will address only the issues identified by staff. The topics for discussion at the conference are: (1) Inconsistencies in reporting upstream transactions in the natural gas supply chain on Form No. 552, and whether these transactions contribute to wholesale price formation; (2) whether transactions involving balancing, cash-out, operational, and in-kind transactions should be reported on Form No. 552; and (3) whether the units of measurement (TBtu) currently used for reporting volumes in the form are appropriate.

Order No. 704–A held that transactions involving unprocessed natural gas were not reportable on Form No. 552. The Commission also held that transactions regarding unprocessed natural gas should not be counted when determining whether an entity falls below the de minimis threshold.

Through various outreach efforts and data collected in Form No. 552 for calendar year 2008, Commission staff has learned that substantial volumes of upstream natural gas transactions may not be reflected in Form No. 552, because of inconsistent reporting practices. The sales and purchase volumes of upstream natural gas transactions are currently reportable on Form No. 552 if they use, contribute to, or may contribute to the formation of a price index. Staff believes that Form No. 552 filers have interpreted this requirement in various ways based on their unique situations. Therefore, staff would like to gain a better understanding of industry reporting practices for upstream transactions in the natural gas supply chain and to determine whether upstream natural gas contributes to wholesale price formation.

In Orders 704–A and 704–B, the Commission found that balancing, cash-out, operational, in-kind, and similar transactions must be reported in Form No. 552 if they use, contribute to, or could contribute to the formation of a price index. Staff has preliminary indications that the volumes of natural gas identified as cash-outs are relatively low in relation to the total reportable physical natural gas reported on Form No. 552. Therefore, staff is seeking to better understand the burden and benefits of reporting these volumes.

Finally, filers have expressed confusion about the requirement in Form No. 552 to report transactions in trillion Btus (TBtu). Converting data to TBtus led to a number of filing errors, and subsequent resubmissions to correct the data were required. Staff is seeking feedback on whether changing the reporting units to an industry standard unit of measure like decatherms would facilitate reporting.

An agenda for the conference will be issued in a later notice. This technical conference will not be webcast. It will be transcribed. Transcripts of the conference will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646).

Any person interested in filing comments after the conference should do so in this docket by April 2, 2010. A person is not required to have attended the conference in order to file comments on the specific topics herein.

Commission conferences and meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For additional information, please contact Christopher Peterson at 202–502–8933 or *Christopher.Peterson@ferc.gov* and Thomas Russo at 202–502–8792 or *Thomas.Russo@ferc.gov* of FERC's Office of Enforcement.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–4089 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

[2] A Notice of Extension of Time is being issued concurrently with this notice granting all natural gas participants an extension of time until July 1, 2010 to file their Form No. 552 for calendar year 2009.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–4–000]

Guidance on Preparation of Market-Based Rate Filings and Electric Quarterly Reports by Public Utilities; Supplemental Notice of Technical Conference

February 22, 2010.

As announced in the "Notice of Technical Conference" issued on January 28, 2010, a technical conference will be held on March 3, 2010, from 9 a.m. to 3 p.m. (EST) in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend and advance registration is not required.

The technical conference will focus on the mechanics of how to prepare an initial electric public utility market-based rate application and subsequent filings (including triennial market power reviews and change in status filings), as well as the requirement to submit Electric Quarterly Reports to the Commission once a seller has received market-based rate authorization. At the technical conference staff will also address the most frequently-asked questions that arise on electric market-based rate filings, the most common errors that are made in such filings, and highlight what tools are currently available to sellers in order to simplify the market-based rate application process as well as the preparation of subsequent required filings. The agenda for this conference is attached.

Any person planning to attend the technical conference is strongly encouraged to register, preferably by close of business on Friday, February

26, 2010. Registration may be submitted either online at *https://www.ferc.gov/whats-new/registration/mbr-03–03–10-form.asp* or by faxing a copy of the form (found at the referenced online link) to (202) 208–0353.

A free webcast of the technical conference will be available. Registration to view the webcast is not required. webcast viewers will not be permitted to participate during the technical conference. Anyone with Internet access interested in viewing this conference can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating the appropriate event in the Calendar. The events will contain a link to the applicable webcast option. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conferences via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For further information, please contact Ryan Anderson at (202) 502–8122 or e-mail *ryan.anderson@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–4096 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Rescheduled Technical Conference

February 19, 2010.

As a result of inclement weather closing the Federal Government in Washington, DC, a technical conference scheduled for February 9, 2010 could not occur. Take notice that that this event has been rescheduled for February 26, 2010. The conference will last from 10 a.m.–1:30 p.m. EST that day.

Please refer to the notice of technical conferences issued on December 16, 2009 in this proceeding for details related to the originating Commission action for this conference, as well as the topics that will be covered.

The conference will be held at the Commission's offices, 888 First Street, NE., Washington, DC. All interested persons are invited to attend. The documents that will be discussed are located at *http://www.ferc.gov/docs-filing/etariff.asp.*

Teleconferencing will be available. The number and instructions for teleconferencing in these meetings is posted on *http://www.ferc.gov/docs-filing/etariff.asp* and an RSS alert related to this rescheduled event will be issued.

The meeting is open to the public. No preregistration is required. FERC meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about these conferences, please contact Keith Pierce, Office of Energy Market Regulation at (202) 502–8525 or send an e-mail to *ETariff@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–4095 Filed 2–26–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OAR–2009–0561–201006; FRL–9119–9]

Adequacy Status of the Hickory-Morganton-Lenoir, North Carolina 1997 $PM_{2.5}$ Attainment Demonstration Motor Vehicle Emissions Budget for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public of its finding that the nitrogen oxides (NOx) motor vehicle emissions budget (MVEB) in the Hickory-Morganton-Lenoir, North Carolina (hereafter referred to as the Hickory Area) attainment demonstration for the 1997 $PM_{2.5}$ standard, submitted on August 21, 2009, by the North Carolina Department of Environment and Natural Resources (NCDENR), is adequate for transportation conformity purposes. EPA is also making an insignificance finding for direct particulate matter (PM) through the transportation conformity adequacy process for the Hickory Area. The Hickory Area is comprised of the entire county of Catawba in North Carolina. On March 2, 1999, the District of Columbia Circuit Court ruled that submitted state implementation plans (SIPs) cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate. As a result of EPA's finding, the Hickory Area must use the NO_X MVEB from the submitted Hickory, North Carolina 1997 $PM_{2.5}$ attainment demonstration for future conformity determinations, and the Hickory Area is not required to perform a regional emissions analysis for direct $PM_{2.5}$ in future $PM_{2.5}$ transportation conformity determinations for the 1997 annual $PM_{2.5}$ standard.

DATES: The adequacy finding for the NO_X MVEB and the insignificance finding for direct $PM_{2.5}$ are effective March 16, 2010.

FOR FURTHER INFORMATION CONTACT: Amanetta Somerville, Environmental Scientist, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Air Quality Modeling and Transportation Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Ms. Somerville can also be reached by telephone at (404) 562–9025, or via electronic mail at *somerville.amanetta@epa.gov.* The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm* (once there, click on the "Transportation Conformity" text icon, then look for "Adequacy Review of SIP Submissions").

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of findings that EPA has already made. EPA Region 4 sent a letter to NCDENR on January 20, 2010, stating that the 2009 NO_X MVEB in the 1997 $PM_{2.5}$ attainment demonstration for Hickory, dated August 21, 2009, is adequate. The letter also states that direct $PM_{2.5}$ is insignificant for the Hickory Area, therefore no regional emissions analysis is required. EPA posted the availability of the Hickory Area MVEB and insignificance demonstration on EPA's Web site on September 8, 2009, as part of the adequacy process, for the purpose of soliciting comments. The comment period ran from September 8, 2009, through October 8, 2009. EPA's findings have also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/index.htm* (once there, click "Transportation Conformity" text icon, then look for "Adequacy Review of SIP

Submissions"). The adequate NO_X MVEB is provided in the following table:

HICKORY AREA NO_X MVEB

[kilograms per day]

	2009
Catawba County	2,887,955

Transportation conformity is required by section 176(c) of the Clean Air Act, as amended in 1990. EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards (NAAQS).

The criteria by which EPA determines whether a SIP's MVEB is adequate for transportation conformity purposes are outlined in 40 Code of Federal Regulations (CFR) 93.118(e)(4). Additionally, the criteria by which EPA determines whether a particular pollutant/precursor is an insignificant contributor to the air quality problem in an area can be found at 40 CFR 93.109(k). Insignificance findings are based on a number of factors, including the percentage of motor vehicle emissions in context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for the allowance of insignificance findings can be found in the July 1, 2004, revision to the transportation conformity rule at 69 **Federal Register** (FR) 40004. Specifically, the rationale is explained on page 40061 under the subsection entitled "B. Areas With Insignificant Motor Vehicle Emissions." Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if EPA finds the MVEB adequate or makes an insignificance finding through the adequacy process, the Agency may later disapprove the SIP.

EPA has described the process for determining the adequacy of submitted SIP budgets in a May 14, 1999, memorandum entitled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision." EPA has followed this guidance in making this adequacy determination. This guidance is incorporated into EPA's July 1, 2004, final rulemaking entitled "Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (69 *FR* 40004).

Within 24 months from the effective date of this notice, the transportation partners will need to demonstrate conformity to the new MVEB if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). (See 73 FR 4419 (January 24, 2008).)

Additionally, the Transportation Conformity Rule at 40 CFR 93.109(k) states that a regional emissions analysis is no longer necessary for direct $PM_{2.5}$ if EPA finds, through the adequacy or approval process, that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor as demonstrated in the SIP. The insignificance finding should be noted in all future conformity determinations, and does not relieve the area of meeting all other transportation conformity requirements.

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

Dated: February 17, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–4146 Filed 2–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9120–3]

Science Advisory Board Staff Office Notification of a Public Meeting of a Workgroup of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of a workgroup of the chartered Science Advisory Board to conduct an expedited and focused review of EPA's draft "Toxicological Review of Inorganic Arsenic: In Support of the Summary Information on the Integrated Risk Information System (IRIS)" (EPA/635/R–10/001). The SAB workgroup will assess the adequacy of EPA's implementation of the SAB previous recommendations regarding the cancer risk assessment of inorganic arsenic.

DATES: The meeting will be held on April 6, 2010 from 1 p.m. to 5:30 p.m. (Eastern Time) and April 7, 2010 from 8:30 a.m. to 2 p.m. (Eastern Time).

ADDRESSES: The meeting will be held at the St. Regis Hotel, 923 16th and K Streets, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public meeting should contact Dr. Sue Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9977; fax: (202) 233–0643; or e-mail at *Shallal.suhair@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a workgroup of the chartered SAB will hold a public meeting to lead the review of the implementation of SAB's previous recommendations for the revision of EPA's cancer risk assessment of inorganic arsenic.

Background: The EPA is currently in the process of updating the 1988 IRIS cancer assessment for inorganic arsenic (iAs). The EPA evaluated and implemented the National Research Council (2001) recommendations and in 2005 requested that the SAB review the Agency's draft cancer assessment for iAs. The SAB review report was finalized in 2007 and is available at the following URL: *http://yosemite.epa.gov/sab/sabproduct.nsf/02ad90b136fc21ef85256eba00436459/EADABBF40DED2A0885257308006741EF/$File/sab-07–008.pdf.*

EPA's Office of Research Development has completed a 2010 draft "Toxicological Review of Inorganic Arsenic: In Support of the Summary Information on the Integrated Risk Information System (IRIS)" (EPA/635/R–10/001). This draft assessment includes an evaluation and characterization of

the potential cancer hazard of iAs and a quantitative dose-response cancer assessment for iAs. The draft assessment also provides a disposition of SAB's previous review comments and recommendations.

In response to the Administrator's request, ORD is requesting that the SAB evaluate and comment on EPA's interpretation and implementation of the key SAB (2007) recommendations in the revised draft assessment. ORD is requesting an expedited and focused review of the draft assessment in three areas: Evaluation of epidemiological literature; dose-response modeling approaches; and the sensitivity analysis of the exposure assumptions used in the risk assessment. In response to this request, the SAB is convening a workgroup of the chartered SAB to lead this expedited and focused review and to assess the responsiveness of EPA's implementation of the previous SAB recommendations. The SAB workgroup's draft report will be reviewed and approved by the full Board in a subsequent public meeting to be announced in a separate **Federal Register** notice. Information about this SAB advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Rev%20Tox%20Review%20Inorg%20Arsenic?OpenDocument.*

Availability of Meeting Materials: The agendas and other materials in support of the meeting will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance. For technical questions and information concerning EPA's draft document, please contact Dr. Reeder Sams at (919) 541–0661, or *sams.reeder@epa.gov.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider on the topics included in this advisory activity or on the group conducting this advisory activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Shallal, DFO, in writing (preferably via e-mail) at the contact information noted above no later than March 26, 2010 to be placed on a list of public speakers for the meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by March 29, 2010 so that the information may be made available to the chartered SAB members for their consideration and placed on the SAB Web site for public information. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Sue Shallal at (202) 343–9977, or *shallal.suhair@epa.gov.* To request accommodation of a disability, please contact Dr. Shallal, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 22, 2010.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–4138 Filed 2–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9120–4]

Science Advisory Board Staff Office; Notification of a Clean Air Scientific Advisory Committee (CASAC) Carbon Monoxide Review Panel Meeting and CASAC Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee (CASAC) Carbon Monoxide Review Panel to peer review EPA's *Risk and Exposure Assessment to Support the Review of the Carbon Monoxide Primary National Ambient Air Quality Standards: Second External Review Draft* and EPA's *Policy Assessment for the Review of the Carbon Monoxide National Ambient Air Quality Standards: External Review Draft.* The chartered CASAC will subsequently hold a public teleconference to review and approve the Panel's reports.

DATES: The public meeting will be held on Monday, March 22, 2010 from 8:30 a.m. to 5 p.m. (Eastern Time) and Tuesday, March 23, 2010 from 8 a.m. to 3 p.m. (Eastern Time). The public teleconference will be held on April 19, 2010 from 10 a.m. to 1 p.m. (Eastern Time).

ADDRESSES: The public meeting will take place at the Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC 27703, telephone (919) 941–6200. The April 19, 2010 teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to submit a written or brief oral statement or wants further information concerning the March 22 and 23, 2010 meeting may contact Ms. Kyndall Barry, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9868; fax (202) 233–0643; or e-mail at *barry.kyndall@epa.gov.* For information on the CASAC teleconference on April 19, 2010, please contact Dr. Holly Stallworth, Designated Federal Officer (DFO), at the above listed address; via telephone/voice mail (202) 343–9867 or e-mail at *stallworth.holly@epa.gov.* General information concerning the CASAC and the CASAC documents can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act, Public Law 92–463 5 U.S.C., App. 2 (FACA), notice is hereby given that the CASAC Carbon Monoxide Panel will hold a public meeting to peer review two draft documents related to the NAAQS review for carbon monoxide and that the chartered CASAC will hold a public teleconference to review and approve the Panel's draft reports. The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC Panel and chartered CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the National Ambient Air Quality Standard (NAAQS) for the six "criteria" air pollutants, including carbon monoxide (CO). EPA is conducting scientific assessments to

review the primary (health-based) NAAQS for CO. CASAC has previously provided consultative advice on EPA's *Plan for Review of the National Ambient Air Quality Standards for Carbon Monoxide,* the first document in this review of the CO NAAQS. CASAC held a public meeting in Chapel Hill, North Carolina on May 12–13, 2009 (as announced in 74 FR 15265–15266) to review the first draft *Integrated Science Assessment for Carbon Monoxide* and provide consultative advice on the *Carbon Monoxide National Ambient Air Quality Standards: Scope and Methods Plan for Risk* and *Exposure Assessment.* CASAC reviewed the second draft *Integrated Science Assessment for Carbon Monoxide* and the first draft *Risk and Exposure Assessment to Support the Review of the Carbon Monoxide Primary National Ambient Air Quality Standards* during the November 16–17, 2009 public meeting (as announced in 74 FR 54042–54043). The CASAC advisory reports are available on the EPA Web site at *http://www.epa.gov/casac.*

The purpose of the March 22 and 23, 2010 meeting is for the CASAC Panel to conduct peer reviews of the *Risk and Exposure Assessment to Support the Review of the Carbon Monoxide Primary National Ambient Air Quality Standards: Second External Review Draft* and the *Policy Assessment for the Review of the Carbon Monoxide National Ambient Air Quality Standards: External Review Draft* recently issued by EPA's Office of Air and Radiation (OAR). The purpose of the *Policy Assessment* is to "bridge the gap" between the scientific information and the judgments required of the Administrator in determining whether it is appropriate to retain or revise the carbon monoxide standards. The draft *Policy Assessment* builds upon the key scientific and technical information contained in the Agency's final *Integrated Science Assessment for Carbon Monoxide* (January 2010), as well as the *Risk and Exposure Assessment.* The chartered CASAC will review and approve the Panel's draft reports by a public conference call on April 19, 2010.

Technical Contacts: Any questions concerning EPA's *Risk and Exposure Assessment to Support the Review of the Carbon Monoxide Primary National Ambient Air Quality Standards: Second External Review Draft* or *Policy Assessment for the Review of the Carbon Monoxide National Ambient Air Quality Standards: External Review Draft* should be directed to Dr. Deirdre Murphy, OAR, *murphy.deirdre@epa.gov* or (919) 541–0729 or Dr. Ines Pagan, OAR, at pagan.ines@epa.gov or (919) 541–5469.

Availability of Meeting Materials: Both EPA–OAR's *Risk and Exposure Assessment to Support the Review of the Carbon Monoxide Primary National Ambient Air Quality Standards: Second External Review Draft* and *Policy Assessment for the Review of the Carbon Monoxide National Ambient Air Quality Standards: External Review Draft* will be available at *http://www.epa.gov/ttn/naaqs/standards/co/s_co_index.html.* The agenda and other materials for the CASAC meetings will be posted on the SAB Web site at *http://www.epa.gov/casac.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the March 22 and 23, 2010 meeting, interested parties should notify Ms. Kyndall Barry, DFO, by e-mail no later than March 15, 2010. To be placed on the public speaker list for the April 19, 2010 teleconference, interested parties should notify Dr. Holly Stallworth, DFO, by e-mail no later than April 13, 2010. Individuals making oral statements will be limited to five minutes per speaker. *Written Statements:* Written statements for the March 22 and 23, 2010 meeting should be received in the SAB Staff Office by March 15, 2010, so that the information may be made available to the CASAC Panel for its consideration prior to this meeting. Written statements for the April 19, 2010 meeting should be received in the SAB Staff Office by April 13, 2010. Written statements should be supplied to the appropriate DFO in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Barry at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 23, 2010.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–4141 Filed 2–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9118–8]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Marin Resource Conservation District Project #C–06–6922–110 Funded by the California CWSRF ARRA Loan #09–306–550

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605(b)(2) (manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality) to the Marin Resource Conservation District (MRCD), a Clean Water State Revolving Fund/ARRA loan recipient, for the purchase of a GrundFos SQ Flex 6 SQF–2 solar powered submersible pump system with control and solar panels (pump system) manufactured in Denmark by GrundFos. This is a project specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project-specific circumstances. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception under section 1605(b)(2) of ARRA.

DATES: *Effective Date:* December 14, 2009.

FOR FURTHER INFORMATION CONTACT: Abimbola Odusoga, Environmental Engineer, Water Division, Infrastructure Office (WTR–4), (415) 972–3437, U.S. EPA Region 9, 75 Hawthorne San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), EPA hereby provides notice it is granting a project waiver of the requirements of Section 1605(b)(2) of Public Law 111–5, Buy American requirements, to the MRCD for the acquisition of the GrundFos SQ Flex 6

SQF–2 solar powered submersible pump system with control and solar panels (pump system) manufactured in Denmark by GrundFos. The head of each federal agency is authorized to issue project waivers pursuant to Section 1605(c) of ARRA. Section 1605(a) of the ARRA requires that none of the funds appropriated or otherwise made available by the ARRA 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. Pursuant to Section 1605(c), a waiver may be provided if EPA determines: (1) Applying these requirements would be inconsistent with the public 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. A Delegation of Authority Memorandum was issued by the EPA Administrator on March 31, 2009 which provided EPA Regional Administrators with the authority to issue waivers to Section 1605(a) of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual recipients of ARRA financial assistance.

The MRCD implements projects within the Tomales Bay and Stemple Creek Watersheds to stop soil erosion, improve riparian habitat, and stabilize eroding stream channels on agricultural lands. The MRCD is installing the pump system to redevelop a brick well in order to provide replacement water for livestock which have been kept from natural water supplies, due to efforts to fence off a creek for streamside and riparian restoration, which restoration will also reduce non-point source pollution. This project is intended to further the purposes of the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB) plan to facilitate land (grazing) management by providing water and water outlets. This will permit the landowner to practice rotational grazing and avoid depleting the integrity of the land with intense grazing.

The MRCD's specifications require the pump system to deliver 920 gallons per day (GPD) against a total dynamic head (TDH) of 160 feet. The MRCD stated in their waiver submission that the closest equivalent domestically-manufactured pump systems do not meet these project specifications. Initial analysis by EPA's national contractor indicated that there was one domestic manufacturer that might be able to meet the project specifications, but observed that additional information clarifying the project's winter month flow requirements was necessary to determine whether this domestic manufacturer could meet all necessary project specifications.

Additional information provided by the MRCD specified that the system must also have a pumping capacity of 1400 GPD at 160 feet of TDH during the winter. Further analysis by EPA and EPA's national contractor confirmed that domestic models capable of meeting the pumping capacity and TDH specifications in winter months would require an additional fuel source. The method to generate this power would require the use of the emergency generator system. Using the emergency system defeats the purpose of having a backup source, and leaves the project site vulnerable to failure. Moreover, as the back-up source of power supply would need to be in operation for nearly the same amount of time that the solar powered equipment would be in operation, this reliance on the emergency system compromises the environmental significance achieved by having a solar powered pump system.

The April 28, 2009 EPA Memorandum for implementation of the ARRA Buy American provisions of P.L. 111–5, states the quantity of iron, steel, or relevant manufactured good is "reasonably available" if it is available at the time and place needed, and in the proper form or specification as specified in the project plans and design.

The MRCD's submission articulates a reasonable and appropriate basis for choosing the type of technology it chose for this project in environmental objectives and performance specifications. Further, it provides sufficient documentation the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantity and of a satisfactory quality to meet its technical specifications. The MRCD has incorporated specific technical design specifications for the proposed project based on their needs and provided information to the EPA indicating there are currently no pump systems manufactured in the United States that have equivalent product specifications. The MRCD has also provided certification from its supplier indicating there are no systems of comparable quality available from a domestic manufacturer to meet its specifications. Based on additional research conducted by the EPA's Buy American consultant, there do not appear to be other pump systems available to meet the MRCD's specifications.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay shovel ready projects by requiring entities, like the MRCD, to revise their design and potentially choose a more costly and less efficient project. The imposition of ARRA Buy American requirements on such projects eligible for CWSRF assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project.

The EPA Region 9 Infrastructure Office, Office of Regional Counsel, EPA's Buy American consultant, and EPA's Office of Administration and Resource Management have reviewed this waiver request and have determined the supporting documentation provided by the MRCD is sufficient to meet the criteria listed under ARRA Section 1605(b)(2) and the EPA April 28, 2009, Memorandum for implementation of ARRA Buy American provisions of Public Law 111–5.

Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the MRCD is hereby granted a waiver from the Buy American requirements of Sections 1605(a) of Public Law 111–5, for the purchase of the GrundFos pump system, specified in the MRCD's request of September 23, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under Section 1605(b)(2).

Authority: Public Law 111–5, Section 1605.

Dated: December 14, 2009.

Laura Yoshii,

Acting Regional Administrator, EPA Pacific Southwest Region.

[FR Doc. 2010–4075 Filed 2–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9119–8]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Environmental Integrity Project, Baltimore Harbor Waterkeeper, Inc., Clean Water Action, and Chesapeake Climate Action Network (collectively "Plaintiffs") in the United States District Court for the District of Columbia: *Environmental Integrity Project, et al.* v. *Jackson,* No. 1:10-cv-165 (RJL) (D.D.C.). Plaintiffs filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the Maryland Department of the Environment to Wheelabrator Baltimore, LP ("Wheelabrator") for a municipal solid waste incinerator in Baltimore, Maryland. Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by April 15, 2010.

DATES: Written comments on the proposed consent decree must be received by *March 31, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–0184, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Leslie Darman, Office of General Counsel (Mail Code 2355A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5452; fax number (202) 564–5477; e-mail address: *darman.leslie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit alleging that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, an administrative petition to object to a CAA Title V permit issued by the Maryland Department of the Environment to Wheelabrator for a municipal solid waste incinerator in Baltimore, Maryland. Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by April 15, 2010. In addition, the proposed consent decree states that within fifteen (15) business days EPA shall transmit notice of such action to the Office of the Federal Register for publication.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2010–0184) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access"

system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: February 22, 2010.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. 2010–4156 Filed 2–26–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

February 22, 2010.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden should be directed to the person listed in the "For Further Information Contact" section below.

FOR FURTHER INFORMATION CONTACT: Tim Stelzig on (202) 418–0942 or e-mail at Tim.Stelzig@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1131.

OMB Approval Date: 12/03/2009.

Expiration Date: 12/31/2012.

Title: Implementation of the NET 911 Improvement ACT of 2008: Location Information from Owners and Controllers of 911 and E911 Capabilities.

Form Number: N/A.

Estimated Annual Burden: 60 responses; 0.0833 hours (5 minutes) hours per response; 5 hours total per year.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act), Public Law 110–283, Stat. 2620 (2008) (to be codified at 47 CFR Section 615a–1), and section 222 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: To implement section 222 of the Communications Act of 1934, as amended, the Commission's rules impose a general duty on carriers to protect the privacy of customer proprietary network information and carrier proprietary information from unauthorized disclosure. See 47 CFR 64.2001 et seq. In the Order, the Commission additionally has clarified that the Commission's rules contemplate that incumbent LECs and other owners or controllers of 911 or E911 infrastructure will acquire information regarding interconnected VoIP providers and their customers for use in the provision of emergency services. We fully expect that these entities will use the information only for the provision of E911 services. To be clear, no entity may use customer information obtained as a result of the provision of 911 or E911 services for marketing purposes.

Needs and Uses: In a Report and Order, FCC 08–249, WC Docket No. 08–171, the FCC requires an owner or controller of a 911 or enhanced 911 (E911) capability to make that capability available to a requesting interconnected Voice over Internet Protocol (VoIP) provider in certain circumstances. This requirement involves the collection and disclosure to emergency services personnel of customers' location information. In a previous action, the Commission required interconnected VoIP providers to collect certain location information from their customers and disclose it to the entities that owner or control an Automatic Location Information (ALI) database. That OMB-approved requirement is under OMB Control Number 3060–1085. All the relevant costs of the entities that own or control an ALI database were previously described in 3060–1085. The Commission has calculated the paperwork burdens of this present item in such a way as to prevent double counting for OMB's inventory.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–4068 Filed 2–26–10; 8:45 am]

BILLING CODE: 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

[RM No. 11592; DA 10–278]

Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Wireless Telecommunications Bureau seeks comment on a petition for rulemaking asking the Commission to require that all mobile units be capable of operating over all frequencies in the 700 MHz Band.

DATES: Interested parties may file comments on or before March 31, 2010, and reply comments on or before April 30, 2010.

ADDRESSES: Comments may be filed using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

• *People With Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (Voice), 202–418–0432 (TTY).

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Documents in RM No. 11592, including a copy of the petition, are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.*

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

FOR FURTHER INFORMATION CONTACT: Won Kim, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418–1368.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in RM No. 11592 and DA 10–278, released on February 18, 2010. On September 29, 2009, an alliance comprised of four Lower 700 MHz Band A Block licensees (Petitioners) filed a petition for rulemaking, asking the Commission to "assure that consumers will have access to all paired 700 MHz spectrum that the Commission licenses, to act so that the entire 700 MHz band will develop in a competitive fashion, and to adopt rules that prohibit restrictive equipment arrangements that are contrary to the public interest." [1] Specifically, the Petitioners ask the Commission to require that all mobile units for the 700 MHz band be capable of operating over all frequencies in the band.[2] The Petitioners further request "an immediate freeze on the authorization of mobile equipment that is not capable of operation on all paired commercial 700 MHz frequencies." [3] The Wireless Telecommunications Bureau seeks comment on the Petition.[4]

AT&T and Verizon Wireless have indicated that they are pursuing 700 MHz Long Term Evolution (LTE) mobile devices that operate over the 700 MHz spectrum blocks associated with some or all of their own respective 700 MHz band licenses but that do not include the Lower 700 MHz Band A Block (A Block).[5] The Petitioners assert that these "equipment design and procurement practices contravene the public interest," arguing that, if the equipment offered by these large carriers does not operate over A Block, mobile 700 MHz "equipment needed by [A Block] licensees in smaller volumes will likely be available only later in time and at considerably higher price points." [6] The Petitioners also argue that such practices "are unjustly discriminatory and anticompetitive" in violation of Sections 201(b) and 202(a) of the Communications Act (Act), and that they are in conflict with other provisions of the Act, including the universal service goals of Section 254(b)(3) and the license application review criteria of Section 307(b).[7]

The Wireless Telecommunications Bureau seeks comment on relevant technical, legal, economic, and policy issues involving the Petitioners' request that the Commission commence a rulemaking proceeding. The Commission notes, for instance, that devices capable of operating in the A Block will be using spectrum adjacent to the full-power DTV broadcasting operations on Channel 51, and to the Lower 700 MHz Band E Block, which may be used for higher-powered mobile services under Commission rules.

Federal Communications Commission.

Ruth Milkman,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 2010–4140 Filed 2–26–10; 8:45 am]

BILLING CODE 6712–01–P

[1] 700 MHz Block A Good Faith Purchaser Alliance Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks, filed Sept. 29, 2009 (Petition), at 1. The Alliance is a "joint venture" consisting of Cellular South Licenses, Inc.; Cavalier Wireless, LLC; Continuum 700, LLC; and King Street Wireless, L.P., each of which is currently the licensee of Lower 700 MHz Band A Block spectrum. *Id.*

[2] Petition at iii, 12.

[3] Petition at 1–2.

[4] The Bureau notes that several parties have already filed comments in various proceedings that discuss either the Petition or substantially similar issues. *See, e.g.,* Cellular South Comments, WT Docket No. 09–66 (filed Sept. 30, 2009) at 8–15; Verizon Wireless Reply Comments, WT Docket No. 09–66 (filed Oct. 22, 2009), at 85–92; AT&T, Inc. Reply Comments, WT Docket No. 09–66 (filed Oct. 22, 2009) (AT&T Reply Comments), at 70–72; Verizon Wireless *Ex parte,* WT Docket No. 09–66; GN Docket No. 09–157 (filed Dec. 18, 2009) (Verizon *Ex parte*); Qualcomm *Ex parte,* WT Docket No. 09–66; GN Docket No. 09–157 (filed Jan. 25, 2010); Motorola Comments, RM–11592 (filed Feb. 12, 2010).

[5] *See* AT&T Reply Comments at 72; Verizon Wireless *Ex parte* at 7.

[6] Petition at 2, 4.

[7] Petition at 7–9.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB; Correction

This notice corrects a notice (FR Doc. 2010–3578) published on pages 8355 through 8362 of the issue for February 24, 2010.

Under the Federal Reserve System heading, the entry for Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB, is revised to read as follows:

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the revision, without extension, of the following reports:

1. *Report title:* Consolidated Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9C.

OMB control number: 7100–0128.

Frequency: Quarterly.

Reporters: BHCs.

Estimated annual reporting hours: 174,070 hours.

Estimated average hours per response: 42.25 hours.

Number of respondents: 1,030.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6)and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6) and (b)(8)).

Abstract: The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs between on-site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC mergers and acquisitions, and to analyze a BHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from BHCs. The FR Y–9C is filed by top-tier BHCs with total consolidated assets of $500 million or more. (Under certain circumstances defined in the General Instructions, BHCs under $500 million may be required to file the FR Y–9C.)

Current Actions: On September 25, 2009, the Federal Reserve published a notice in the **Federal Register** (74 FR 48960) requesting public comment for 60 days on the revision, without extension, of the FR Y–9C report. The comment period for this notice expired on November 24, 2009. The Federal Reserve received one comment letter on this proposal. In addition, the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) (the banking agencies) received six comment letters on proposed revisions to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) that parallel the proposed revisions to the FR Y–9C and are taken into consideration for this proposal.

Summary of Comments

The Federal Reserve received one comment letter from a bankers' organization on proposed revisions to the FR Y–9C (who also submitted comparable comments on proposed changes to the Call Report). In addition, the banking agencies received comment letters from six organizations: two banks, one bank holding company (BHC), two bankers' organizations, and a bank insurance consultant on proposed changes to the Call Report, many of which parallel proposed changes to the FR Y–9C and are taken into consideration for this proposal.

None of the commenters addressed all aspects of the proposed changes to the FR Y–9C and Call Report. Rather, individual respondents commented on one or more of the proposed changes. Four of the commenters offered general views on the overall proposal. One bank expressed general support for the proposal and identified a few items that deserved further consideration. The bankers' organization commented that its members expressed no concerns with many of the proposed changes, but it urged the Federal Reserve and the banking agencies to consider several suggested changes in the final revisions. The organization's suggested changes also included the proposed collection of data in one subject area that was not addressed in the proposal.

One bank opposed the proposed revisions, stating they would not improve the safety and soundness of any banking organization, yet would add to banking organizations' costs of operations. While an important use of FR Y–9C data is to assist the Federal Reserve in fulfilling their supervisory responsibilities with respect to the safety and soundness of individual BHCs as well as the banking system as a whole, FR Y–9C data are also used for a variety of other purposes, such as supporting the conduct of monetary policy and assessing the availability of credit. Furthermore, in developing the FR Y–9C revisions for 2010, the Federal Reserve carefully considered the purposes for which the proposed additional data would be used, which are described in the September 25, 2009, **Federal Register** notice and, to the extent appropriate, in this **Federal Register** notice. The Federal Reserve also considered the estimated cost and burden to BHCs of reporting these additional data.

The following section of this notice describes the proposed FR Y–9C report changes and discusses the Federal Reserve's evaluation of the comments received on the proposed changes, including modifications made in response to those comments. The following section also addresses the Federal Reserve's response to the recommendation from the bankers' organization's concerning the collection of certain additional data that had not been included in the September 25, 2009, notice.

After considering the comments, the Federal Reserve will move forward in 2010 with the proposed reporting changes after making certain modifications in response to the comments. In addition, the Federal Reserve will add four data items to the FR Y–9C on assets covered by FDIC loss-sharing agreements in response to the recommendation from the bankers' organization.

The Federal Reserve recognizes institutions' need for lead time to prepare for reporting changes. Thus, consistent with longstanding practice, for the March 31, 2010, report date, BHCs may provide reasonable estimates for any new or revised FR Y–9C data item initially required to be reported as of that date for which the requested information is not readily available. Furthermore, the specific wording of the captions for the new or revised FR Y–9C data items discussed in this notice and the numbering of these data items should be regarded as preliminary.

I. FR Y–9C Revisions Proposed for March 2010

The Federal Reserve and the banking agencies received either no comments on or comments expressing support for the following revisions that were proposed to take effect as of March 31, 2010, and therefore the Federal Reserve will implement these revisions as proposed:

- New Memorandum items in Schedule HI, Income Statement, identifying total other-than-temporary impairment losses on debt securities, the portion of the total recognized in other comprehensive income, and the net losses recognized in earnings, consistent with the presentation requirements of a recent accounting standard;
- Clarification of the instructions for reporting brokered deposits in Schedule HC–E, and

• Reformatting of loan information collected on Schedule HC–K, Quarterly Averages.

The Federal Reserve and the banking agencies received one or more comments addressing or otherwise relating to each of the following proposed revisions:

• Clarification of the instructions for reporting unused commitments in Schedule HC–L, Derivatives and Off-Balance-Sheet Items;

• Breakdowns of the existing data items in Schedule HC–L for unused credit card lines and other unused commitments, with the former breakdown required only for certain institutions, and a related breakdown of the existing data item for other loans in Schedule HC–C, Loans and Lease Financing Receivables; and

• Clarification of impact of FAS Statements Nos. 166 and 167 [1] on the reporting instructions, and related potential future proposed revisions.

The Federal Reserve and the banking agencies also received one comment recommending the addition of data to the FR Y–9C on assets covered by FDIC loss-sharing agreements, which the Federal Reserve had not proposed.

A. Clarification of the Instructions for Reporting Unused Commitments

BHCs report unused commitments in data item 1 of Schedule HC–L, Derivatives and Off-Balance Sheet Items. The instructions for this data item identify various arrangements that should be reported as unused commitments, including but not limited to commitments for which the BHC has charged a commitment fee or other consideration, commitments that are legally binding, loan proceeds that the BHC is obligated to advance, commitments to issue a commitment, and revolving underwriting facilities. However, the Federal Reserve has found that some BHCs have not reported commitments that they have entered into until they have signed the loan agreement for the financing that they have committed to provide. Although the Federal Reserve considers these arrangements to be commitments to issue a commitment and within the scope of the existing instructions for reporting commitments in Schedule HC–L, the Federal Reserve believes that these instructions may not be sufficiently clear. Therefore, the Federal Reserve proposed to revise the instructions for Schedule HC–L, data item 1, Unused commitments, to clarify that commitments to issue a commitment at some point in the future are those where the BHC has extended terms and the borrower has accepted the offered terms, even though the related loan agreement has not yet been signed.

One bank and the bankers' organization commented on this proposed revision to the instructions for reporting commitments to issue a commitment. The bank recommended that these instructions "should include only terms extended and accepted in writing to allow the banks to develop a reliable tracking system." Similarly, the bankers' organization recommended that the commitment be in writing, but also stated that banking organizations should only be required to report when the commitment "has an expiration date of greater than 90 days." The bankers' organization further added that it "would be exceedingly difficult to capture commitments that have an expiration date of 90 days or less and that are not in writing." The organization requested that the Federal Reserve and the banking agencies delay the effective date of the revised instructions for reporting commitments to issue a commitment by at least six months "to allow [banking organizations] sufficient time to adjust their systems."

The Federal Reserve generally agrees with the recommendation that the instructions for reporting commitments to issue a commitment should cover situations where the terms extended and accepted are in writing. However, in those circumstances where the extension and acceptance of the terms are not in writing but are legally binding on both the BHC and the borrower under applicable law, the Federal Reserve believes that such commitments should be reported. Furthermore, when the terms of a commitment to issue a commitment have been extended and accepted in writing or, if not in writing, are legally binding, the Federal Reserve believes that it is a sound banking practice and a sound internal control for the BHC entering into such commitments to maintain an appropriate tracking system for the commitments whether or not there is a related regulatory reporting requirement.

Accordingly, the Federal Reserve recommends revising the proposed instructional clarification pertaining to the reporting of commitments to issue a commitment in Schedule HC–L, data item 1, Unused commitments, to state that commitments to issue a commitment at some point in the future are those where the BHC has extended terms, the borrower has accepted the offered terms, and the terms extended and accepted are in writing or, if not in writing, are legally binding on the BHC and the borrower, even though the related loan agreement has not yet been signed. Although the Federal Reserve will not delay the effective date for this instructional clarification, BHCs will be reminded that, because of the revision to the instructions for reporting commitments to issue a commitment in Schedule HC–L, data item 1, they may provide a reasonable estimate of the amount of such commitments in their FR Y–9C reports for March 31, 2010. In response to the comments received, the revised instructions for Schedule HC–L, data item 1, would read as follows:

> Report in the appropriate subitem the unused portions of commitments. Unused commitments are to be reported gross, *i.e.,* include in the appropriate subitem the unused amount of commitments acquired from and conveyed or participated to others. However, exclude commitments conveyed or participated to others that the bank holding company is not legally obligated to fund even if the party to whom the commitment has been conveyed or participated fails to perform in accordance with the terms of the commitment.
>
> For purposes of this item, commitments include:
>
> (1) Commitments to make or purchase extensions of credit in the form of loans or participations in loans, lease financing receivables, or similar transactions.
>
> (2) Commitments for which the bank holding company has charged a commitment fee or other consideration.
>
> (3) Commitments that are legally binding.
>
> (4) Loan proceeds that the bank holding company is obligated to advance, such as:
>
> (a) Loan draws;
>
> (b) Construction progress payments; and
>
> (c) Seasonal or living advances to farmers under prearranged lines of credit.
>
> (5) Rotating, revolving, and open-end credit arrangements, including, but not limited to, retail credit card lines and home equity lines of credit.
>
> (6) Commitments to issue a commitment at some point in the future, where the bank holding company has extended terms, the borrower has accepted the offered terms, and the extension and acceptance of the terms are in writing or, if not in writing, are legally binding on the bank holding company and the borrower, even though the related loan agreement has not yet been signed.
>
> (7) Overdraft protection on depositors' accounts offered under a program where the bank holding company advises account holders of the available amount of overdraft protection, for example, when accounts are

[1] Statement of Financial Accounting Standards (FAS Statements) No. 166, *Accounting for Transfers of Financial Assets,* amends FAS Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities.* FAS Statement No. 167, *Amendments to Financial Accounting Standards Board (FASB) Interpretation No. 46(R),* amends FASB Interpretation No. 46(R), *Consolidation of Variable Interest Entities.* In general, under the FASB Accounting Standards Codification™, see Topics 860, Transfers and Servicing, and 810, Consolidation.

opened or on depositors' account statements or ATM receipts.

(8) The bank holding company's own takedown in securities underwriting transactions.

(9) Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and other similar arrangements, which are facilities under which a borrower can issue on a revolving basis short-term paper in its own name, but for which the underwriting bank holding company has a legally binding commitment either to purchase any notes the borrower is unable to sell by the rollover date or to advance funds to the borrower.

Exclude forward contracts and other commitments that meet the definition of a derivative and must be accounted for in accordance with FASB Accounting Standards Codifications Subtopic 815–10, Derivatives and Hedging—Overall (formerly referred to as Statement No. 133), which should be reported in Schedule HC–L, item 13. Include the amount (not the fair value) of the unused portions of loan commitments that do not meet the definition of a derivative that the bank holding company has elected to report at fair value under a fair value option. Also include forward contracts that do not meet the definition of a derivative.

The unused portions of commitments are to be reported in the appropriate subitem regardless of whether they contain "material adverse change" clauses or other provisions that are intended to relieve the issuer of its funding obligations under certain conditions and regardless of whether they are unconditionally cancelable at any time.

In the case of commitments for syndicated loans, report only the bank holding company's proportional share of the commitment.

For purposes of reporting the unused portions of revolving asset-based lending commitments, the commitment is defined as the amount a bank holding company is obligated to fund—as of the report date—based on the contractually agreed upon terms. In the case of revolving asset-based lending, the unused portions of such commitments should be measured as the difference between (a) the lesser of the contractual borrowing base (*i.e.,* eligible collateral times the advance rate) or the note commitment limit, and (b) the sum of outstanding loans and letters of credit under the commitment. The note commitment limit is the overall maximum loan amount beyond which the bank holding company will not advance funds regardless of the amount of collateral posted. This definition of "commitment" is applicable only to revolving asset-based lending, which is a specialized form of secured lending in which a borrower uses current assets (*e.g.,* accounts receivable and inventory) as collateral for a loan. The loan is structured so that the amount of credit is limited by the value of the collateral.

B. Additional Categories of Unused Commitments and Loans

The extent to which banks and other financial intermediaries are reducing the supply of credit during the current financial crisis has been of great interest to the Federal Reserve and to Congress. Also, BHC lending plays a central role in any economic recovery and the Federal Reserve needs data to better determine when credit conditions ease. One way to measure the supply of credit is to analyze the change in total lending commitments by BHCs, considering both the amount of loans outstanding and the volume of unused credit lines. These data are also needed for safety and soundness purposes because draws on commitments during periods when BHCs face significant funding pressures, such as during the Fall of 2008, can place significant and unexpected demands on the liquidity and capital positions of BHCs. Therefore, the Federal Reserve proposed breaking out in further detail two categories of unused commitments on Schedule HC–L, Derivatives and Off-Balance-Sheet Items. The Federal Reserve also proposed to break out in further detail one new loan category on Schedule HC–C, Loans and Lease Financing Receivables. These new data items would improve the Federal Reserve's ability to get timely and accurate readings on the supply of credit to households and businesses. These data would also be useful in determining the effectiveness of the government's economic stabilization programs.

Unused commitments associated with credit card lines are currently reported in Schedule HC–L, data item 1.b. This data item is not meaningful for monitoring the supply of credit because it mixes consumer credit card lines with credit card lines for businesses and other entities. As a result of this aggregation, it is not possible to fully monitor credit available specifically to households. Furthermore, the Federal Reserve would benefit from the split because the usage patterns, profitability, and evolution of credit quality through the business cycle are likely to differ for consumer credit cards and business credit cards. Therefore, the Federal Reserve proposed to split Schedule HC–L, data item 1.b into unused consumer credit card lines and other unused credit card lines. Draws from these credit lines that have not been sold are already reported on Schedule HC–C. For example, BHCs must report draws on credit cards issued to nonfarm nonfinancial businesses as commercial and industrial (C&I) loans in Schedule HC–C, data item 4, and draws on personal credit cards as consumer loans in Schedule HC–C, data item 6.a.

Schedule HC–L, data item 1.e, aggregates all other unused commitments and includes unused commitments to fund C&I loans (other than credit card lines to commercial and industrial enterprises, which are reported in data item 1.b, and commitments to fund commercial real estate, construction, and land development loans not secured by real estate, which are reported in data item 1.c.(2)). Separating these C&I lending commitments from the other commitments included in other unused commitments would considerably improve the Federal Reserve's ability to analyze business credit conditions. A very large percentage of banks responding to the Federal Reserve's Senior Loan Officer Opinion Survey on Bank Lending Practices (FR 2018; OMB No. 7100–0058) reported having tightened lending policies for C&I loans and credit lines during 2008; however, C&I loans on banks' balance sheets expanded through the end of October 2008, reportedly as a result of substantial draws on existing credit lines. In contrast, other unused commitments reported on the Call Report contracted. Without the proposed breakouts of such commitments, it was not possible to know how total business borrowing capacity had changed. The FR 2018 data do not suffice because they are qualitative rather than quantitative and are collected only from a sample of institutions up to six times per year. Having the additional unused commitment data reported separately on the FR Y–9C (and Call Report), along with the proposed changes to schedule HC–C described below, would have indicated more clearly whether there was a widespread restriction in new credit available to businesses.

Therefore, the Federal Reserve proposed to split Schedule HC–L, data item 1.e into three categories: (1) Unused commitments to fund commercial and industrial loans (which would include only commitments not reported in Schedule HC–L, data items 1.b and 1.c(2), for loans that, when funded, would be reported in Schedule HC–C, data item 4), (2) unused commitments to fund loans to financial institutions (defined to include depository institutions and nondepository institutions such as real estate investment trusts, mortgage

companies, holding companies of other depository institutions, insurance companies, finance companies, mortgage finance companies, factors and other financial intermediaries, short-term business credit institutions, personal finance companies, investment banks, bank's own trust department, other domestic and foreign financial intermediaries, and Small Business Investment Companies), and (3) all other unused commitments.

With respect to Schedule HC–C, the Federal Reserve proposed to split data item 9.b for all other loans into loans to nondepository financial institutions (as defined above) and all other loans. BHCs already report data on loans to depository institutions in Schedule HC–C, data item 2. This change to schedule HC–C would allow the Federal Reserve to fully analyze the information gained by splitting data item 1.e on Schedule HC–L. Lending by nondepository financial institutions was a key characteristic of the recent credit cycle and many such institutions failed, but little information existed on the exposure of the banking system to those firms as this information was obscured by the current structure of the FR Y–9C and Call Report loan schedule. The proposed addition of separate data items for unused commitments to financial institutions and loans to nondepository financial institutions, together with the existing data on loans to depository institutions, would allow supervisors and other interested parties to more closely monitor the exposure of individual BHCs to financial institutions and to assess the impact that changes in the credit availability to this sector have on the economy.

Two commenters addressed these proposed revisions to Schedules HC–L and HC–C. The bankers' organization indicated that the proposed revisions relating to additional categories of unused commitments were acceptable. One bank expressed support for the proposed reporting of unused commitments and loans to nondepository financial institutions, agreeing that this information would be useful to the Federal Reserve and the banking agencies in their monitoring of lending activity. However, this bank also asserted that the instructions for categorizing loans in Schedule HC–C "are complex, require considerable effort, and introduce the potential for inconsistency across reporting institutions." The bank asked the Federal Reserve and the banking agencies to consider simplifying the loan categorization requirements by "(1) consolidating reporting categories, where feasible, (2) creating a decision tree matrix with prioritization for competing criteria, and (3) recommending the use of more objective criteria (such as SIC classifications)." The Federal Reserve periodically reviews the reporting categories used in Schedule HC–C and have found that additional loan categories are needed to better monitor the credit risk profiles of individual institutions and the industry as a whole, to assess credit availability, and to conduct the Federal Reserve's other activities. When assigning loans to the loan categories in Schedule HC–C, the schedule already assigns priority to loans secured by real estate, regardless of borrower loan purpose. Loans that do not meet the definition of the term loan secured by real estate are then categorized by borrower or purpose. The Federal Reserve believes the remaining loan categories (*e.g.,* loans to depository institutions; commercial and industrial loans; loans to individuals for household, family, and other personal expenditures; and loans to foreign governments and official institutions) are sufficiently distinct from one another. The instructions for Schedule HC–C provide detailed descriptions of the types of loans and borrowers that fall within the scope of each loan category.

C. Effect of New Accounting Standards on Schedule HC–S, Servicing, Securitization, and Asset Sale Activities

On June 12, 2009, the Financial Accounting Standards Board (FASB) issued FAS Statements Nos. 166 and 167, which revise the existing standards governing the accounting for financial asset transfers and the consolidation of variable interest entities. FAS Statement No. 166 eliminates the concept of a qualifying special-purpose entity, changes the requirements for derecognizing financial assets, and requires additional disclosures. FAS Statement No. 167 changes how a company determines when an entity that is insufficiently capitalized or is not controlled through voting (or similar rights) should be consolidated. This consolidation determination is based on, among other things, an entity's purpose and design and a company's ability to direct the activities of the entity that most significantly impact the entity's economic performance.[2] In general, the revised standards took effect January 1, 2010. The standards are expected to cause a substantial volume of assets in banking organization-sponsored entities associated with securitization and structured finance activities to be brought onto BHCs balance sheets.

The Federal Reserve currently collects data on BHCs' securitization and structured finance activities in Schedule HC–S, Servicing, Securitization, and Asset Sale Activities. The Federal Reserve will continue to collect Schedule HC–S after the effective date of FAS Statements Nos. 166 and 167 and BHCs should continue to complete this schedule in accordance with its existing instructions, taking into account the changes in accounting brought about by these two FASB statements. In this regard, data items 1 through 8 of Schedule HC–S involve the reporting of information for securitizations that the reporting BHC has accounted for as sales. Therefore, after the effective date of FAS Statements Nos. 166 and 167, a BHC should report information in data items 1 through 8 only for those securitizations for which the transferred assets qualify for sale accounting or are otherwise not carried as assets on the BHC's consolidated balance sheet. Thus, if a securitization transaction that qualified for sale accounting prior to the effective date of FAS Statements Nos. 166 and 167 must be brought back onto the reporting BHC's consolidated balance sheet upon adoption of these statements, the BHC would no longer report information about the securitization in data items 1 through 8 of Schedule HC–S.

Data items 11 and 12 of Schedule HC–S are applicable to assets that the reporting BHC has sold with recourse or other seller-provided credit enhancements, but has not securitized. In Memorandum item 1 of Schedule HC–S, a BHC reports certain transfers of small business obligations with recourse that qualifies for sale accounting. The scope of these data items will continue to be limited to such sold financial assets after the effective date of FAS Statements Nos. 166 and 167. In Memorandum item 2 of Schedule HC–S, a BHC currently reports the outstanding principal balance of loans and other financial assets that it services for others when the servicing has been purchased or when the assets have been originated or purchased and subsequently sold with servicing retained. Thus, after the effective date of FAS Statements Nos. 166 and 167, a BHC should continue to report retained servicing for those assets or portions of assets reported as sold as well as purchased servicing in Memorandum item 2. Finally, Memorandum item 3 of Schedule HC–S collects data on asset-

[2] FASB News Release, June 12, 2009, *http://www.fasb.org/cs/ContentServer?c=FASBContent_C&pagename=FASB/FASBContent_C/NewsPage&cid=1176156240834&pf=true.*

backed commercial paper conduits regardless of whether the reporting BHC must consolidate the conduit in accordance with FASB Interpretation No. 46(R). This will continue to be the case after the effective date of FAS Statement No. 167, which amended this FASB interpretation.

The Federal Reserve plans to evaluate the disclosure requirements in FAS Statements Nos. 166 and 167 and the disclosure practices that develop in response to these requirements. This evaluation will assist the Federal Reserve in determining the need for revisions to Schedule HC–S that will improve its ability to assess the nature and scope of BHCs' involvement with securitization and structured finance activities, including those accounted for as sales and those accounted for as secured borrowings. Such revisions, which would not be implemented before March 2011, would be incorporated into a formal proposal that the Federal Reserve would then publish with a request for comment in accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA).

The bankers' organization commented on the reporting of information associated with securitization and structured finance activities and recommended that information be required in Schedule HC–S for assets that must be consolidated under FAS Statements Nos. 166 and 167 that are held as securities by third parties as well as any applicable loan loss allowances and related deferred tax assets. The Federal Reserve will consider these recommendations as we evaluate our data needs with respect to on-balance-sheet securitizations and structured finance transactions. Any resulting potential new reporting requirements would be incorporated into the formal proposal mentioned above.

D. Assets Covered by FDIC Loss-Sharing Agreements

The bankers' organization requested that the Federal Reserve revise the FR Y–9C to collect information on loss-sharing agreements with the FDIC even though this had not been proposed by the Federal Reserve. The organization noted that there is currently no guidance on how a BHC that acquires a failed bank should report any loss-sharing agreement in the FR Y–9C. It also stated that the FR Y–9C does not provide users with a "readily accessible summary of the [bank holding company's] net exposures on assets that are subject to loss-share agreements." The organization observed that "[t]his will become an increasingly important long-term and more common reporting issue as additional failed banks are acquired from the FDIC under a loss-share agreement."

Under loss sharing, the FDIC agrees to absorb a portion of the loss on a specified pool of a failed institution's assets in order to maximize asset recoveries and minimize the FDIC's losses. In general, the FDIC will reimburse 80 percent of losses incurred by an acquiring institution on covered assets over a specified period of time up to a stated threshold amount, with the acquirer absorbing 20 percent. Any losses above the stated threshold amount will be reimbursed by the FDIC at 95 percent of the losses booked by the acquirer. Over the past year, the FDIC has entered into loss-sharing agreements with acquiring institutions in connection with approximately 80 failed banks and thrifts. Some acquiring institutions have been involved in multiple failed institution acquisitions. The continued use of loss-sharing agreements is expected in connection with the resolution of failures of insured institutions by the FDIC. Assets covered by loss-sharing agreements include, but are not limited to, loans, other real estate, and debt securities.

As the bankers' organization indicated, the FR Y–9C does not include a "readily accessible summary" of assets that reporting BHCs have acquired from failed institutions that are covered by FDIC loss-sharing agreements. Any covered loans and leases that are past due 30 days or more or are in nonaccrual status are reportable in data items 11 and 11.a of Schedule HC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, as loans and leases that are wholly or partially guaranteed by the U.S. Government. However, these data items would also include loans and leases guaranteed by other U.S. Government agencies (such as the Small Business Administration and the Federal Housing Administration) that are past due 30 days or more or are in nonaccrual status and they would exclude loans and leases covered by FDIC loss-sharing agreements that do not meet these past due or nonaccrual reporting conditions as of the report date. Thus, the amount of covered loans and leases is not readily identifiable from the FR Y–9C and the amount of other covered assets cannot be determined at all from the FR Y–9C.

The Federal Reserve agrees with the bankers' organization that the reporting of summary data on covered assets would be beneficial to FR Y–9C report users and to BHCs holding covered assets. Therefore, the Federal Reserve will add such a summary to FR Y–9C Schedule HC–M, Memoranda, effective as of March 31, 2010. In this summary, BHCs that have entered into loss-sharing agreements with the FDIC will separately report the carrying amounts of loans and leases, other real estate owned, debt securities, and other assets covered by such agreements. The Federal Reserve will also consider whether the collection of additional information concerning covered assets would be warranted and, if so, it would be incorporated into a formal proposal that the Federal Reserve would then publish with a request for comment in accordance with the requirements of the PRA.

2. *Report title:* Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies.

Agency form number: FR Y–11.

OMB control number: 7100–0244.

Frequency: Quarterly and annually.

Reporters: BHCs.

Estimated annual reporting hours: FR Y–11 (quarterly), 15,504 hours; and FR Y–11 (annual), 1,802 hours.

Estimated average hours per response: FR Y–11 (quarterly), 6.80 hours; and FR Y–11 (annual), 6.80 hours.

Number of respondents: FR Y–11 (quarterly), 570; and FR Y–11 (annual), 265.

General description of report: This information collection is mandatory (12 U.S.C. §§ 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6)and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6) and (b)(8)).

Abstract: The FR Y–11 reports collect financial information for individual non-functionally regulated U.S. nonbank subsidiaries of domestic BHCs. BHCs file the FR Y–11 on a quarterly or annual basis according to filing criteria. The FR Y–11 data are used with other BHC data to assess the condition of BHCs that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

Current Actions: On September 25, 2009, the Federal Reserve published a notice in the **Federal Register** (74 FR 48960) requesting public comment for 60 days on the revision, without extension, of the FR Y–11. The comment period for this notice expired on November 24, 2009. The Federal Reserve did not receive any comments; the revisions will be implemented as proposed.

3. *Report title:* Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314.

OMB control number: 7100–0073.

Frequency: Quarterly and annually.

Reporters: U.S. state member banks (SMBs), BHCs, and Edge or agreement corporations.

Estimated annual reporting hours: FR 2314 (quarterly), 15,365 hours; and FR 2314 (annual), 1,313 hours.

Estimated average hours per response: FR 2314 (quarterly), 6.60 hours; and FR 2314 (annual), 6.60 hours.

Number of respondents: FR 2314 (quarterly), 582; and FR 2314 (annual), 199.

General description of report: This information collection is mandatory (12 U.S.C. §§ 324, 602, 625, and 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act (5 U.S.C. §§ 552(b)(4) (b)(6) and (b)(8)).

Abstract: The FR 2314 reports collect financial information for non-functionally regulated direct or indirect foreign subsidiaries of U.S. SMBs, Edge and agreement corporations, and BHCs. Parent organizations (SMBs, Edge and agreement corporations, or BHCs) file the FR 2314 on a quarterly or annual basis according to filing criteria. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

Current Actions: On September 25, 2009, the Federal Reserve published a notice in the **Federal Register** (74 FR 48960) requesting public comment for 60 days on the revision, without extension, of the FR 2314. The comment period for this notice expired on November 24, 2009. The Federal Reserve did not receive any comments; the revisions will be implemented as proposed.

4. *Report title:* Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations.

Agency form number: FR Y–7N.

OMB control number: 7100–0125.

Frequency: Quarterly and annually.

Reporters: Foreign banking organizations (FBOs).

Estimated annual reporting hours: FR Y–7N (quarterly), 4,787 hours; and FR Y–7N (annual), 1,387 hours.

Estimated average hours per response: FR Y–7N (quarterly), 6.8 hours; and FR Y–7N (annual), 6.8 hours.

Number of respondents: FR Y–7N (quarterly), 176; and FR Y–7N (annual), 204.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c), 3106(c), and 3108). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for information, in whole or in part, on any of the reporting forms can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 522(b)(4) and (b)(6)).

Abstract: The FR Y–7N collects financial information for non-functionally regulated U.S. nonbank subsidiaries held by FBOs other than through a U.S. BHC, U.S. FHC, or U.S. bank. FBOs file the FR Y–7N on a quarterly or annual basis based on size thresholds.

Current Actions: On September 25, 2009, the Federal Reserve published a notice in the **Federal Register** (74 FR 48960) requesting public comment for 60 days on the revision, without extension, of the FR Y–7N. The comment period for this notice expired on November 24, 2009. The Federal Reserve did not receive any comments; the revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, February 24, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–4118 Filed 2–26–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–00XX]

Submission for OMB Review; Information Regarding Responsibility Matters

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding Information Regarding Responsibility Matters.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before March 31, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVCB), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–00XX, Information Regarding Responsibility Matters, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Millisa Gary, Procurement Analyst, Contract Policy Branch, at (202) 501–0699 or *millisa.gary@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The collection of new information is in compliance with section 872 of the Duncan Hunter National Defense Authorization Act of 2009 (Pub. L. 110–417), enacted on October 14, 2008. Section 872 of the Act requires the General Services Administration (GSA) to develop and maintain a database containing specific information on the integrity and performance of covered Federal agency contractors and grantees.

Section 872 defines a covered person as any person awarded a Federal agency contract or grant in excess of $500,000 and any person awarded "such other category or categories of Federal agency contract as the FAR may provide * * *" Information to be included in the data system is listed in section 872 and must cover the most recent five-year period for—

i. Each civil or criminal proceeding, or any administrative proceeding in connection with the award or performance of a contract or grant with the Federal government during the period when the proceeding results in one or more of the following:

A. A criminal proceeding resulting in a conviction.

B. A civil proceeding resulting in a finding of fault and liability that results in payment of a monetary amount of $5,000 or more.

C. An administrative proceeding resulting in a finding of fault and liability that results in payment of a monetary fine or penalty of $5,000 or more; or payment of a monetary reimbursement, restitution, or damages in excess of $100,000.

D. A disposition of the matter by consent or compromise with an acknowledgment of fault by the covered person if the proceeding could have led to any of the outcomes specified in subparagraphs A, B, or C above.

ii. Each Federal contract and grant awarded to the person that was terminated due to default.

iii. Each Federal administrative agreement entered into between the person and the Federal Government to resolve a suspension or debarment proceeding.

iv. Each final finding by a Federal official that the person has been determined not to be a responsible source pursuant to subparagraph (C) or (D) of section 4(7) of the OFPP Act (41 U.S.C.403(7)).

v. Such other information as shall be provided for purposes of this section in the FAR.

vi. To the maximum extent practical, information similar to that mentioned in subparagraphs I, ii, and iii, in connection with the award or performance of a contract or grant with a State Government.

A new solicitation provision has been developed for inclusion in solicitations expected to result in a contract of $500,000 or more. A new provision (FAR 52.209–XX, Information Regarding Responsibility Matters) will require each offeror to check a box indicating whether it has, or has not, current Federal Government contracts and grants totaling $10,000,000 or more. If the offeror checks the box indicating that it does not currently have contracts and grants of at least $10,000,000, that is the extent of the information collection. If, however, the offeror checks the box indicating that it does currently have contracts and grants of at least $10,000,000, and the offeror has not updated its Central Contactor Registration (CCR) database in the last six months, then the offeror is obligated to go to the CCR web site and enter the following information:

"52.209–XX (c)

(1) (i) Whether the offeror, and/or any of its principals, has or has not, within the last five years, been involved in a civil or criminal proceeding, or any administrative proceeding, in connection with the award to or performance by the offeror of a Federal or State contract or grant, to the extent that such proceeding resulted in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

(C) In an administrative proceeding, a finding of fault and liability that results in—

(1) The payment of a monetary fine or penalty of $5,000 or more; or

(2) The payment of a reimbursement, restitution, or damages in excess of $100,000.

(D) To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in subparagraphs (i), (ii), or (iii).

(ii) If the offeror checked "has" to the information request in (b)(1)(i), the offeror shall provide the requested information with regard to each occurrence."

In addition, the final rule includes a new clause that requires Contractors to semi-annually update of the information in Federal Awardee Performance and Integrity Information Systems (FAPIIS).

The final rule requires for every solicitation of $500,000 or more that the offeror respond whether it has, or has not, current contracts and grants under performance that total at least $10,000,000. Only if the offeror responds affirmatively is there any further information collection requirement. Given that the amount of current Federal contracts and grants is basic knowledge for any firm, the estimated number of hours for this initial response is 0.1 hours. Using data from the Federal Procurement Data System—Next Generation (FPDS–NG), we estimate that there will be approximately 12,000–14,000 contracts over $500,000 each year. Estimating between five and six responses to each solicitation, then believe there will be 80,000 responses annually to the "has/has not" question.

We expect that 5,000 contractors will answer the first question affirmatively and then will have to enter data into the website. We have used a burden estimate of 0.5 hours to enter the company's data into the website. This time estimate does not include the time necessary to maintain the company's information internally. Most large businesses and some small businesses probably have established systems to track compliance. At this time, all or most Government contractors have entered relevant company data in the Central Contractor Registration (CCR) in accordance with another information collection requirement. Therefore, the estimate includes an average of 100 hours per year for recordkeeping for each of the 5,000 respondents to the request for additional information, for a total of 500,000 annual recordkeeping hours.

Annual Reporting Burden

Initial response:	
Respondents	*8,000*
Responses per respondent	*× 10*
Total annual responses	*80,000*
Total response burden hours	*8,000*
Additional response:	
Total annual responses	*10,000*
Total response burden hours	*5,000*
Recordkeeping hours	*500,000*
Total burden hours	*505,000*

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–00XX, Information Regarding Responsibility Matters, in all correspondence.

Dated: February 23, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–4057 Filed 2–26–10; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

Notice of Availability Record of Decision for the Update to the Master Plan for the Consolidation of the Food and Drug Administration Headquarters at the Federal Research Center at White Oak in Silver Spring, MD

AGENCY: U.S. General Service Administration (GSA); National Capital Region.

ACTION: Notice; record of decision.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), GSA Order PBS P1095.1F (Environmental considerations in decisionmaking, date October 19, 1999), and the GSA Public

Buildings Service NEPA Desk Guide, GSA has signed a Record of Decision (ROD) for the update to the Master Plan to support the consolidation of the Food and Drug Administration (FDA) Headquarters at the Federal Research Center at White Oak in Silver Spring, Maryland. The ROD identifies that Alternative 2: Dispersed Density Action Alternative, as defined in the *FDA Headquarters Consolidation Master Plan Update Final Supplemental Environmental Impact Statement (EIS)* (GSA, July 2009), is the alternative selected for implementation. The complete ROD can be viewed at: *http://www.gsa.gov/ncrnep*a.

FOR FURTHER INFORMATION CONTACT: Suzanne Hill, NEPA Lead, General Services Administration, National Capital Region, at (202) 205–5821.

SUPPLEMENTARY INFORMATION: *Decision:*

It is the decision of the Acting Regional Administrator of GSA, National Capital Region to: Implement Alternative 2: Dispersed Density Action Alternative. This alternative includes the following:

(1) Construction of facilities to accommodate the increase of FDA employees from 7,719 to 8,889;

(2) Construction of a new office building on the northwestern portion of the site;

(3) Relocation of the 21,000-square foot Child Care Center and 25,000-square foot Broadcast Studio;

(4) Construction of a 10,000-square foot fitness center;

(5) Expansion of the CUP by 50,000-square feet and construction of a thermal water storage tank;

(6) Construction of a 300,000 gallon elevated water storage tank for potable water; and

(7) Elimination of the need for an antenna farm because of advances in technology.

Background

In 1997, GSA completed an environmental impact statement that analyzed the impacts from the consolidation of 5,974 FDA employees at the FRC. In 2005, GSA also completed a supplemental environmental impact statement that analyzed the impacts of increasing the number of employees from 5,947 to 7,720 and the impacts of creating a new eastern access point into the FRC. In September 2007, new legislation was enacted that expanded FDA's mandate to support the Prescription Drug User Fee Act (PDUFA) and the Medical Device User Fee and Modernization Act (MDUFMA). In order for FDA to fulfill the legislated mandates, additional employees may be needed, and the new legislation will likely result in an increase of employees at the FRC from 7,720 to 8,889. The increase in the campus population is needed to conduct the complex and comprehensive reviews necessary for new drugs and medical devices.

The purpose of the action is to update the Master Plan for the FDA Campus at FRC to accommodate employee growth from 7,720 to 8,889 within the 130 acres appropriated by Congress for the FDA Campus. Need for the proposed action is to continue to support FDA Headquarters consolidation at FRC and provide the necessary office and laboratory space to support the expanded PDUFA and MDUFMA programs.

The ROD documents the specific components of and rationale for GSA's decision. This decision is based on analyses contained in the Draft Supplemental EIS issued March 2009; the Final Supplemental EIS issued in July 2009; the comments of Federal, state, and local agencies, members of the public, and elected officials; and other information in the administrative record.

Issued September 2, 2009 by Sharon J. Banks, Acting Regional Administrator, General Services Administration, National Capital Region.

February 16, 2010.

Patricia T. Ralston,

Director, Portfolio Management, Public Buildings Service, National Capital Region.

[FR Doc. 2010–4120 Filed 2–26–10; 8:45 am]

BILLING CODE 6820–23–P

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement for the Otay Mesa Land Port of Entry

AGENCY: General Services Administration.

ACTION: Notice of Intent.

SUMMARY: The General Services Administration (GSA) announces its intent to prepare an Environmental Impact Statement (EIS) for the modernization of the Otay Mesa Land Port of Entry (LPOE) in San Diego, California. The project will modernize the existing port to improve its functionality, capacity, and security.

The facility currently handles all traffic modes, including commercial vehicles, buses, privately operated vehicles (POVs), and pedestrians. Built in 1984 and expanded in 1994 to accommodate new commercial facilities and southbound commercial traffic, the existing 10 commercial and 13 POV booths no longer meet the Department of Homeland Security (DHS) security standards and are incapable of adequately handling current and projected traffic volumes.

GSA proposes to modernize the current port by remodeling, improving and expanding the existing facility through the acquisition of approximately 10 acres of land along the eastern boundary of the port. The modernized POV port will accommodate 24 primary booths for northbound inspection with future accommodation of another 12 booths. Roadway modifications within the port will be designed to improve traffic circulation through the LPOE and to enhance pedestrian safety. The commercial import facility will accommodate 12 primary booths and be modified to safely expedite truck inspections and decrease wait times. Energy conservation and sustainability provisions will be applied throughout the facility.

The EIS will evaluate the potential environmental impacts associated with alternatives to implement the proposed action described below, including the No Action Alternative:

Alternative 1—*POV/Commercial LPOE:* GSA will modernize the existing Otay Mesa LPOE to accommodate 12 commercial lanes and a combination of 24 POV/bus lanes. Approximately 10 acres of adjacent land on the east side of the LPOE will be acquired which will modernize the facility to accommodate modern operational requirements.

Alternative 2—*Multimodal/Commercial LPOE:* GSA will modernize the existing Otay Mesa LPOE as mentioned in Alternative 1 and integrate long range pedestrian and public transit capabilities.

Alternative 3—*No Action:* Continue operations at the existing LPOE facilities as they are currently configured.

FOR FURTHER INFORMATION CONTACT: Maureen Sheehan by phone at 253–931–7548 or by e-mail at *Maureen.Sheehan@gsa.gov.*

SUPPLEMENTARY INFORMATION: The scoping process has involved newspaper announcements in the San Diego Union Tribune on June 18, 2009 and in the Hispanos Unidos Spanish language newspaper on June 19, 2009. A project fact sheet has been distributed among likely stakeholders and one notice was placed in the July/August 2009 edition of the Otay Action Newsletter distributed by the Otay Mesa Chamber of Commerce. All announced open house was held within the community at the Otay Mesa Holiday

Inn Express on July 7, 2009. All public materials presented at the open house were made available in English and Spanish. The purpose of the open house was to present information about the project and to receive input from the public regarding concerns or issues with the existing condition of the Otay Mesa LPOE and the proposed action. The public was also provided the opportunity to comment on the project by means of a form provided with the fact sheet and at the open house, or electronically via the project e-mail address (*GSAOtayMesa@parsons.com*). Comments were accepted by any of the means described above through August 7, 2009.

Twenty-six individuals attended the open house (excluding GSA project and contractor staff—five individuals), with the majority of those attending associated with a federal, state, or local agency. Comments were provided during discussions about the project with GSA and contractor staff. Written comments were provided by three emails and one letter. These communications suggested that there is a high degree of controversy surrounding the underwriting of local infrastructure needs associated with the project. GSA has therefore decided to prepare an EIS per GSA NEPA Desk Guide (1999; Section 7.4):

Acquisition of space by Federal construction or lease construction, or expansion or improvement of an existing facility, where one or more of the following applies:

** * * The proposed use will substantially increase the number of motor vehicles at the facility;*

** * * There is evidence of current or potential community controversy about environmental justice or other environmental issues.*

Dated: February 9, 2010.

Abdee Gharavi,

Program Director for Land Port of Entry.

[FR Doc. 2010–4188 Filed 2–26–10; 8:45 am]

BILLING CODE 6820–YF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging Agency Information Collection Activities; Proposed Collection; Comment Request; Extension of a Currently Approved Information Collection; Program Announcement and Grant Application Instructions Template for the Older Americans Act Title IV Discretionary Grant Program

AGENCY: Administration on Aging, HHS.

ACTION: Notice

SUMMARY: The Administration on Aging (AoA) 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 information collection requirements relating to the standard Program Announcement and Grant Application Instructions template for Older Americans Act Title IV Discretionary Grant Program.

DATES: Submit written or electronic comments on the collection of information by April 30, 2010.

ADDRESSES: Submit electronic comments on the collection of information to: *lori.stalbaum@aoa.hhs.gov.*

Submit written comments on the collection of information to Lori Stalbaum, U.S. Administration on Aging, Washington, DC 20201 or by fax to (202) 357–3466.

FOR FURTHER INFORMATION CONTACT: Lori Stalbaum at (202) 357–3452 or *lori.stalbaum@aoa.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 request 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, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA'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.

AoA plans to submit to the Office of Management and Budget for approval *Program Announcement and Grant Application Instructions Template for the Older Americans Act Title IV Discretionary Grants Program.* The Program Announcement and Application Instructions provide the requirements and instructions for the submission of an application for funding opportunities of the Administration on Aging under Title IV of the Older Americans Act. Through its Title IV Program, the Administration on Aging (AoA) supports projects for the purpose of developing and testing new knowledge and program innovations with the potential for contributing to the well-being of older Americans. The Program Announcement template may be found on the AoA Web site at *http://www.aoa.gov/AoARoot/Grants/Funding/overview.aspx.* AoA estimates the burden of this collection of information as follows: *Frequency:* Based on the budget authorization for that Fiscal Year, AoA publishes 10 to 15 program announcements on average. *Respondents:* States, public agencies, private nonprofit agencies, institutions of higher education, and organizations including tribal organizations. *Estimated Number of Responses:* 300 annually. *Total Estimated Burden Hours:* 14,400.

Dated: February 24, 2010.

Kathy Greenlee,

Assistant Secretary for Aging.

[FR Doc. 2010–4112 Filed 2–26–10; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human

Services (DHHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should e-mail *acmh@osophs.dhhs.gov.*

DATES: The meeting will be held on Tuesday, April 6, 2010 from 9 a.m. to 5 p.m. and Wednesday, April 7, 2010 from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 1515 Rhode Island Ave., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–2882 Fax: 240–453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during this meeting will include strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities, as well as other related issues.

Public attendance at the meeting is 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 designated contact person at least fourteen (14) business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least seven (7) business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Executive Secretary, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business March 30, 2010.

Dated: February 24, 2010.

Garth N. Graham,

Deputy Assistant Secretary for Minority Health, Office of Minority Health, Office of Public Health and Science, Office of the Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2010–4123 Filed 2–26–10; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

Proposed Project: Survey of State Underage Drinking Prevention Policies and Practices—New

The *Sober Truth on Preventing Underage Drinking Act* (the "STOP Act")[1] states that the "Secretary [of Health and Human Services] shall * * * annually issue a report on each State's performance in enacting, enforcing, and creating laws, regulations, and programs to prevent or reduce underage drinking." The Secretary has delegated responsibility for this report to SAMHSA. Therefore, SAMHSA is developing a *Survey of State Underage Drinking Prevention Policies and Practices* (the "*State Survey*") to provide input for an *Annual Report on State Underage Drinking Prevention and Enforcement Activities* (the "State Report").

The STOP Act also requires the Secretary to develop "a set of measures to be used in preparing the report on best practices" and to consider categories including but not limited to the following:

Category #1: Sixteen specific underage drinking laws/regulations enacted at the State level (*e.g.,* laws prohibiting sales to minors; laws related to minors in possession of alcohol);

Category #2: Enforcement and educational programs to promote compliance with these laws/regulations;

Category #3: Programs targeted to youths, parents, and caregivers to deter underage drinking and the number of individuals served by these programs;

Category #4: The amount that each State invests, per youth capita, on the prevention of underage drinking broken into five categories: (a) Compliance check programs in retail outlets; (b) Checkpoints and saturation patrols that include the goal of reducing and deterring underage drinking; (c) Community-based, school-based, and higher-education-based programs to prevent underage drinking; (d) Underage drinking prevention programs that target youth within the juvenile justice and child welfare systems; and (e) Any other State efforts or programs that target underage drinking.

Congress' purpose in mandating the collection of data on State policies and programs through the *State Survey* is to provide policymakers and the public with currently unavailable but much needed information regarding State underage drinking prevention policies and programs. SAMHSA and other Federal agencies that have underage drinking prevention as part of their mandate will use the results of the *State Survey* to inform Federal programmatic priorities. The information gathered by the *State Survey* will also establish a resource for State agencies and the general public for assessing policies and programs in their own State and for becoming familiar with the programs, policies, and funding priorities of other States.

Because of the broad scope of data required by the STOP Act, SAMHSA will rely on existing data sources where possible to minimize the survey burden on the States. SAMHSA will employ data on State underage drinking policies from the National Institute of Alcohol Abuse and Alcoholism's Alcohol Policy

[1] Public Law 109–422. It is assumed Congress intended to include the District of Columbia as part of the State Report.

Information System (APIS), an authoritative compendium of State alcohol-related laws. The APIS data will be augmented by SAMHSA with original legal research on State laws and policies addressing underage drinking to include all of the STOP Act's requested laws and regulations (Category #1 of the four categories included in the STOP Act, as described above, page 2).

The STOP Act mandates that the *State Survey* assess "best practices" and emphasize the importance of building collaborations with Federally Recognized Tribal Governments ("Tribal Governments"). It also emphasizes the importance at the Federal level of promoting interagency collaboration and to that end established the Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD). SAMHSA has determined that to fulfill the Congressional intent, it is critical that the *State Survey* gather information from the States regarding the best practices standards that they apply to their underage drinking programs, collaborations between States and Tribal Governments, and the development of State-level interagency collaborations similar to ICCPUD.

SAMHSA has determined that data on Categories #2, #3, and #4 mandated in the STOP Act (as listed on page 2) (enforcement and educational programs; programs targeting youth, parents, and caregivers; and State expenditures) as well as States' best practices standards, collaborations with Tribal Governments, and State-level interagency collaborations *are not available from secondary sources* and therefore must be collected from the States themselves. The *State Survey* will therefore be necessary to fulfill the Congressional mandate found in the STOP Act.

The *State Survey* is a single document that is divided into four sections, as follows:

(1) Enforcement of underage drinking prevention laws;

(2) Underage drinking prevention programs, including data on State best practices standards and collaborations with Tribal Governments;

(3) State interagency collaborations used to implement the above programs; and

(4) Estimates of the State funds invested in the categories specified in the STOP Act (see description of Category #4, above, page 2) and descriptions of any dedicated fees, taxes or fines used to raise these funds.

The number of questions in each Section is as follows:

Section 1: *29 questions*
Section 2A: *18 questions* [2]
Section 2B: *6 questions* [3]
Section 2C: *6 questions*
Section 3: *12 questions*
Section 4: *19 questions*
TOTAL: *90 Questions*

It is anticipated that respondents will actually respond to only a subset of this total. This is because the survey is designed with "skip logic," which means that many questions will only be directed to a subset of respondents who report the existence of particular programs or activities.

To ensure that the *State Survey* obtains the necessary data while minimizing the burden on the States, SAMHSA has conducted a lengthy and comprehensive planning process. It has sought advice from key stakeholders (as mandated by the STOP Act) including hosting an all-day stakeholders meeting, conducting two field tests with State officials likely to be responsible for completing the *State Survey,* and investigating and testing various *State Survey* formats, online delivery systems, and data collection methodologies.

Based on these investigations, SAMHSA has decided to collect the required data using an online survey instrument over an 8-week period. The *State Survey* will be sent to each State Governor's office and the Office of the Mayor of the District of Columbia, for a total of 51 survey respondents. Based on the feedback received from stakeholders and field pilot testers, it is anticipated that the State Governors will designate staff from State agencies that have access to the requested data (typically State Alcohol Beverage Control [ABC] agencies and State Substance Abuse Program agencies). SAMHSA will provide both telephone and online technical support to State agency staff and will emphasize that the States are only expected to provide data that is readily available and are not required to provide data that has not already been collected. The burden estimate below takes into account these assumptions.

The estimated annual response burden to collect this information is as follows:

Instrument	Number of respondents	Responses/ respondent	Burden/ response (hrs)	Annual burden (hrs)
State Questionnaire	51	1	17.7	902.7

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *and* e-mail a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: February 19, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–4117 Filed 2–26–10; 8:45 am]

BILLING CODE 4162–20–P

[2] Note that the number of questions in Sections 2A is an estimate. This Section asks States to identify their programs that are *specific* to underage drinking prevention. For each program identified there are six follow-up questions. Based on feedback from stakeholders and pilot testers, it is anticipated that States will report an average of three programs for a total of 18 questions.

[3] Note that the number of questions in Section 2B is an estimate. This Section asks States to identify their programs that are *related* to underage drinking prevention. For each program identified there are two follow-up questions. Based on feedback from stakeholders and pilot testers, it is anticipated that States will report an average of three such programs for a total of six questions.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–576A]

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:* Organ Procurement Organization's (OPO's) Health Insurance Benefits Agreement and Supporting Regulations at 42 CFR 486.301–486.348; *Use:* The information provided on this form serves as a basis for continuing the agreements with CMS and the 580 OPOs for participation in the Medicare and Medicaid programs for reimbursement of service. *Form Number:* CMS–576A (OMB#: 0938–0512); *Frequency:* Reporting—Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 58; *Total Annual Responses:* 58; *Total Annual Hours:* 116. (For policy questions regarding this collection contact Michele Walton at 410–786–3353. 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 31, 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 23, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–4186 Filed 2–26–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–10AD]

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

School Dismissal Monitoring System—New—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

During the spring 2009 H1N1 outbreak, the U.S. Department of Education (ED) and the Centers for Disease Control and Prevention (CDC) received numerous daily requests about the overall number of school dismissals nationwide including the number of students and teachers impacted by the outbreak. Illness among school-aged students (K–12) in many states and cities resulted in at least 1351 school dismissals due to rapidly increasing absenteeism among students or staff that impacted at least 824,966 students and 53,217 teachers.

Although a system was put in place to track school closures in conjunction with the Department of Education (ED), no formal monitoring system was established, making it difficult to monitor reports of school dismissal and to gauge the impact of the outbreak.

CDC has recently issued guidance for school closure for the 2009–2010 school year. To address the need to monitor reports of school closure, CDC and ED have established a School Dismissal Monitoring System to report on novel influenza A (H1N1)-related school or school district dismissals in the United States. Although the School Dismissal Monitoring System is currently approved to collect data under OMB Control Number 0920–0008, Emergency Epidemic Investigations, CDC would like to continue the data collection long term. Thus, CDC is requesting a separate OMB Control Number for this data collection.

The purpose of the School Dismissal Monitoring System is to generate accurate, real-time, national summary data daily on the number of school dismissals and the number of students and teachers impacted by the school dismissals. CDC will use the summary data to fully understand how schools are responding to CDC community mitigation guidance among schools, students, household contacts and for overall awareness of the impact of influenza outbreaks on school systems and communities.

Respondents are schools, school districts, and local public health agencies. Respondents will use a common reporting form to submit data to CDC. The reporting form includes the following data elements: Name of school district; zip code of school district; date the school or school district was dismissed; and the date school or school district is projected to reopen. Optional data elements include: name of person submitting information; the organization/agency; phone number of the organization/agency; and e-mail address. There is no cost to respondents other than their time to complete the data collection. The total annualized burden for this information collection request is 42 hours.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondent	Number of respondents	Responses per respondent	Average burden per respondent (in hours)
School, school district or public health department	500	1	5/60

Dated: February 24, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–4177 Filed 2–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–10BT]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam 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

National Quitline Data Warehouse — New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description:

Despite the high level of public knowledge about the adverse effects of smoking, tobacco use remains the leading preventable cause of disease and death in the United States. Tobacco use results in approximately 440,000 deaths annually, including approximately 38,000 deaths from secondhand smoke exposure. Adults who smoke contribute to $92 billion annually in lost worker productivity, and die an average of 14 years earlier than nonsmokers. Although the prevalence of current smoking among adults decreased significantly since its peak in the 1960s, overall smoking prevalence among U.S. adults has remained virtually unchanged during the past five years. Large disparities in smoking prevalence continue to exist among members of racial/ethnic minority groups and individuals of low socioeconomic status.

The National Tobacco Control Program (NTCP) was established by CDC to help reduce tobacco-related disease, disability, and death. The NTCP's four goal areas are: (1) The prevention of initiation of tobacco use among young people, (2) the elimination of nonsmokers' exposure to secondhand smoke, (3) the promotion of quitting among adults and young people, and (4) the elimination of tobacco-related disparities. The NTCP has provided funding for State quitlines, which provide telephone-based tobacco cessation services—including individualized counseling and self-help material—to help tobacco users quit. Quitlines overcome many of the barriers to tobacco cessation classes and traditional clinics because they are free and available at the caller's convenience. Quitline services in all States can be accessed through a toll-free national portal number at 1–800–QUIT–NOW. According to CDC's Best Practices for Comprehensive Tobacco Control, approximately six to eight percent of tobacco users potentially can be reached successfully by quitlines; however, currently, only one to two percent of tobacco users contact quitlines.

All States collect intake information about quitline callers and the services provided to them, but have varied with respect to the schedule for follow-up with callers, the number of follow-up attempts per caller, and the collection of information related to follow-up. With leadership from the North American Quitline Consortium (NAQC) and other tobacco control organizations, the field has collaborated to develop a Minimum Data Set (MDS) consisting of a set of suggested intake questions that should be asked of all callers, and follow-up questions that should be asked of a representative sample of callers who have both completed intake and received a quitline service.

CDC requests OMB approval to collect information for a National Quitline Data Warehouse (NDQW) based on a uniform follow-up protocol and standardized instruments adapted from the MDS. Respondents will be the 50 States, the District of Columbia, and Guam. Additional funding for the expansion of tobacco quitline services, standardization of the information collection, and transmission to the shared NQDW is provided under the *American Recovery and Reinvestment Act of 2009* (ARRA).

Intake information will be collected from approximately 60,833 callers per month over a 24-month period. Minimal information will be collected from callers who contact the Quitline on behalf of another person. The information collection will also include seven-month follow-up data from a random sample of approximately 3,400 callers per month across all States, beginning in month eight (*i.e.,* seven full months after the first intakes) and continuing through month 24. Finally, the Tobacco Control Manager for each ARRA awardee (State, district or territory) will be required to submit a quarterly report describing services provided. The quarterly report will be used to quantify improvements in the capacity of the quitlines to assist tobacco users over time and to evaluate the expenditure of Recovery Act dollars.

The NQDW will have significant implications for the development of policies and programs aimed at tobacco use cessation and reduction of tobacco use. The information to be collected in the NQDW will be used to determine the role quitlines are playing in promoting tobacco use cessation, measure the number of tobacco users being served by State Quitlines, determine reach of quitlines to high-risk populations (*e.g.,* racial and ethnic minorities and the medically underserved), measure the number using each State quitline who quit, determine whether some combinations of services contribute to higher quit rates than others, and improve the timeliness, access to, and quality of data collected by quitlines.

CDC requests OMB approval to collect information for a two-year period. All information will be collected electronically. There are no costs to respondents other than their time.

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)
Caller who contacts the Quitline on behalf of someone else.	Intake Questionnaire	230,000	1	1/60	3,833
Caller who contacts the Quitline for personal use.		500,000	1	10/60	83,333
Quitline caller who received a Quitline service.	Follow-up Questionnaire	28,900	1	7/60	3,372
Tobacco Control Manager	Quitline Services Questionnaire	52	4	7/60	24
Total					90,562

Dated: February 23, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–4164 Filed 2–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0084]

Agency Information Collection Activities; Proposed Collection; Comment Request; Pretesting of Tobacco Communications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on pretesting of tobacco communications.

DATES: Submit written or electronic comments on the collection of information by April 30, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, e-mail: *Jonnalynn.capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information 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.

Pretesting of Tobacco Communications

In order to conduct educational and public information programs relating to tobacco use, as authorized by section 903(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)) and to develop stronger health warnings on tobacco packaging as authorized by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), it is beneficial for FDA to conduct research and studies relating to the control and prevention of disease as authorized by section 301 of the Public Health Service Act (42 U.S.C 241(a)). In conducting such research, FDA will employ formative pretests to assess the likely effectiveness of tobacco communications with specific target audiences. The information collected will serve two major purposes. First, as formative research it will provide the critical knowledge needed about target audiences. FDA must first understand critical influences on people's decisionmaking process when choosing to use, not use, or quit using tobacco products. In addition to understanding the decisionmaking processes of adults, it is also critical to understand the decisionmaking processes among adolescents (ages 13 to 17), where communications will aim to discourage tobacco use before it starts. Knowledge of these decisionmaking processes will be applied by FDA to help design effective communication strategies, messages, and warning labels. Second, as initial testing, it will allow FDA to assess the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences. Pretesting messages with a sample of the target audience will allow FDA to refine messages while they are still in the developmental stage. By utilizing appropriate qualitative and quantitative methodologies, FDA will be able to: (1) Better understand characteristics of the target audience-its attitudes, beliefs, and behaviors-and use

these in the development of effective risk communications; (2) more efficiently and effectively design messages and select formats that have the greatest potential to influence the target audience's attitudes and behavior in a favorable way; (3) determine the best promotion and distribution channels to reach the target audience with appropriate messages; and (4) expend limited program resource dollars wisely and effectively. *Frequency of Response:* On occasion. *Affected Public*: Individuals or households; *Type of Respondents*: Members of the public, healthcare professionals; organizational representatives.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Respondents	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Adolescents 13–17, and Adults 18+	16,448	1	16,448	0.1739	2,860
Total					2,860

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–4098 Filed 2–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0066]

Agency Information Collection Activities; Proposed Collection; Comment Request; Human Tissue Intended for Transplantation

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 information collection requirements relating to FDA regulations for human tissue intended for transplantation.

DATES: Submit written or electronic comments on the collection of information by April 30, 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: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792.

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.

Human Tissue Intended for Transplantation—21 CFR Part 1270 (OMB Control Number 0910–0302)—Extension

Under section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264), FDA issued regulations under part 1270 (21 CFR part 1270) to prevent the transmission of human immunodeficiency virus (HIV), hepatitis B, and hepatitis C through the use of human tissue for transplantation. The regulations provide for inspection by FDA of persons and tissue establishments engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. These facilities are required to meet provisions intended to ensure appropriate screening and testing of human tissue donors and to ensure that records are kept documenting that the appropriate screening and testing have been completed.

Section 1270.31(a) through (d) requires written procedures to be prepared and followed for the following steps: (1) All significant steps in the infectious disease testing process under § 1270.21; (2) all significant steps for obtaining, reviewing, and assessing the relevant medical records of the donor as prescribed in § 1270.21; (3) designating and identifying quarantined tissue; and (4) for prevention of infectious disease contamination or cross-contamination by tissue during processing. Section 1270.31(a) and (b) also requires recording and justification of any deviation from the written procedures. Section 1270.33(a) requires records to be maintained concurrently with the performance of each significant step in the performance of infectious disease screening and testing of human tissue

donors. Section 1270.33(f) requires records to be retained regarding the determination of the suitability of the donors and such records required under § 1270.21. Section 1270.33(h) requires all records to be retained at least 10 years beyond the date of transplantation if known, distribution, disposition, or expiration of the tissue, whichever is the latest. Section 1270.35(a) through (d) requires specific records to be maintained to document the following: (1) The results and interpretation of all required infectious disease tests, (2) information on the identity and relevant medical records of the donor, (3) the receipt and/or distribution of human tissue, and (4) the destruction or other disposition of human tissue.

Respondents to this collection of information are manufacturers of human tissue intended for transplantation. Based on information from the Center for Biologics Evaluation and Research's (CBER's) database system, FDA estimates that there are approximately 257 tissue establishments of which 145 are conventional tissue banks and 112 are eye tissue banks. Based on information provided by industry, there are an estimated total of 1,959,270 conventional tissue products and 82,741 eye tissue products recovered per year with an average of 25 percent of the tissue discarded due to unsuitability for transplant. In addition, there are an estimated 57,275 donors of conventional tissue and 54,115 donors of eye tissue each year.

Accredited members of the American Association of Tissue Banks (AATB) and Eye Bank Association of America (EBAA) adhere to standards of those organizations that are comparable to the recordkeeping requirements in part 1270. Based on information provided by CBER's database system, 90 percent of the conventional tissue banks are members of AATB (145 x 90% = 130), and 77 percent of eye tissue banks are members of EBAA (112 x 77% = 86). Therefore, recordkeeping by these 216 establishments (130 + 86 = 216) is excluded from the burden estimates as usual and customary business activities (5 CFR 1320.3(b)(2)). The recordkeeping burden, thus, is estimated for the remaining 41 establishments, which is 16 percent of all establishments (257 - 216 = 41, or 41/257 = 16%).

FDA assumes that all current tissue establishments have developed written procedures in compliance with part 1270. Therefore, their information collection burden is for the general review and update of written procedures estimated to take an annual average of 24 hours, and for the recording and justifying of any deviations from the written procedures for § 1270.31(a) and (b), estimated to take an annual average of 1 hour. The information collection burden for maintaining records concurrently with the performance of each significant screening and testing step and for retaining records for 10 years under § 1270.33(a), (f), and (h), include documenting the results and interpretation of all required infectious disease tests and results and the identity and relevant medical records of the donor required under § 1270.35(a) and (b). Therefore, the burden under these provisions is calculated together in table 1 of this document. The recordkeeping estimates for the number of total annual records and hours per record are based on information provided by industry and FDA experience.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Response	Total Hours
1270.31(a), (b), (c), and (d)[2]	41	1	41	24	984
1270.31(a) and (b)[3]	41	2	82	1	82
1270.33(a), (f), and (h) and 1270.35(a) and (b)	41	8,404	344,564	1	344,564
1270.35(c)	41	15,938	653,458	1	653,458
1270.35(d)	41	1,992	81,672	1	81,672
Total					1,080,760

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Review and update of SOPs.
[3] Documentation of deviations from SOPs.

Dated: February 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–4066 Filed 2–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0206]

Determination of Regulatory Review Period for Purposes of Patent Extension; FIRMAGON

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FIRMAGON and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product FIRMAGON (degarelix acetate). FIRMAGON is indicated for treatment of patients with advanced prostate cancer. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FIRMAGON (U.S. Patent No. 5,925,730) from Ferring BV, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 29, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FIRMAGON represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for FIRMAGON is 2,695 days. Of this time, 2,394 days occurred during the testing phase of the regulatory review period, while 301 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: August 10, 2001. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 10, 2001.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: February 28, 2008. FDA has verified the applicant's claim that the new drug application (NDA) 22–201 was submitted on February 28, 2008.

3. *The date the application was approved*: December 24, 2008. FDA has verified the applicant's claim that NDA 22–201 was approved on December 24, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,498 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 30, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 30, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 9, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–4159 Filed 2–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0075]

Draft Guidance for Industry on Non-Inferiority Clinical Trials; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Non-Inferiority Clinical Trials." This draft guidance provides sponsors and review staff in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) with the agency's interpretation of the underlying principles involved in the use of non-inferiority (NI) study designs to provide evidence of the effectiveness of a drug or therapeutic biologic product. The draft guidance offers advice on when NI studies can be interpretable, how to choose the NI margin, and how to analyze the results.

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. 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 Temple, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4212, Silver Spring, MD 20993–0002, 301–796–2270; or

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

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 "Non-Inferiority Clinical Trials." The draft guidance includes four parts. The first part is a discussion of regulatory, study design, scientific, and statistical issues associated with the use of non-inferiority studies when these are used to establish the effectiveness of a new drug or therapeutic biologic product. The second part focuses on some of these issues in more detail, notably the quantitative analytical and statistical approaches used to determine the non-inferiority margin for use in NI studies, as well as the advantages and disadvantages of available methods. The third part addresses commonly asked questions about NI studies and provides practical advice about various approaches. The fourth part includes five examples of successful and unsuccessful efforts to define non-inferiority margins and conduct NI studies.

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 non-inferiority clinical trials. 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. 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*, or *http://www.regulations.gov*.

Dated: February 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–4109 Filed 2–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227. 414–328–7840/800–877–7016. (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400. (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little

Rock, AR 72205–7299, 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.
Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.
DynaLIFE Dx, * 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876. (Formerly: Dynacare Kasper Medical Laboratories)
ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823. (Formerly: Laboratory Specialists, Inc.)
Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130. (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group.)
Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center.)
LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845. (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)
Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700. (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.
Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521. (Formerly: SmithKline Beecham Clinical Laboratories)
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276.
Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.
STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.
Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, 305–593–2260.
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Dated: February 22, 2010.

Elaine Parry,

Director, Office of Program Services, SAMHSA.

[FR Doc. 2010–3973 Filed 2–26–10; 8:45 am]

BILLING CODE 4160–20–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; Member Conflict: Traumatic Brain Injury and Stroke Intervention.

Date: March 10–11, 2010.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Kevin Walton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kevin.walton@nih.hhs.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 23, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4178 Filed 2–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Noninvasive Imaging of Beta Cells.

Date: March 24, 2010.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 23, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4181 Filed 2–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Metabolic Dysfunction Collaborative Interdisciplinary Science.

Date: March 24, 2010.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; CAMUS Trial.

Date: April 2, 2010.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ANCA Glomerulonephritis.

Date: April 9, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 23, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4183 Filed 2–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel,

March 10, 2010, 8 a.m. to March 11, 2010, 6 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 which was published in the **Federal Register** on February 1, 2010, 75 FR 5093.

This FRN amends the dates of the meeting to May 10–11, 2010. The meeting is closed to the public.

Dated: February 24, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4184 Filed 2–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Dietary Supplements (ODS) 2010–2014 Strategic Plan

ACTION: Notice of availability of the ODS Strategic Plan for 2010–2014.

SUMMARY: The Office of Dietary Supplements (ODS) at the National Institutes of Health (NIH) has completed a strategic planning process resulting in the development of the ODS Strategic Plan for 2010–2014, entitled *Strengthening Knowledge and Understanding of Dietary Supplements.* The strategic plan is available in pdf format on the ODS Web site: *http://ods.od.nih.gov/pubs/strategicplan/StrategicPlan2010-2014.pdf.*

The ODS strategic plan was developed after more than a year's worth of reflection on its programs, activities, and accomplishments, as well as anticipated challenges for the future. It was also shaped by the thoughtful input, comments, and advice received from ODS stakeholder communities throughout the federal government, academia, the dietary supplement industry, consumer advocacy and education groups, and interested consumers.

FOR FURTHER INFORMATION CONTACT: Office of Dietary Supplements, National Institutes of Health, 6100 Executive Boulevard, Room 3B01, Bethesda, MD 20892–7517, E-mail: *ODS@nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

The mission of the Office of Dietary Supplements (ODS) is to strengthen knowledge and understanding of dietary supplements by evaluating scientific information, stimulating and supporting research, disseminating research results, and educating the public to foster an enhanced quality of life and health for the U.S. population. ODS was established in the Office of the Director, NIH, in 1995 as a major provision of the Dietary Supplement Health and Education Act of 1994 (DSHEA).

Dated: February 22, 2010.

Paul M. Coates,

Director, Office of Dietary Supplements, Office of the Director, National Institutes of Health.

[FR Doc. 2010–4180 Filed 2–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0104]

Measuring Progress on Food Safety: Current Status and Future Directions; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled Measuring Progress on Food Safety: Current Status and Future Directions. The purpose of the public workshop is to inform the public about current and potential measurements for assessing progress in food safety and associated methodological issues and to discuss potential improvements.

Date and Time: The public workshop will be held on March 30, 2010, from 9 a.m. to 5 p.m.

Location: The public workshop will be held in the Regency A Ballroom of the Hyatt Regency Washington, 400 New Jersey Ave., NW., Washington, DC 20001, 202–737–1234, FAX: 202–737–5773.

Contact Person: For registration information and general questions regarding the workshop, contact Juanita Yates, Center for Food Safety and Applied Nutrition (HFS–009), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1731, e-mail: *juanita.yates@fda.hhs.gov*.

Registration: There is no registration fee. However, due to limited seating, we encourage all persons who wish to attend the workshop to register in advance. Attendees may register in advance by March 24, 2010. There will be no onsite registration. We encourage attendees to register for the workshop electronically at: *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/ucm201102.htm.*

If you need special accommodations due to disability, please contact Juanita Yates (see *Contact Person*) by March 24, 2010.

SUPPLEMENTARY INFORMATION: The Federal Government and the food industry are pursuing major new efforts to reduce foodborne illness that include science-based preventive controls in food production and processing. As recommended by the President's Food Safety Working Group (Ref. 1), one element of the Federal Government's food safety initiatives includes regularly assessing performance metrics for measuring progress in reducing foodborne illness. FDA, the Centers for Disease Control and Prevention (CDC), and the U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) are collaborating to address the methodologic and data challenges involved in the development of feasible and effective food safety metrics. The agencies will engage the food safety expert and stakeholder communities to discuss this subject through a series of public workshops.

I. Background

FDA and FSIS base decisions about policies and other interventions related to food safety, in part, on CDC's analyses of data on foodborne illness. These analyses are powerful tools for assessing the safety of food, which, in turn, reflects the effectiveness of Government and industry policies and interventions. The President's Food Safety Working Group has noted the importance of assessing metrics (Ref. 1). Through its epidemiologic and laboratory data collection and analysis, CDC generates various types of measures and estimates of foodborne illness, via a number of mechanisms, which serve different purposes. For example, the Foodborne Diseases Active Surveillance Network (FoodNet) collects data on laboratory-confirmed cases of nine foodborne illnesses caused by bacteria and parasites commonly associated with foodborne human illness (e.g., *Salmonella* and *Escherichia coli* O157:H7). The cases are reported to CDC by State health authorities in 10 States representing 15 percent of the U.S. population (i.e., all of Connecticut, Georgia, Maryland, Minnesota, New Mexico, Oregon, and Tennessee and selected counties in California, Colorado, and New York). Based on the FoodNet data, CDC writes an annual report on the incidence and trends of laboratory-confirmed cases of these nine illnesses. The FoodNet also conducts special studies to determine risk factors for acquiring those illnesses.

Periodically, CDC estimates the overall burden of foodborne illness. CDC's estimate of the overall burden of foodborne illness has a much larger scope than CDC's annual reports and draws heavily from FoodNet data as well as from a much wider variety of data sources, both inside and outside of CDC. This estimate also includes norovirus, a major contributor to the overall burden of foodborne disease, which can be transmitted not only by foods, but also by environmental sources, and is not monitored by FoodNet. CDC's last estimate of the overall burden of foodborne illness was issued in 1999 and included unknown causes of foodborne illness (Ref. 2). Since then, advances in methodology and data sources have improved capabilities in developing disease burden estimates; these will be reflected in CDC's next estimate.

In addition to CDC estimates, FDA and USDA use other measures to gauge the success, or implied success (i.e., via proxy measures), of policies and interventions for reducing foodborne illness. For example, although measurements of the food industry's compliance with a given food safety regulation cannot be used to directly measure the regulation's impact on the rate of foodborne illness, improved compliance can be reasonably expected to improve the likelihood that the foods involved will be safer and, thus, the likelihood that fewer illnesses will result. Examples include the tracking of *E. coli* O157:H7 in ground beef and of *Salmonella* in meat, and surveys of both domestic and imported produce, such as surveys conducted by FDA and USDA's Microbiological Data Program, which have targeted *Salmonella* and *E. coli* O157:H7.

II. Purpose of the Workshop and Topics for Discussion

The purpose of this initial 1-day public workshop is to discuss current and potential measurements for assessing progress in food safety and to provide workshop participants an opportunity to learn about metrics and to consider and suggest metrics for assessing the effects that policies and interventions have on foodborne illness. The workshop will focus on the current status and challenges involved in measuring foodborne illness and trends over time, including incidence and trends in the overall burden of foodborne illness and illnesses associated with specific foodborne pathogens and specific pathogens that affect specific foods. The workshop will include a discussion of other measures that are, or could be, used to measure food safety progress that cannot be directly linked to health outcomes. These include measures of process control in food production, studies on the prevalence of specific pathogens in specific classes of food, and studies of compliance with recommended or required food safety practices in retail and food-service operations.

Specifically, topics to be discussed include CDC's data sources and methods, including methods for estimating the burden of foodborne illness, and their various limitations and utilities; and FDA's and USDA's ongoing measures to gauge the success, or implied success (i.e., via the kinds of proxy measures described in previously mentioned examples; e.g., surveys for *E. coli* O157:H7 and *Salmonella* in produce and tracking of specific pathogens in meat), of policies and interventions, including the level of compliance with food safety regulations.

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

IV. References

The following references are on display at the Division of Dockets Management (see *Transcripts*), between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the following Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. President's Food Safety Working Group findings, *http://www.foodsafetyworkinggroup.gov/ContentKeyFindings/HomeKeyFindings.htm*.

2. Mead P.S., L. Slutsker, V. Dietz, et al., *Food-Related Illness and Death in the United States*, *Emerging Infectious Diseases*, 5(5), 607–625, 1999.

Dated: February 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–4110 Filed 2–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0071]

Privacy Act of 1974; U.S. Immigration and Customs Enforcement–006 Intelligence Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, U.S. Immigration and Customs Enforcement is modifying an existing system of records titled the Immigration and Customs Enforcement–006 Intelligence Records System (Dec. 9, 2008), to clarify the nature of the personally identifiable information that will be collected and maintained on individuals. In conjunction with its publication of the Privacy Impact Assessment for the ICEGangs system, Immigration and Customs Enforcement is modifying the DHS/ICE–006 Immigration and Customs Enforcement Intelligence Records system of records notice to more clearly explain the type of information it gathers on suspected and confirmed gang members and associates. This DHS/Immigration and Customs Enforcement–006 Intelligence Records system of records notice updates categories of individuals; categories of records; purpose of the system; adding a routine use; and policies and practices for retaining and disposing of records in the system. Immigration and Customs Enforcement is soliciting comments on this SORN due to the clarifying changes that were made since the original publication. A Privacy Impact Assessment on ICEGangs that describes the system in detail is being published concurrently with this notice. In addition, this notice addresses one comment that was received in response to the original publication of the Immigration and Customs Enforcement Intelligence Records SORN on December 9, 2008. A final rule is being published concurrently with this notice in which the Department exempts portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This amended system of records will be effective March 31, 2010. Written comments must be submitted on or before March 31, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–

2009–0071 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact Lyn M. Rahilly (202–732–3300), Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20536. For privacy issues please contact Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Immigration and Customs Enforcement (ICE) Intelligence Records (IIRS) system of records was originally established on December 9, 2008 (73 FR 74735), and public comments were solicited for the SORN and the associated Notice of Proposed Rulemaking (73 FR 74633, Dec. 9, 2008) which proposed to exempt this system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. Due to urgent homeland security and law enforcement mission needs, ICE was already maintaining these records when the original IIRS SORN was published. Recognizing that ICE published a system of records notice for an existing system, ICE committed to reviewing and considering public comments, apply appropriate revisions, and republish the IIRS system of records notice within 180 days of receipt of comments. A new routine use is also proposed to allow data sharing between ICE and other law enforcement agencies for the purpose of collaboration, coordination, and de-confliction of cases.

In addition to the records described in the initial publication of IIRS, this notice also consists of information maintained by the ICE Office of Investigations concerning suspected or confirmed gang members and associates included in a database called ICEGangs. ICEGangs maintains personal information about individuals who qualify as suspected or confirmed gang members and associates under ICE criteria. ICEGangs stores the following data about each gang member and associate to the extent it is available: Biographic information (name, date of birth, *etc.*), immigration status, gang affiliation, physical description, government-issued identification numbers, photos of the individual, identities of gang associates, field interview notes, and criminal history information. ICEGangs also stores general comments entered by the ICE agent that created the gang member or associate record as well as a reference to the official evidentiary system of records where official case files are stored.

ICEGangs has two main purposes. First, it supplements the existing ICE case management system by providing a consolidated repository of information on gang members and associates and gang-related activity. ICEGangs allows ICE agents and support personnel to search gang-oriented information in a more efficient and effective manner than is possible in ICE's standard investigative case management system. For example, an ICE field agent can query ICEGangs for a list of members in a specific gang. It is not currently possible to perform the same sort of query using ICE's investigative case management system. As a matter of policy, ICE agents are required to create and/or update ICEGangs records for suspected and/or confirmed gang members and associates whenever they encounter gang members and associates in the field during their official law enforcement activities. ICEGangs records also contain references to the official evidentiary system of records, which allows ICE agents and support personnel to refer to official case records.

Second, ICEGangs facilitates the sharing of gang information between ICE and other law enforcement agencies. In particular, ICE currently provides the California Department of Justice (CalDOJ) access to the data in ICEGangs. CalDOJ users access ICEGangs through their own CalGangs application which accesses the ICEGangs repository remotely. In the future, ICE anticipates that it will share information with other State and local law enforcement agencies that use the GangNET software. ICE will require access controls for State and local agencies as a prerequisite to gaining access to ICEGangs.

II. Public Comment

One public comment was received, but as it did not pertain to the SORN or proposed rule, it is not addressed here. A final rule is published concurrently with this notice in this issue of the **Federal Register**.

III. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals to more easily find such files within the agency. Below is the description of the Immigration and Customs Enforcement–006 Intelligence Records system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS

DHS/ICE–006

SYSTEM NAME:

ICE Intelligence Records System (IIRS).

SECURITY CLASSIFICATION:

Sensitive But Unclassified, Classified.

SYSTEM LOCATION:

Records are maintained at ICE Headquarters in Washington, DC, and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include the following: (1) Individuals (*e.g.,* subjects, witnesses, associates) associated with immigration enforcement activities or law enforcement investigations/activities conducted by ICE, the former Immigration and Naturalization Service, or the former U.S. Customs Service; (2) individuals associated with law enforcement investigations or activities conducted by other Federal, State, Tribal, territorial, local or foreign agencies where there is a potential nexus to ICE's law enforcement and immigration enforcement responsibilities or homeland security in general; (3) individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism; (4) individuals involved in, associated with, or who have reported suspicious activities, threats, or other incidents reported by domestic and foreign government agencies, multinational or non-governmental organizations, critical infrastructure owners and operators, private sector entities and organizations, and individuals; (5) individuals who are the subjects of or otherwise identified in classified or unclassified intelligence reporting received or reviewed by ICE; and (6) individuals who are known or suspected gang members or associates, including records maintained in the ICEGangs system.

IIRS includes an information technology system known as the Intelligence Fusion System (IFS). In addition to the categories of individuals listed above, IFS also includes the following: (1) Individuals identified in law enforcement, intelligence, crime, and incident reports (including financial reports under the Bank Secrecy Act and law enforcement bulletins) produced by DHS and other government agencies; (2) individuals identified in U.S. visa, border, immigration and naturalization benefit data, including arrival and departure data; (3) individuals identified in DHS law enforcement and immigration records; (4) individuals not authorized to work in the United States; (5) individuals whose passports have been lost or stolen; and (6) individuals identified in public news reports.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include: (1) Biographic information (name, date of birth, social security number, alien registration number, citizenship/immigration status, passport information, addresses, phone numbers, *etc.*); (2) Records of immigration enforcement activities or law enforcement investigations/activities conducted by ICE, the former Immigration and Naturalization Service, or the former U.S. Customs Service; (3) Information (including documents and electronic data) collected by DHS from or about individuals during investigative activities and border searches; (4) Records of immigration enforcement activities and law enforcement investigations/activities that have a possible nexus to ICE's law enforcement and immigration enforcement responsibilities or homeland security in general; (5) Law enforcement, intelligence, crime, and incident reports (including financial reports under the Bank Secrecy Act and law enforcement bulletins) produced by DHS and other government agencies; (6) U.S. visa, border immigration and naturalization benefit data, including arrival and departure data; (7) Terrorist watchlist information and other terrorism related information regarding threats, activities, and incidents; (8) Lost and stolen passport data; (9) Records pertaining to known or suspected terrorists, terrorist incidents, activities, groups, and threats; (10) ICE-generated intelligence requirements, analysis, reporting, and briefings; (11) Third party intelligence reporting; (12) Articles, public-source data, and other published information on individuals and events of interest to ICE; (13) Records and information from government data systems or retrieved from commercial data providers in the course of intelligence research, analysis and reporting; (14) Reports of suspicious activities, threats, or other incidents generated by ICE and third parties; and (15) Additional information about known and suspected gang members and associates such as biographic information (name, date of birth, *etc.*), immigration status, gang affiliation, physical description, government-issued identification numbers, photos of the individual, identities of gang associates, field interview notes, and criminal history information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 8 U.S.C. 1103, 1105, 1225(d)(3), 1324(b)(3), 1357(a), and 1360(b); 19 U.S.C. 1 and 1509.

PURPOSE(S):

The purpose of this system is:

(a) To maintain records that reflect and generally support ICE's collection, analysis, reporting, and distribution of law enforcement, immigration administration, terrorism, intelligence, and homeland security information in support of ICE's law enforcement and immigration administration mission.

(b) To produce law-enforcement intelligence reporting that provides actionable information to ICE's law enforcement and immigration administration personnel and to other appropriate government agencies.

(c) To enhance the efficiency and effectiveness of the research and analysis process for DHS law enforcement, immigration, and intelligence personnel through information technology tools that provide for advanced search and analysis of various datasets.

(d) To facilitate multi-jurisdictional informational exchange between ICE and other law enforcement agencies regarding known and suspected gang members and associates; and

(e) To identify potential criminal activity, immigration violations, and threats to homeland security; to uphold and enforce the law; and to ensure public safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when (1) DHS or any component thereof; (2) any employee of DHS in his/her official capacity; (3) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or (4) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation; and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To the Department of Justice (DOJ), Civil Rights Division, for the purpose of responding to matters within the DOJ's jurisdiction to include allegations of fraud and/or nationality discrimination.

C. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

D. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

E. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

F. To appropriate agencies, entities, and persons when: (1) DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information, or harm to an individual; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

G. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

H. To a Federal, State, territorial, Tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

I. To a former employee of DHS, in accordance with applicable regulations, for purposes of responding to an official inquiry by a Federal, State or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

J. To an appropriate Federal, State, local, Tribal, foreign, or international agency, if the information is relevant and necessary to the agency's decision concerning the hiring or retention of an individual or the issuance, grant, renewal, suspension or revocation of a security clearance, license, contract, grant, or other benefit; or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person receiving the information.

K. To appropriate Federal, State, local, Tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health risk.

L. To a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

M. To a Federal, State, Tribal, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

N. To appropriate Federal, State, local, Tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where DHS determines that the information would assist in the enforcement of civil, criminal, or regulatory laws.

O. To third parties during the course of an investigation by DHS, a proceeding within the purview of the immigration and nationality laws, or a matter under DHS's jurisdiction, to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

P. To a Federal, State, or local agency, or other appropriate entity or individual, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

Q. To Federal and foreign government intelligence or counterterrorism agencies when DHS reasonably believes there to be a threat or potential threat to national or international security for which the information may be useful in countering the threat or potential threat, when DHS reasonably believes such use is to assist in anti-terrorism efforts, and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

R. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

S. To international and foreign governmental authorities in accordance with law and formal or informal international agreements.

T. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws

including treaties and reciprocal agreements.

U. To appropriate Federal, State, local, Tribal, or foreign governmental agencies or multilateral governmental organizations where DHS is aware of a need to utilize relevant data for purposes of testing new technology and systems designed to enhance national security or identify other violations of law.

V. To appropriate Federal, State, local, Tribal, or foreign government agencies or multinational government organizations where DHS desires to exchange relevant data for the purpose of developing new software or implementing new technologies for the purposes of data sharing to enhance homeland security, national security or law enforcement.

W. To a criminal, civil, or regulatory law enforcement authority (whether Federal, State, local, territorial, Tribal, international or foreign) where the information is necessary for collaboration, coordination and de-confliction of investigative matters, to avoid duplicative or disruptive efforts and for the safety of law enforcement officers who may be working on related investigations.

X. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by personal identifiers such as but not limited to name, alien registration number, phone number, address, social security number, or passport number. Records may also be retrieved by non-personal information such as transaction date, entity/institution name, description of goods, value of transactions, and other information.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The system maintains a real-time auditing function of individuals who access the system. Additional safeguards may vary by component and program.

RETENTION AND DISPOSAL:

ICE is in the process of drafting a proposed record retention schedule for the information maintained in IIRS, including system information stored in IFS. ICE anticipates retaining the records from other databases in IFS for 20 years, records for which IFS is the repository of record for 75 years, and ICE-generated intelligence reports for 75 years. The original electronic data containing the inputs to IFS will be destroyed after upload and verification or returned to the source.

ICE is in the process of drafting a proposed record retention schedule for the information maintained in ICEGangs. ICE anticipates retaining ICEGangs records for five years from the date the record was last accessed.

SYSTEM MANAGER AND ADDRESS:

Director, ICE Office of Intelligence, 500 12th Street, SW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, ICE will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty or perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose form the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Federal, State, local, territorial, Tribal or other domestic agencies, foreign agencies, multinational or non-governmental organizations, critical infrastructure owners and operators, private sector entities and organizations, individuals, commercial data providers, and public sources such as news media outlets and the Internet.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a (k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

Dated: February 24, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–4102 Filed 2–26–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0144]

Privacy Act of 1974; Department of Homeland Security United States Immigration Customs and Enforcement—011 Immigration and Enforcement Operational Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security U.S. Immigration and Customs Enforcement is updating an existing system of records titled, Department of Homeland Security/U.S. Immigration and Customs Enforcement—011 Removable Alien Records System of Records, January 28, 2009, and renaming it Department of Homeland Security/U.S. Immigration and Customs Enforcement—011 Immigration and Enforcement Operational Records System of Records. With the publication of this updated system of records, the Department of Homeland Security is also retiring an existing system of records titled, Department of Homeland Security/U.S. Immigration and Customs Enforcement—Customs and Border Protection—U.S. Citizenship and Immigration Services—001–03 Enforcement Operational Immigration Records System of Records, March 20, 2006, and transferring certain law enforcement and immigration records described therein that are owned by U.S. Immigration and Customs Enforcement to this updated system of records. Categories of individuals and categories of records have been reviewed, and the purpose statement and routine uses of this system have been updated to better reflect the current status of these records. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before March 31, 2010. This amended system will be effective March 31, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0144 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly (703–732–3300), Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20536; or Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, the Department of Homeland Security is updating and reissuing Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE)—011 Removable Alien Records System of Records (74 FR 4965, Jan. 28, 2009) to include additional DHS records pertaining to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations conducted by DHS. This system of records is also being updated to include records pertaining to fugitive aliens and aliens paroled into the United States (U.S.) by ICE. The system of records is being renamed DHS/ICE–011 Immigration and Enforcement Operational Records System of Records (ENFORCE) to better reflect the nature and scope of the records maintained.

DHS is updating this notice to include the following substantive changes: (1) An update to the categories of records to include clarifying language as well as to provide the Department of Justice (DOJ) with DNA samples as required by 28 CFR Part 28; (2) the addition of routine uses to (a) incorporate the routine uses that were already part of the published DHS/ICE—011 Removable Aliens Records System of Records (RARS) (74 FR 20719, May 5, 2009) into this newly consolidated SORN, (b) provide information to individuals in the determination of whether or not an alien has been removed from the U.S., (c) assist agencies in collecting debts owed to them or the U.S. Government, (d) allow sharing with the Department of State (DOS) for immigration benefits and visa activities, as well as when DOS is contacted by foreign governments to discuss particular matters involving aliens in custody or other ICE enforcement matters that may involve identified individuals, (e) allow the Office of Management and Budget (OMB) to review the private immigration relief bill process in Congress, (f) inform members of Congress about an alien who is being considered for private immigration relief, (g) share operational information with other law enforcement agencies to prevent conflicting investigations or activities, (h) coordinate the transportation, custody, and care of U.S. Marshals Service (USMS) prisoners, (i) allow third parties to facilitate the placement or release of an alien who has been or are in the process of being released from ICE custody, (j) provide information about an alien who has or is in the process of being released from ICE custody who may pose a health or safety risk, (k) to provide information facilitating the issuance of an immigration detainer on an individual in custody or the transfer of an individual to ICE or another agency, (l) disclose DNA samples and related information as required by Federal regulation, (m) to facilitate the transmission of arrest information to the Department of Justice for inclusion in relevant law enforcement databases and for the enforcement Federal firearms licensing laws, and (n) to disclose information to persons seeking to post or arrange immigration bonds. These updated routine uses are compatible with the purpose of this system because

they sharing will assist ICE with its immigration and law enforcement mission.

With the publication of this notice, DHS is also merging into the DHS/ICE–011 ENFORCE System of Records certain records from an existing system of records titled, DHS/ICE–CBP–CIS–001–03 Enforcement Operational Immigration Records System of Records (71 FR 13987, March 20, 2006), and retiring that system of records. When last published, DHS/ICE–CBP–CIS–001–03 Enforcement Operational Immigration Records System of Records covered biometric and biographic information collected during DHS enforcement encounters and screening at ports of entry. The system of records supported DHS in the identification, investigation, apprehension, and/or removal of aliens unlawfully entering or present in the U.S. and facilitated the legal entry of individuals. The records described in DHS/ICE–CBP–CIS–001–03 Enforcement Operational Immigration Records System of Records were owned by several components within DHS, specifically ICE, CBP, and USCIS. After stewardship for the DHS biometric records database titled, Automated Biometric Identification System (IDENT), which had been covered by DHS/ICE–CBP–CIS–001–03 Enforcement Operational Immigration Records System of Records, was transferred in 2006 to DHS's U.S. Visitor and Immigrant Status Indictor Technology (US–VISIT) Program, US–VISIT established a separate system of records titled, DHS/US–VISIT–0012 Automated Biometric Identification System (IDENT) (72 FR 31080, June 5, 2007) to cover records in that database. The remaining non-IDENT records in DHS/ICE–CBP–CIS–001–03 Enforcement Operational Immigration Records System of Records pertained to enforcement encounters and admission screening of individuals at the border, and were owned by ICE and CBP. Of those, CBP records are now covered by the system of records titled, DHS/CBP–011 TECS System of Records (73 FR 77778, December 19, 2008), and ICE's records are now covered by the DHS/ICE–011 ENFORCE System of Records, which is the subject of this notice.

II. ENFORCE System of Records

The DHS/ICE–011 ENFORCE System of Records consists of paper and electronic records related to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations conducted by DHS, including fugitive aliens and paroled aliens.

Criminal and Immigration Enforcement Records

The DHS/ICE–011 ENFORCE System of Records contains personal information about individuals who are criminal suspects, alleged immigration violators, and other individuals whose information may be collected or obtained during the course of an immigration enforcement or criminal matter (*e.g.,* witnesses, associates, relatives). This system of records will also contain biographical information of those prisoners that ICE holds in its detention facilities for the USMS under an interagency agreement. These records are maintained in an ICE-owned and operated information technology system known as the Enforcement Integrated Database (EID). Associated paper records are also maintained. EID captures and maintains information related to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and law enforcement investigations and operations conducted by ICE. While CBP law enforcement personnel can also create and access EID information, CBP records in EID are covered by the DHS/CBP TECS System of Records.

The EID supports a variety of DHS law enforcement processes and workflows, especially those related to the enforcement of immigration laws. As an alleged immigration violator (*i.e.,* subject) moves through the enforcement process (*e.g.,* arrest, booking, detention, or removal), DHS personnel create, modify, and access the data stored in the EID's central data repository. In addition to supporting the immigration enforcement process, EID also supports DHS's arrest and booking of subjects for violations of U.S. customs laws and other Federal criminal laws. This updated system of records notice is being published concurrently with the Privacy Impact Assessment (PIA) for ICE's EID because information maintained in EID is described in this notice. The EID PIA is available on the DHS Privacy Office Web site at *http://www.dhs.gov/privacy.*

Fugitive Alien Records

The DHS/ICE–011 ENFORCE System of Records also contains records pertaining to ICE's efforts to identify, locate, apprehend and remove fugitive aliens from the United States. Fugitive aliens are aliens ordered and/or removed from the United States by a U.S. Immigration Judge, but who failed to appear as ordered for removal. ICE maintains records on aliens who are fugitives and collects information from other government systems and commercial data sources to identify leads that may reveal the fugitive's current location. ICE records are updated when fugitive aliens are apprehended and removed by ICE. ICE's Fugitive Case Management System (FCMS) is the information system in which these records are maintained, and associated paper records are also maintained. A PIA for FCMS is available on the DHS Privacy Office Web site at *http://www.dhs.gov/privacy.*

Paroled Alien Records

Finally, the DHS/ICE–011 ENFORCE System of Records also contains records pertaining to aliens who are paroled into the United States by ICE. ICE maintains records on the individual aliens who are paroled into the United States in order to track and manage parolees and ensure they comply with the terms of parole. ICE's Parole Case Tracking System (PCTS) is the information system in which these records are maintained, and associated paper records are also maintained. A PIA for PCTS is in progress and expected to be published in 2010.

Consistent with DHS's information sharing mission, information stored in the DHS/ICE–011 ENFORCE System of Records may be shared with other DHS components, as well as appropriate Federal, State, local, Tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

Portions of the DHS/ALL–011 ENFORCE System of Records are exempt from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements. Individuals may request information about records pertaining to them stored in the DHS/ALL–011 ENFORCE System of Records as outlined in the "Notification Procedure" section below. ICE reserves the right to exempt various records from release. The Secretary of Homeland Security has exempted portions of this system of records from subsections (c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), and (e)(8); and (g) of the Privacy Act pursuant to 5 U.S.C. § 552a(j)(2). In addition, the Secretary of Homeland Security has exempted portions of this system of records from

subsections (c)(3); (d); (e)(1), (e)(4)(G), and (e)(4)(H) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

III. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ICE–011 Immigration and Enforcement Operational Records (ENFORCE) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

DHS/ICE–011

SYSTEM NAME:

Immigration and Enforcement Operational Records (ENFORCE).

SECURITY CLASSIFICATION:

Unclassified; Controlled Unclassified Information (CUI).

SYSTEM LOCATION:

Records are maintained at the U.S. Immigration Customs and Enforcement (ICE) Headquarters in Washington, DC, ICE field and attaché offices, and detention facilities operated by or on behalf of ICE, or that otherwise house individuals detained by ICE.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

1. Individuals arrested, detained, and/or removed for criminal and/or administrative violations of the Immigration and Nationality Act, or individuals who are the subject of an ICE immigration detainer issued to another custodial agency;

2. Individuals arrested by ICE law enforcement personnel for violations of Federal criminal laws enforced by ICE or DHS;

3. Individuals who fail to leave the United States after receiving a final order of removal, deportation, or exclusion, or who fail to report to ICE for removal after receiving notice to do so (fugitive aliens);

4. Individuals who are granted parole into the United States under section 212(d)(5) of the Immigration and Nationality Act (parolees);

5. Other individuals whose information may be collected or obtained during the course of an immigration enforcement or criminal matter, such as witnesses, associates, and relatives;

6. Attorneys or representatives who represent individuals listed in categories (a)–(d) above;

7. Persons who post or arrange bond for the release of an individual from ICE detention, or receive custodial property of a detained alien;

8. Personnel of other agencies who assisted or participated in the arrest or investigation of an alien, or who are maintaining custody of an alien; and

9. Prisoners of the U.S. Marshals Service held in ICE detention facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

1. Biographic, descriptive, historical and other identifying data, including but not limited to: Names; aliases; fingerprint identification number (FIN); date and place of birth; passport and other travel document information; nationality; aliases; Alien Registration Number (A-Number); Social Security Number; contact or location information (*e.g.,* known or possible addresses, phone numbers); visa information; employment, educational, immigration, and criminal history; height, weight, eye color, hair color and other unique physical characteristics (*e.g.,* scars and tattoos).

2. Biometric data: Fingerprints and photographs. DNA samples required by DOJ regulation (see 28 CFR Part 28) to be collected and sent to the Federal Bureau of Investigation (FBI). DNA samples are not retained or analyzed by DHS.

3. Information pertaining to ICE's collection of DNA samples, limited to the date and time of a successful collection and confirmation from the FBI that the sample was able to be sequenced. ICE does not receive or maintain the results of the FBI's DNA analysis (*i.e.,* DNA sequences).

4. Case-related data, including: Case number, record number, and other data describing an event involving alleged violations of criminal or immigration law (location, date, time, event category, types of criminal or immigration law violations alleged, types of property involved, use of violence, weapons, or assault against DHS personnel or third parties, attempted escape and other related information; event categories describe broad categories of criminal law enforcement, such as immigration worksite enforcement, contraband smuggling, and human trafficking). ICE case management information, including: Case category, case agent, date initiated, and date completed.

5. Birth, marriage, education, employment, travel, and other information derived from affidavits, certificates, manifests, and other documents presented to or collected by ICE during immigration and law enforcement proceedings or activities. This data typically pertains to subjects, relatives, and witnesses.

6. Detention data on aliens, including immigration detainers issued; transportation information; detention-related identification numbers; custodial property; information about an alien's release from custody on bond, recognizance, or supervision; detention facility; security classification; book-in/book-out date and time; mandatory detention and criminal flags; aggravated felon status; and other alerts.

7. Detention data for U.S. Marshals Service prisoners, including: prisoner's name, date of birth, country of birth, detainee identification number, FBI identification number, State identification number, book-in date, book-out date, and security classification;

8. Limited health information relevant to an individual's placement in an ICE detention facility or transportation requirements (*e.g.,* general information

on physical disabilities or other special needs to ensure that an individual is placed in a facility or bed that can accommodate their requirements). Medical records about individuals in ICE custody (*i.e.,* records relating to the diagnosis or treatment of individuals) are maintained in DHS/ICE—013 Alien Medical Records System of Records;

9. Progress, status and final result of removal, prosecution, and other DHS processes and relating appeals, including: information relating to criminal convictions, incarceration, travel documents and other information pertaining to the actual removal of aliens from the United States.

10. Contact, biographical and identifying data of relatives, attorneys or representatives, associates or witnesses of an alien in proceedings initiated and/or conducted by DHS including, but not limited to: name, date of birth, place of birth, telephone number, and business or agency name.

11. Data concerning personnel of other agencies that arrested, or assisted or participated in the arrest or investigation of, or are maintaining custody of an individual whose arrest record is contained in this system of records. This can include: name, title, agency name, address, telephone number and other information.

12. Data about persons who post or arrange an immigration bond for the release of an individual from ICE custody, or receive custodial property of an individual in ICE custody. This data may include: name, address, telephone number, Social Security Number and other information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1225, 1226, 1324, 1357, 1360, and 1365(a)(b); Justice for All Act of 2004 (Pub. L. 108–405); DNA Fingerprint Act of 2005 (Pub. L. 109–162); Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248); and 28 CFR Part 28, "DNA–Sample Collection and Biological Evidence Preservation in the Federal Jurisdiction."

PURPOSE(S):

The purposes of this system are:

1. To support the identification, apprehension, and removal of individuals unlawfully entering or present in the United States in violation of the Immigration and Nationality Act, including fugitive aliens.

2. To support the identification and arrest of individuals (both citizens and non-citizens) who commit violations of Federal criminal laws enforced by DHS.

3. To track the process and results of administrative and criminal proceedings against individuals who are alleged to have violated the Immigration and Nationality Act or other laws enforced by DHS.

4. To support the grant, denial, and tracking of individuals who seek or receive parole into the United States.

5. To provide criminal and immigration history information during DHS enforcement encounters, and background checks on applicants for DHS immigration benefits (*e.g.,* employment authorization and petitions).

6. To identify potential criminal activity, immigration violations, and threats to homeland security; to uphold and enforce the law; and to ensure public safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, or to a court, magistrate, administrative tribunal, opposing counsel, parties, and witnesses, in the course of a civil or criminal proceeding before a court or adjudicative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, Tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, including to an actual or potential party or his or her attorney, or in connection with criminal law proceedings.

I. To other Federal, State, local, or foreign government agencies,

individuals, and organizations during the course of an investigation, proceeding, or activity within the purview of immigration and nationality laws to elicit information required by DHS/ICE to carry out its functions and statutory mandates.

J. To the appropriate foreign government agency charged with enforcing or implementing laws where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

K. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

L. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the payment of Federal benefits to the record subject in accordance with that agency's statutory responsibilities.

M. To foreign governments for the purpose of coordinating and conducting the removal of aliens to other nations; and to international, foreign, and intergovernmental agencies, authorities, and organizations in accordance with law and formal or informal international arrangements.

N. To family members and attorneys or other agents acting on behalf of an alien, to assist those individuals in determining whether: (1) The alien has been arrested by DHS for immigration violations; (2) the location of the alien if in DHS custody; or (3) the alien has been removed from the United States, provided however, that the requesting individuals are able to verify the alien's date of birth or Alien Registration Number (A–Number), or can otherwise present adequate verification of a familial or agency relationship with the alien.

O. To the DOJ Executive Office of Immigration Review (EOIR) or their contractors, consultants, or others performing or working on a contract for EOIR, for the purpose of providing information about aliens who are or may be placed in removal proceedings so that EOIR may arrange for the provision of educational services to those aliens under EOIR's Legal Orientation Program.

P. To attorneys or legal representatives for the purpose of facilitating group presentations to aliens in detention that will provide the aliens with information about their rights under U.S. immigration law and procedures.

Q. To a Federal, State, Tribal or local government agency to assist such agencies in collecting the repayment of recovery of loans, benefits, grants, fines, bonds, civil penalties, judgments or other debts owed to them or to the U.S. Government, and/or to obtain information that may assist DHS in collecting debts owed to the U.S. Government.

R. To the State Department in the processing of petitions or applications for immigration benefits and non-immigrant visas under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements; or when the State Department requires information to consider and/or provide an informed response to a request for information from a foreign, international, or intergovernmental agency, authority, or organization about an alien or an enforcement operation with transnational implications.

S. To the Office of Management and Budget (OMB) in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in the Circular.

T. To the U.S. Senate Committee on the Judiciary or the U.S. House of Representatives Committee on the Judiciary when necessary to inform members of Congress about an alien who is being considered for private immigration relief.

U. To a criminal, civil, or regulatory law enforcement authority (whether Federal, State, local, territorial, Tribal, international or foreign) where the information is necessary for collaboration, coordination and de-confliction of investigative matters, to avoid duplicative or disruptive efforts and for the safety of law enforcement officers who may be working on related investigations.

V. To the U.S. Marshals Service concerning Marshals Service prisoners that are or will be held in detention facilities operated by or on behalf of ICE in order to coordinate the transportation, custody, and care of these individuals.

W. To third parties to facilitate placement or release of an alien (*e.g.,* at a group home, homeless shelter, *etc.*) who has been or is about to be released from ICE custody but only such information that is relevant and necessary to arrange housing or continuing medical care for the alien.

X. To an appropriate domestic government agency or other appropriate authority for the purpose of providing information about an alien who has been or is about to be released from ICE custody who, due to a condition such as mental illness, may pose a health or safety risk to himself/herself or to the community. ICE will only disclose information about the individual that is relevant to the health or safety risk they may pose and/or the means to mitigate that risk (*e.g.,* the alien's need to remain on certain medication for a serious mental health condition).

Y. To the DOJ Federal Bureau of Prisons (BOP) and other Federal, State, local, territorial, Tribal and foreign law enforcement or custodial agencies for the purpose of placing an immigration detainer on an individual in that agency's custody, or to facilitate the transfer of custody of an individual from ICE to the other agency. This will include the transfer of information about unaccompanied minor children to the U.S. Department of Health and Human Services (HHS) to facilitate the custodial transfer of such children from ICE to HHS.

Z. To DOJ, disclosure of DNA samples and related information as required by 28 CFR Part 28.

AA. To DOJ, disclosure of arrest and removal information for inclusion in relevant DOJ law enforcement databases and for use in the enforcement Federal firearms laws (*e.g.,* Brady Act).

BB. To Federal, State, local, Tribal, territorial, or foreign governmental or quasi-governmental agencies or courts to confirm the location, custodial status, removal or voluntary departure of an alien from the United States, in order to facilitate the recipient agencies' exercise of responsibilities pertaining to the custody, care, or legal rights (including issuance of a U.S. passport) of the removed individual's minor children, or the adjudication or collection of child support payments or other debts owed by the removed individual.

CC. Disclosure to victims regarding custodial information, such as release on bond, order of supervision, removal from the United States, or death in custody, about an individual who is the subject of a criminal or immigration investigation, proceeding, or prosecution.

DD. To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury, (*e.g.,* disclosure of custodial release information to witnesses who have received threats from individuals in custody.)

EE. To an individual or entity seeking to post or arrange, or who has already posted or arranged, an immigration bond for an alien to aid the individual or entity in (1) identifying the location of the alien, or (2) posting the bond, obtaining payments related to the bond,

or conducting other administrative or financial management activities related to the bond.

FF. To appropriate Federal, State, local, Tribal, or foreign governmental agencies or multilateral governmental organizations where DHS is aware of a need to utilize relevant data for purposes of testing new technology and systems designed to enhance national security or identify other violations of law.

GG. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information can be stored in case file folders, cabinets, safes, or a variety of electronic or computer databases and storage media.

RETRIEVABILITY:

Records may be retrieved by name, identification numbers including, but not limited to, alien registration number (A–Number), fingerprint identification number, Social Security Number, case or record number if applicable, case related data and/or combination of other personal identifiers including, but not limited to, date of birth and nationality.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

ICE is in the process of drafting a proposed record retention schedule for the information maintained in the Enforcement Integrated Database (EID). ICE anticipates retaining records of arrests, detentions and removals in EID for one-hundred (100) years; records concerning U.S. Marshals Service prisoners for ten (10) years; fingerprints and photographs collected using Mobile IDENT for up to seven (7) days in the cache of an encrypted government laptop; Enforcement Integrated Database Data Mart (EID–DM), ENFORCE Alien Removal Module Data Mart (EARM–DM), and ICE Integrated Decision Support (IIDS) records for seventy-five (75) years; user account management records (UAM) for ten (10) years following an individual's separation of employment from Federal service; statistical records for ten (10) years; audit files for fifteen (15) years; and backup files for up to one (1) month.

ICE anticipates retaining records from the Fugitive Case Management System (FCMS) for ten (10) years after a fugitive alien has been arrested and removed from the United States; 75 years from the creation of the record for a criminal fugitive alien that has not been arrested and removed; ten (10) years after a fugitive alien reaches 70 years of age, provided the alien has not been arrested and removed and does not have a criminal history in the United States; ten (10) years after a fugitive alien has obtained legal status; ten (10) years after arrest and/or removal from the United States for a non-fugitive alien's information, whichever is later; audit files for 90 days; backup files for 30 days; and reports for ten (10) years or when no longer needed for administrative, legal, audit, or other operations purposes.

SYSTEM MANAGER AND ADDRESS:

Unit Chief, Law Enforcement Systems/Data Management, U.S. Immigration and Customs Enforcement, Office of Investigations Law Enforcement Support and Information Management Division, Potomac Center North, 500 12th Street, SW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, ICE will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to ICE's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts."

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records in the system are supplied by several sources. In general, information is obtained from individuals covered by this system, and other Federal, State, local, Tribal, or foreign governments. More specifically, DHS/ICE–011 records derive from the following sources:

(a) Individuals covered by the system and other individuals (*e.g.,* witnesses, family members);

(b) Other Federal, State, local, Tribal, or foreign governments and government information systems;

(c) Business records;

(d) Evidence, contraband, and other seized material; and

(e) Public and commercial sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted portions of this system of records from subsections (c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), and (e)(8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted portions of this system of records from subsections (c)(3); (d); (e)(1), (e)(4)(G), and (e)(4)(H) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

In addition, to the extent a record contains information from other exempt systems of records, DHS will rely on the exemptions claimed for those systems.

Dated: February 24, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–4099 Filed 2–26–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–15]

Fungibility Plan and Follow-Up Reporting To Implement Section 901 on Voucher Funds for Displaced Hurricane Katrina and Rita Families

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

Eligible PHAs in areas most heavily impacted by Hurricanes Katrina and Rita will submit a Notice of Intent and Section 901 Fungibility Plan to inform HUD they will exercise funding flexibility and describe how program funds will be used. PHAs will submit quarterly and annual reports on fund utilization.

DATES: *Comments Due Date: March 31, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0245) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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: Notice of Intent and Fungibility Plan and Follow-Up Reporting to Implement Section 901 of 2006 Supplemental Emergency Appropriations authorizing PHAs to Combine or Use Public Housing Capital or Operating Funds, or Housing Choice Voucher Funds for other program purposes to Aid Formerly Assisted Families Displaced by Hurricanes Katrina and Rita.

OMB Approval Number: 2577–0245.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Eligible PHAs in areas most heavily impacted by Hurricanes Katrina and Rita will submit a Notice of Intent and Section 901 Fungibility Plan to inform HUD they will exercise funding flexibility and describe how program funds will be used. PHAs will submit quarterly and annual reports on fund utilization.

Frequency of Submission: Quarterly, Annually, Other one-time upfront fungibility plan submission-annual reporting for 5 years, one final report.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	12	6		23.33		1,680

Total Estimated Burden Hours: 1,680.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 23, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–4158 Filed 2–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5380–N–11]

Notice of Proposed Information Collection: Comment Request; Owner of Record and Re-Sale Data To Preclude Predatory Lending Practices (Property Flipping) on FHA Insured Mortgages

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 30, 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., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Leroy.McKinneyJr@HUD.gov* or telephone (202) 402–8048 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Program Contact, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (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: Owner of Record and Re-sale Data to Preclude Predatory Lending Practices (Property Flipping) on FHA Insured Mortgages.

OMB Control Number, if applicable: 2502–0547.

Description of the need for the information and proposed use: HUD is committed to preventing predatory sales practices. To do so, a permanent policy provides that FHA will not insure mortgages on properties re-sold within 90 days and will require that only the owner-of-record be permitted to sell the property if FHA will insure the subsequent mortgage. However, in order to accommodate current market conditions, FHA has established a waiver to this 90-days regulation, which will expire after a one-year period. Lenders will be required to provide evidence of the date of the last resale and the date it occurred. If the resale exceeds area price thresholds established by FHA, FHA requires an additional appraisal to establish value.

Agency form numbers, if applicable: None.

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 43,500; the number of respondents is 13,000 generating approximately 1,150,000 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is less than 1 minute for clerical data and 1 hour for ARM Disclosure review.

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 23, 2010.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2010–4143 Filed 2–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5380–N–12]

Notice of Proposed Information Collection: Comment Request; Submission Requirements for the Section 202 Supportive Housing for the Elderly and the Section 811 Supportive Housing for Persons With Disabilities Capital Advance Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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 30, 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., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Leroy.McKinneyJr@HUD.gov* or telephone (202) 402–8048 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3000 (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: Capital Advance Program Submission Requirements for Firm Commitment Through Final Closing. Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons With Disabilities.

OMB Control Number, if applicable: 2502–0470.

Description of the need for the information and proposed use: This submission, for which the Department is requesting clearance, is to permit the continued processing of all Sections 202 and 811 capital advance projects that have not yet been finally closed. The submission includes processing of the application for firm commitment to final closing of the capital advance. It is

needed to assist HUD in determining the Owner's eligibility and capacity to finalize the development of a housing project under the Section 202 and Section 811 Capital Advance Programs. A thorough evaluation of an Owner's capabilities is critical to protect the Government's financial interest and to mitigate any possibility of fraud, waste and mismanagement of public funds.

Agency form numbers, if applicable: HUD–: 2328; 2530; 2554; 2880; 935.2; 9832; 9839–A; 9839–B; 9839–C; 51994; 90163–CA; 90163.1–CA; 90164–CA; 90165–CA; 90167–CA; 90169–CA; 90169.a–CA; 90170–CA; 90171–CA; 90172–A–CA; 90172–B–CA; 90173–A–CA; 90173–B–CA; 90173–C–CA; 90175–CA; 90175.1–CA; 90176–CA; 90177–CA; 90178–CA; 91732–A–CA; 92013; 92013–SUPP; 92264; 92330; 92330–A; 92329; 92331; 92403.1; 92403–CA; 92433–CA; 92434–CA; 92435–CA; 92437; 92442; 92442–A–CA; 92443–CA; 92448; 92450–CA; 92452–A; 92452–A–CA; 92457; 92458; 92464; 92466–CA; 92466.1–CA; 92476–A; 92476–A–CA; 92485; 92580; 93432–CA; 93479; 93480; 93481; 93566–CA; 93566.1–CA; 27054; 50080–CAH; SF–269; SF–1199; SF–LL; and FM–1006.

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 number of burden hours is 8,973. The number of respondents is 260, the number of responses is 9,079, the frequency of response is on occasion, and the burden hour per response is 60.

Status of the proposed information collection: Extension of currently approved collection

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 23, 2010.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2010–4145 Filed 2–26–10; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–14]

Cooperative Share Loan Insurance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

New guidance for cooperative housing loan insurance will be published to update existing policies, and better enable mortgagees to submit cooperative share loans for FHA insurance. This new publication will provide instructions to lenders to ensure compliance with project requirements, origination, servicing, and claims. The guidance includes matters concerning forward and reverse (HECM) mortgages, as well as compatible insurance programs. Mortgagees must collect documents and information about the cooperative corporation and housing project, which are needed to evaluate the share loans' eligibility, and ensure compliance with security and project, requirements. Additionally, the new instructions require a Cooperative Project Questionnaire, which will be used by lenders and FHA to document critical information relevant to the structure of the cooperative corporation and its eligibility for FHA insurance. Also required is a form Mortgagee Certification of Cooperative Eligibility, which is to be signed by the Mortgagee/Lender.

DATES: *Comments Due Date:* March 31, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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: Cooperative Share Loan Insurance.

OMB Approval Number: 2502–NEW.

Form Numbers: HUD–92270, HUD–92271, HUD–92270–G.

Description of the Need for the Information and Its Proposed Use:

New guidance for cooperative housing loan insurance will be published to update existing policies, and better enable mortgagees to submit cooperative share loans for FHA insurance. This new publication will provide instructions to lenders to ensure compliance with project requirements, origination, servicing, and claims. The guidance includes matters concerning forward and reverse (HECM) mortgages, as well as compatible insurance programs. Mortgagees must collect documents and information about the cooperative corporation and housing project, which are needed to evaluate the share loans' eligibility, and ensure compliance with security and project, requirements. Additionally, the new instructions require a Cooperative Project Questionnaire, which will be used by lenders and FHA to document critical information relevant to the structure of the cooperative corporation and its eligibility for FHA insurance. Also required is a form Mortgagee Certification of Cooperative Eligibility, which is to be signed by the Mortgagee/Lender.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden:	12,670	12.670		2		2,000

Total Estimated Burden Hours: 2,000.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 23, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–4155 Filed 2–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–12]

Multifamily Default Status Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

Mortgagees use this report to notify HUD that a project owner has defaulted on their mortgage and that an assignment of mortgage will result if HUD and the mortgagor do not develop a plan for reinstating the loan.

DATES: *Comments Due Date: March 31, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0041) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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: Multifamily Default Status Report.

OMB Approval Number: 2502–0041.

Form Numbers: HUD–92426.

Description of the Need for the Information and its Proposed Use: Mortgagees use this report to notify HUD that a project owner has defaulted on their mortgage and that an assignment of mortgage will result if HUD and the mortgagor do not develop a plan for reinstating the loan.

Frequency of Submission: On occasion, Other Reporting required when default occurs.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	63	119		0.167		1,256

Total Estimated Burden Hours: 1,256.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 22, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–4152 Filed 2–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–13]

Single Family Mortgage Insurance Premium, Single Family

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

Lenders use the Single Family Premium Collection Subsystem-Upfront (SFPCS–U) to remit the upfront premium to obtain mortgage insurance for the homeowner. The information strengthens HUD's ability to manage and to manage and process upfront single family mortgage insurance premium collections and corrections to submit data. It also improves data integrity for the Single Family Mortgage Insurance Program.

DATES: *Comments Due Date: March 31, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0423) and should be sent to: HUD Desk Officer,

Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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: Single Family Mortgage Insurance Premium, Single Family.

OMB Approval Number: 2502–0423.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Lenders use the Single Family Premium Collection Subsystem-Upfront (SFPCS–U) to remit the upfront premium to obtain mortgage insurance for the homeowner. The information strengthens HUD's ability to manage and to manage and process upfront single family mortgage insurance premium collections and corrections to submit data. It also improves data integrity for the Single Family Mortgage Insurance Program.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	4,016	12		6.667		7,229

Total Estimated Burden Hours: 7,229.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 22, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–4154 Filed 2–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2010–N031; 30120–1113–0000–F6]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before March 31, 2010.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, MN 55111–4056; or by electronic mail to *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES.**

Permit Applications

Permit Application Number: TE006012.
Applicant: Steven Taylor, Center for Biodiversity, Illinois Natural History Survey, Champaign, Illinois.

The applicant requests a permit renewal to take (capture and release, collect for scientific study and for propagation) Illinois cave amphipod (*Gammarus acherondytes*) in Monroe and St. Clair Counties, Illinois. Activities are proposed for life history analysis and population assessment work aimed at enhancement of the survival of the species in the wild.

Permit Application Number: TE106217.
Applicant: Toledo Zoological Society, Toledo, Ohio.

The applicant requests a permit renewal to take (capture and hold) Mitchell's satyr butterflies (*Neonympha mitchelli mitchelli*) for captive propagation and release into the wild. Activities are proposed in the interest of conservation and recovery of the species and enhancement of the survival of the species in the wild.

Permit Application Number: TE130900
Applicant: Enviroscience, Inc., Blacklick, Ohio.

The applicant requests a permit renewal to take (capture and release) the following unionid species: Clubshell (*Pleurobema clava*), Northern riffleshell (*Epioblasma torulosa rangiana*), Orange-footed pimpleback pearlymussel (*Plethobasus cooperianus*), Pink mucket pearlymussel (*Lampsilis orbiculata*), Rough pigtoe (*Pleurobema plenum*), Purple cat's paw pearlymussel (*Epioblasma obliquata obliquata*), White cat's paw pearlymussel (*Epioblasma obliquata perobliqua*), Fanshell (*Cyprogenia stegaria*), Fat pocketbook (*Potamilus capax*), Higgins' eye pearlymussel (*Lampsilis higginsi*), Winged mapleleaf (*Quadrula fragosa*), White wartyback (*Plethobathus cicatricosus*), Fat three-ridge (*Amblema*

neislerii), Chipola slabshell (*Elliptio chipolaensis*), Purple bankclimber (*Elliptoideus sloatianus*), Upland combshell (*Epioblasma metrastriata*), Southern acornshell (*Epioblasma othcaloogeniss*), Fine-lined pocketbook (*Lampsilis altilis*), Shiny-rayed pocketbook (*Lampsilis subangulata*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), Southern clubshell (*Pleurobema decisum*), Southern pigtoe (*Pleurobema georgianum*), Ovate clubshell (*Pleurobema perovatum*), Triangular kidneyshell (*Ptychobrachus greeni*), Oval pigtoe (*Pleurobema pyriforme*) and the following fish species: Shortnose sturgeon (*Acipenser brevirostrum*), Blue shiner (*Cyprinella caerulea*), Cherokee darter (*Etheostoma scotti*), Etowah darter (*Etheostoma etowahae*), Amber darter (*Percina antesella*), *Goldline darter* (Percina aurolineata), Conasauga logperch (*Percina jenkinsi*), and Snail darter (*Percina tanasi)* in the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, Wisconsin, Kentucky, Florida and Georgia. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE02344A
Applicant: Mainstream Commercial Divers, Inc., Murray, Kentucky.

The applicant requests a permit renewal to take (capture and release) the following unionid species: Clubshell, Northern riffleshell, Orangefoot pimpleback pearlymussel, Pink mucket pearlymussel, Rough pigtoe, Purple cat's paw pearlymussel, White cat's paw pearlymussel, Fanshell, Fat pocketbook, Higgins' eye pearlymussel, Winged mapleleaf, and Scaleshell (*Leptodea leptodon*) in the States of Illinois, Indiana, Iowa, Missouri, Ohio, Wisconsin, Alabama, Arkansas, Florida, Georgia, Kentucky, Mississippi, Tennessee, Pennsylvania, and West Virginia. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE02350A.
Applicant: J.F. New Associates, Inc., Walkerton, Indiana.

The applicant requests a permit to take (capture and release) Indiana bats (*Myotis sodalis*) and gray bats (*Myotis grisescens*) throughout the States of Indiana, Ohio, Michigan, Minnesota, Illinois, Wisconsin, Iowa, Missouri, and Kentucky to document presence/absence of the species and to conduct habitat use assessments. Proposed activities are aimed at enhancement of survival of the species in the wild.

Permit Application Number: TE02360A.
Applicant: Theresa Sydney Burke, Beaver, West Virginia.

The applicant requests a permit renewal to take (capture and release) Indiana bats, gray bats, and Virginia big-eared bats (*Corynorhinus townsendii virginianus*) throughout the range of the species in Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are aimed at enhancement of survival of the species in the wild.

Permit Application Number: TE02365A.
Applicant: Lynn W. Robbins, Missouri State University, Springfield, Missouri.

The applicant requests a permit renewal to take (capture and release; collect tissue samples) Indiana bats and gray bats throughout the range of the species in Iowa, Kansas, Missouri, Nebraska, and Ohio. Proposed activities are aimed at enhancement of survival of the species in the wild.

Permit Application Number: TE02373A
Applicant: Environmental Solutions and Innovations, Inc., Cincinnati, Ohio.

The applicant requests a permit renewal with amendment to take (capture and release) Indiana bats, gray bats, Virginia big-eared bats, Ozark big-eared bats (*Corynorhinus townsendii ingens*); to take (harass) running buffalo clover (*Trifolium stoloniferum*) and Northeastern bulrush (*Scirpus ancistrochaetus*), to take (capture and release) Cumberland elktoe (*Alasmidonta atropurpurea*), dwarf wedgemussel (*Alasmidonta heterodon*), Fanshell, Dromedary pearlymussel (*Dromus dromas*), Cumberland combshell (*Epioblasma brevidens*), oyster mussel (*E. capsaeformis*), Curtis pearlymussel (*E. florentina curtisii*), yellow blossom (*E. florentina florentina*), tan riffleshell (*E. florentina walkeri*), purple cat's paw, white cat's paw, northern riffleshell, tubercled-blossom pearlymussel (*E. torulosa torulosa*), cracking pearlymussel (*Hemistena lata),* pink mucket, Arkansas fatmucket (*Lampsilis powellii*), scaleshell, ring pink (*Obovaria retusa*), Littlewing pearlymussel *(Pegias fibula),* white wartyback pearlymussel, orangefoot pimpleback, clubshell, James spiny mussel (*Pleurobema collina*), rough pigtoe, fat pocketbook, rough rabbitsfoot (*Quadrula cylindrical strigillata*), winged mapleleaf, and Cumberland bean (*Villosa travilis*) mussels; and to take (capture and release) diamond darter (*Crystallaria cincotta*), blue shiner, Maryland darter (*Etheostoma sellare*), Roanoke logperch (*Percina rex*) and blackside dace (*Phoxinus cumberlandensis*) in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, Nebraska, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the purpose of determining presence or absence of the species, population monitoring, habitat assessment, and evaluation of potential project impacts. Activities are aimed at the enhancement of survival of the species in the wild.

Permit Application Number: TE02378A.
Applicant: U.S. Army Corps of Engineers, St. Paul District, St. Paul, Minnesota.

The applicant requests a permit renewal to take (capture and release) Higgins' eye pearlymussel in the Mississippi, St. Croix, Minnesota, and Wisconsin Rivers in Minnesota, Wisconsin, Iowa, Illinois, and Missouri. Proposed activities include surveys to determine presence/absence of the species and to assess impacts of proposed projects. Proposed activities are aimed at the enhancement of survival of the species in the wild.

Permit Application Number: TE02381A.
Applicant: Mark Hove, Macalester College, St. Paul, Minnesota.

The applicant requests a permit renewal to take (capture and release; potential collection of glochidia during fish-host study; capture and relocate) winged mapleleaf and Higgins eye pearlymussels in the St. Croix, Mississippi, Chippewa, and Zumbro Rivers in Minnesota and Wisconsin. Proposed activities are aimed at enhancement of survival of the species in the wild.

Permit Application Number: TE224720–1.
Applicant: ABR, Inc., Environmental Research & Services, Forest Grove, Oregon.

The applicant requests a permit amendment to permit number TE224720 which authorizes take (harass through capture and release; collection of hair and tissue samples) of Indiana bats and gray bats. Applicant requests an

amendment of the geographic scope of the permit to include the states within Region 5 of the Service: Connecticut, Delaware, Maine, Maryland, Massachusetts, Pennsylvania, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Virginia, and West Virginia. Proposed activities under this permit application include surveys to document species' presence or absence in areas proposed for wind-energy development, studies to document habitat use, collection of echolocation data and hair/tissue sampling for scientific research. The applicant's proposed activities are aimed at enhancement of the survival of the species in the wild.

Permit Application Number: TE839777–11.

Applicant: Don Helms, Helms & Associates, Bellevue, Iowa.

The applicant requests a permit amendment to take (capture and release; capture and relocate) Higgins' eye pearlymussels and scaleshell mussels throughout the State of South Dakota. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE02560A.

Applicant: Timothy C. Carter, Ball State University, Muncie, Indiana.

The applicant requests a permit renewal and amendment to take (capture and release; collect tissue samples) Indiana bats and gray bats throughout the States of Georgia, Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE02651A.

Applicant: The Ohio Department of Transportation, Columbus, Ohio.

The applicant requests a permit renewal to take (capture and release) Indiana bats and American burying beetles (*Nicrophorus americanus*) within the State of Ohio. Proposed activities to determine presence/absence of the species, to assess habitat use and monitor populations are for the enhancement of survival of the species in the wild.

Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. 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.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Dated: February 19, 2010.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 2010–4166 Filed 2–26–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000–L13100000.PP0000–L.X.SS.052L0000]

Notice of Public Meeting, BLM—Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held April 6–7, 2010, in the Campbell Tract Facility at 4700 BLM Road, Anchorage, Alaska 99507. On April 6, the meeting starts at 1 p.m in the training room. On April 7, the meeting begins in the same location at 9 a.m. and the council will accept public comment from 1–2 p.m.

FOR FURTHER INFORMATION CONTACT: Ruth McCoard, RAC Coordinator; BLM–Alaska State Office; 222 W. 7th Avenue, #13; Anchorage, AK 99513. Telephone 907–271–4418 or e-mail *ruth_mccoard@blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics planned for discussion include:

- Election of Chair and Vice-Chair.
- Manager reports.
- Stimulus projects update.
- Alaska Land Information System.
- National Landscape Conservation System anniversary.
- Resource management planning.
- Other topics of interest to the RAC.

All meetings are open to the public. Depending on the number of people wishing to comment and time available, the time for individual oral comments may be limited, so be prepared to submit written comments if necessary. 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.

Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the BLM RAC Coordinator listed above.

Dated: February 19, 2010.

Thomas P. Lonnie,

State Director.

[FR Doc. 2010–4115 Filed 2–26–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of the Confederated Tribes of the Warm Springs Reservation of Oregon Judgment Funds in Docket 02–126L Before the United States Federal Court of Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the plan for the use and distribution of the judgment funds awarded to the *Confederated Tribes of the Warm Springs Reservation of Oregon* v. *U.S.,* Docket No. 02–261L, is effective as of December 18, 2009. The judgment funds were awarded by the United States Court of Federal Claims on January 16, 2009. The Tribal Council of the

Confederated Tribes of the Warm Springs Reservation of Oregon enacted Tribal Resolution No. 10,997, on January 22, 2009, to accept the Tribal Use and Distribution Plan providing for the disposition of the settlement funds. Funds were appropriated on March 5, 2009.

FOR FURTHER INFORMATION CONTACT: Iris A. Drew, Bureau of Indian Affairs, Division of Tribal Government Services, 1001 Indian School Road, NW., Albuquerque, New Mexico 87104. *Telephone number:* (505) 563–3530.

SUPPLEMENTARY INFORMATION: On September 1, 2009, the plan for the use and distribution of the funds was submitted to Congress pursuant to the Indian Tribal Judgment Fund Act, 25 U.S.C. 1401 *et seq.* Receipt of the plan by the House of Representatives and the Senate was recorded in the Congressional Record on September 30, 2009, and September 8, 2009, respectively. The plan became effective on December 18, 2009, because a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

For the Use and Distribution of the Confederated Tribes of the Warm Springs Reservation of Oregon Judgment Funds in Docket No. 02–126L

The funds appropriated in satisfaction of the Settlement Agreement executed by the Confederated Tribes of the Warm Springs Reservation of Oregon and the United States Government in Docket No. 02–126L shall be used and distributed in accord with the terms of the Settlement Agreement. The settlement funds total Sixty-Eight Million Dollars ($68,000,000.00). The terms of the Settlement Agreement specifying the use and distribution of the settlement funds are reflected below.

Tribal Programming

A. Thirty-two Million Dollars ($32,000,000) of the settlement funds, as well as all income from the investment, shall be by the Tribe in its sole discretion for tribal operations and purposes (Settlement Agreement, paragraph 3.A.).

B. Twenty-nine Million Dollars ($29,000,000) of the settlement funds, as well as all income from the investment, shall be used to fund the implementation of the Strategic Restoration Plan for the Natural Resources on the Warm Springs Reservation (Settlement Agreement, paragraph 3.B. and Exhibit B).

C. Six Million Dollars ($6,000,000) of the settlement funds, as well as all income from the investment, shall be used by the Tribe to pay for a baseline assessment of the current conditions of the Tribe's natural resources on its Reservation, (which shall include the forest, range, roads, watersheds, and cultural resources) and/or to reimburse the Tribe for attorneys fees and costs and expert fees and costs incurred by the Tribe (Settlement Agreement, paragraphs 3.C. and 6).

D. Seven Hundred and Fifty Thousand Dollars ($750,000), as well as all income from the investment of such amount, shall be released to the Tribe for its sole discretion upon the Tribe's submission to the Interior Department, pursuant to 25 CFR 1000.17, 1000.20, 100.23 (2008), of a complete application that seeks self-governance over all of the forestry and natural resource management programs relating to the Tribe's On-Reservation Non-Monetary Trust Assets (Settlement Agreement, paragraph 3.D.).

E. Two Hundred and Fifty Thousand Dollars ($250,000), as well as all income from the investment of such amount, shall be released to the Tribe for use as it decided at its sole discretion, upon the execution by the Tribe and the Interior Department of mutually acceptable annual funding agreement relating to the Self-governance responsibilities described in D. of the Settlement Agreement. If the Tribe and the Interior fail to execute a mutually acceptable annual funding agreement within twenty-four (24) months of the date of the Tribe's submission of its application, as set forth in Paragraph 3.D. of the Settlement Agreement, One Hundred and Twenty-Five Thousand Dollars ($125,000), as well as all income from the investment of such amount, shall be released to the Tribe for use at its sole discretion (Settlement Agreement, paragraph 3.E.).

General Provisions

None of the funds distributed under this plan shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the social Security Act, or any Federal or federally assisted programs.

Dated: February 19, 2010.

George T. Skibine,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010–4119 Filed 2–26–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N038; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. Both laws require that we invite public comment before issuing these permits.

DATES: We must receive requests for documents or comments on or before March 31, 2010. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by March 31, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 558–7725; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 558–7725 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your

comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. *1531 et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 18 require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

[A.] Endangered Species

Applicant: Dr. Ajit Varki, Department of Cellular and Molecular Medicine, University of California, San Diego, CA, PRT–236267

The applicant requests a permit to acquire from Coriell Institute, Camden, NJ, in interstate commerce DNA and/or cell lines from chimpanzee, (*Pan troglodytes*), gorilla (*Gorilla*), and Bornean orangutan (*Pongo pygmaeus*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a one-year period.

Applicant: Exotic Feline Breeding Compound, Inc., Rosamond, CA, PRT–234072

The applicant requests a permit to import one captive bred male Iranian leopard (*Panthera pardus saxicolor*) from Aalborg Zoo, Denmark, for the purpose of enhancement of the survival of the species.

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Terrance David Braden, Williamston, MI, PRT–231677

Applicant: Alan Maiss, Reno, NV, PRT–228691

Applicant: Conroe Taxidermy, Conroe, TX, PRT–230925

On January 26, 2010, we published a **Federal Register** notice inviting the public to comment on several applications for permits to conduct certain activities with endangered species (75 FR 4103). We made an error in reporting the species of the animal in the Conroe Taxidermy application, which starts at the top of column 3 on page 4103. The animal is not a male Scimitar-horned oryx (*Oryx dammah*) as we reported in 75 FR 4103, but rather a male Bontebok (*Damaliscus pygargus pygargus*). All the other information we printed was correct. With this notice, we correct that error and reopen the comment period for PRT–230925.

[B.] [Endangered Marine Mammals and] Marine Mammals

Applicant: U.S. Fish and Wildlife Service, Jacksonville, FL, PRT–770191

The applicant requests a permit and a letter of authorization for the rescue, rehabilitation and release of unlimited number of stranded West Indian manatees (*Trichechus manatus*) in the waters of the United States, the import of rescued manatees, and import and export of biological specimens. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: February 19, 2010.

Brenda Tapia,

Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–4168 Filed 2–26–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM910000 L18200000.XG0000]

Notice of Relocation/Change of Street Address for New Mexico State Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, New Mexico State Office located at 1474 Rodeo Road, Santa Fe, New Mexico has relocated to 301 Dinosaur Trail, Santa Fe, New Mexico.

DATES: *Effective Date:* November 2, 2009.

SUPPLEMENTARY INFORMATION: The office at 1474 Rodeo Road remained open during the move which took place starting on October 26 through November 6, 2009. The mailing address remains the same (P.O. Box 27115, Santa Fe, New Mexico 87502–0115). The main office telephone number has changed to (505) 954–2000.

FOR FURTHER INFORMATION CONTACT: Rosemary Herrell, Branch Chief, Support Services, at (505) 438–7625, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115.

Linda S.C. Rundell,

State Director.

[FR Doc. 2010–4055 Filed 2–26–10; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1071 and 1072 (Review)]

Magnesium From China and Russia

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on magnesium from China and Russia.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on magnesium from China and Russia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 31, 2010. Comments on the adequacy of responses may be filed with the Commission by May 14, 2010. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

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

FOR FURTHER INFORMATION CONTACT: Mary Messer (tel: 202–205–3193, e-mail: *mary.messer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 15, 2005, the Department of Commerce issued antidumping duty orders on imports of magnesium (also known as magnesium metal) from China and Russia (70 FR 19928–19931). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Russia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission found one *Domestic Like Product* to include pure and alloy magnesium, primary and secondary magnesium, and ingot (cast) and granular magnesium. Certain Commissioners defined the *Domestic Like Product* differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found one *Domestic Industry* consisting of all producers of the *Domestic Like Product,* including grinders that produce granular magnesium. Certain Commissioners defined the *Domestic Industry* differently.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is April 15, 2005.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR § 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–211, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 31, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is May 14, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2009, except as noted (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.*, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country(ies),* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 24, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–4163 Filed 2–26–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on February 22, 2010, a proposed Consent Decree in *United States* v. *Cummins, Inc.,* case number 1:10–cv–00275, was lodged with the United States District Court for the District of Columbia.

The Decree resolves the claims of the United States against Cummins, Inc. ("Cummins") for violations of Title II of the Clean Air Act, 42 U.S.C. 7521 *et seq.* (the "Act"). The United States alleged that Cummins sold, offered for sale, or introduced or delivered for introduction into commerce new motor vehicle engines not covered by certificates of conformity, because the engines as actually sold, offered for sale, or introduced or delivered for introduction into commerce are materially different from the engines described in Cummins' applications for certificates of conformity, in that the engines were not equipped with the required emission control system or aftertreatment device. Under the proposed Decree, Cummins shall: Pay a penalty of $2.1 million, of which $1,680,000 shall be paid to the United States and the remainder to the State of California under a parallel administrative agreement; institute a voluntary recall of the affected engines; retire 167.1 tons of NO_X and 30.5 tons of PM, the entire amount of excess pollution attributable to the violation; and dismiss with prejudice a pending Petition for Review in the DC Circuit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-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 the Consent Decree between the United States and Cummins, DOJ Ref. No. 90–5–2–1–09351.

During the public comment period, the Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the 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 no. (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 $8.25 (25 cents per page reproduction cost) 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. 2010–4023 Filed 2–26–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Modification of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on February 23, 2010, a proposed Consent Decree in *United States* v. *Schlumberger Technology Corporation,* Civil Action No. 2:10-cv-00783–TON, D.J. Ref. 90–

11–3–09285 was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States sought reimbursement of response costs incurred in connection with the release or threatened release of hazardous substances at the North Penn 12 Superfund Site, Worcester Township, Montgomery County, Pennsylvania (the "Site"). The Consent Decree obligates the Settling Defendant to reimburse $10,429.94 of the United States' past response costs paid in connection with the Site, and to pay future response costs to be incurred by the United States at the Site as well.

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 emailed 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. *Schlumberger Technology Corporation,* Civil Action No. 2:10-cv-00783–TON, D.J. Ref. 90–11–3–09285.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250 Philadelphia, PA 19106, and at U.S. EPA Region 3. 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 no. (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 $6.75 (@ 25 cents per page reproduction cost) 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 Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–4060 Filed 2–26–10; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL SCIENCE FOUNDATION

Notice of Buy American Waiver Under the American Recovery and Reinvestment Act of 2009

AGENCY: National Science Foundation (NSF).

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) has granted a limited waiver of section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, 123 Stat. 115, 303 (2009), with respect to the purchase of the bow thruster that will be used in the Alaska Region Research Vessel (ARRV). A bow thruster is a propulsion device that is built into a vessel's bow to make it more maneuverable and better able to hold a certain position or orientation at sea.

DATES: March 1, 2010.

ADDRESSES: National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Leithead, Division of Acquisition and Cooperative Support, 703–292–4595.

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of the Recovery Act and section 176.80 of Title 2 of the Code of Federal Regulations, the National Science Foundation (NSF) hereby provides notice that on January 28, 2010, the NSF Director granted a limited project waiver of section 1605 of the Recovery Act (Buy American provision) with respect to the bow thruster that will be used in the ARRV. The basis for this waiver is section 1605(b)(2) of the Recovery Act, in that 360-degree azimuthing, 686-kW (920 hp), ice certified bow thrusters of satisfactory quality are not produced in the United States in sufficient and reasonably available commercial quantities. The cost of the bow thruster represents approximately 0.5% of the total $148 million Recovery Act award provided toward construction of the ARRV.

I. Background

The Recovery Act appropriated $400 million to NSF for several projects being funded by the Foundation's Major Research Equipment and Facilities Construction (MREFC) account. The ARRV is one of NSF's MREFC projects. Section 1605(a) of the Recovery Act, the Buy American provision, states that none of the funds appropriated by the Act "may be used for a project 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."

The ARRV has been developed under a cooperative agreement awarded to the University of Alaska, Fairbanks (UAF) that began in 2007. Shipyard selection is complete and UAF executed the construction contract in December 2009. The purpose of the Recovery Act is to stimulate economic recovery in part by funding current construction projects like the ARRV that are "shovel ready" without requiring projects to revise their standards and specifications, or to restart the bidding process again.

Subsections 1605(b) and (c) of the Recovery Act authorize the head of a Federal department or agency to waive the Buy American provision if the head of the agency finds that: (1) Applying the provision would be inconsistent with the public interest; (2) the relevant goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent. If the head of the Federal department or agency waives the Buy American provision, then the head of the department or agency is required to publish a detailed justification in the **Federal Register**. Finally, section 1605(d) of the Recovery Act states that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

II. Finding That Relevant Goods Are Not Produced in the United States in Sufficient and Reasonably Available Quality

The vessel's operational design requirements, as set forth in the Science Mission Requirements and documented in the UAF's proposal, dictate two particular bow thruster specifications: (1) A certification for use in ice to permit independent operations in the Arctic; and (2) a requirement to hold the ship in a specific location or orientation for science operations. Consequently, a design was prepared that included a bow thruster and an ice wedge located on the hull. An ice wedge is a projection at the front of a vessel below the water line that moves ice to the sides as the bow breaks and pushes it down. This particular hull form, together with the requirements to hold the ship in a certain position at sea, further constrains the bow thruster design, resulting in the following four technical requirements of any bow thruster for this particular vessel:

• *Size*—The unit must fit within the space allocated in the hull and ice wedge;
• *Power*—Minimum 686-kW rated (920 hp);
• *Capability*—360-degree thrust (azimuthing steering control);
• *Certification for use in ice*—No hull protrusion(s), tunnel with propeller, or any feature that subjects the thruster to ice damage along the hull form, per American Bureau of Shipping Rules for Building and Classing Vessels, Polar Class PC–5.

Failure to meet any of these four technical requirements would have severe negative consequences for the capabilities of the vessel. It is not feasible to modify the shape of the hull forward to accommodate a thruster of a different configuration, since the hull shape has been optimized for ice breaking through extensive testing over the past four years. Any changes at this point would significantly affect vessel capabilities. Reduction of the minimum power, or elimination of the 360-degree thrust requirement, would also result in a vessel that could not successfully support open water science equipment deployments in the Arctic. Vessels working in the Arctic are subject to demanding and often dangerous conditions due to low temperatures, high winds, and rough seas as well as ice. Accepting a design that is susceptible to ice damage could render the bow thruster inoperable under these severe conditions, thereby jeopardizing the safety of the vessel and personnel aboard. Such compromises also produce a ship that would not be allowed to operate independently in the Arctic under emerging international agreements which require minimum standards for equipment survivability for vessels operating in polar waters (Arctic and Antarctic). Independent operation is critical to cost-effective science support. Requiring the ARRV to be escorted by another, more ice-capable vessel could add over $6M in outside charter cost for NSF and the other funding agencies for every 100 days in the ice. Frequent damage as a result of using a non-compliant design would add significant annual program cost for maintenance and repair (in excess of $100K per incident depending on the extent of damage) once the vessel goes into operation. This financial loss is in addition to the lost science opportunities caused by delay in sailing.

As noted in UAF's request for this waiver, UAF performed market research in April and early May of 2009 that initially found that bow thrusters are generally available in manufacturers' commercial product lines. UAF then conducted additional market research by reviewing industry publications and the Internet, and by attending an industry suppliers' conference, in order to assess whether there exists a domestic capability to provide a bow thruster that meets the necessary requirements for safe and successful operation in Arctic waters.

After identifying 15 potential domestic suppliers, UAF compared the existing product lines for compliance with the bow thruster technical specifications and requirements as identified above.

Beginning with an assessment of power requirements, the bow thrusters offered by 12 domestic firms either did not meet the 686-kW rated minimum or the companies simply served as distributors of others' product lines. Two of the remaining three domestic suppliers did not provide bow thrusters that meet the required ice certification standards, because their products rely upon tunnels with propellers or units that extended from the hull; these features make this type of bow thruster susceptible to ice damage which, as explained above, could render them inoperable under the severe conditions inherent in Arctic operations. The final, most capable domestic manufacturer of bow thrusters did comply with the stated size, power and (potentially) capability requirements. However, this bow thruster relies upon controllable vanes that are fitted to the thruster discharge nozzles to achieve the 360-degree thrust capability. The controllable vanes make the bow thrusters susceptible to ice damage which, as explained above, could render them inoperable under the severe conditions inherent in Arctic operations.

In the absence of a domestic supplier that could provide a requirements-compliant bow thruster, UAF requested that NSF issue a Section 1605 waiver determination with respect to the purchase of foreign-supplied, requirements-compliant bow thruster, so that the vessel will contain a bow thruster that meets the specific design and technical requirements which, as explained above, are necessary for this vessel to be able to perform its Arctic mission safely and successfully. Furthermore, UAF's market research indicated that bow thrusters compliant with the ARRV's technical specifications and requirements are commercially available from foreign vendors within their standard product lines.

NSF's Division of Acquisition and Cooperative Support (DACS) and other NSF program staff reviewed the UAF waiver request submittal, found that it was complete, and determined that sufficient technical information was provided in order for NSF to evaluate the waiver request and to conclude that a waiver is needed and should be granted.

III. Waiver

On January 28, 2010, based on the finding that no domestically produced bow thruster met all of the ARRV's technical specifications and requirements and pursuant to section 1605(b), the Director of the National Science Foundation granted a limited project waiver of the Recovery Act's Buy American requirements with respect to the procurement of a 360-degree azimuthing, 686-kW, ice classed bow thruster.

Dated: February 24, 2010.

Lawrence Rudolph,

General Counsel.

[FR Doc. 2010–4170 Filed 2–26–10; 8:45 am]

BILLING CODE 7555–01–P

SMALL BUSINESS ADMINISTRATION

SBA Lender Risk Rating System

AGENCY: Small Business Administration.

ACTION: Notice of revised Risk Rating System; request for comments.

SUMMARY: This notice implements changes to the Small Business Administration's (SBA's) Risk Rating System (Risk Rating System). The Risk Rating System is an internal tool to assist SBA in assessing the risk of each active 7(a) Lender's and Certified Development Company's (CDC's) SBA loan operations and loan portfolio. Consistent with industry best practices, SBA recently redeveloped the model used to calculate the composite risk ratings to ensure that the Risk Rating System remains current and predictive as technologies and available data evolve. SBA is publishing this notice with a request for comments to provide the public with an opportunity to comment and to allow for any necessary adjustments as the industry moves through the economic cycle.

DATES: This notice is effective March 1, 2010.

Comment Date: Comments must be received on or before April 30, 2010.

ADDRESSES: You may submit comments, identified by RIN number [INSERT RIN NUMBER], by any of the following methods:

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

• *Mail:* Bryan Hooper, Director for Office of Credit Risk Management, U.S. Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.

• *Hand Delivery/Courier:* Bryan Hooper, Director for Office of Credit Risk Management, U.S. Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416.

All comments will be posted on *http://www.Regulations.gov.* If you wish to include within your comment, confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at *http://www.Regulations.gov* and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery and you must address the comment to the attention of Bryan Hooper, Director for Office of Credit Risk Management, Office of Credit Risk Management. In the submission, you must highlight the information that you consider is CBI and explain why you believe this information should be held confidential. SBA will make a final determination, in its discretion, of whether the information is CBI and, therefore, will be published or not.

FOR FURTHER INFORMATION CONTACT: Bryan Hooper, Director, Office of Credit Risk Management, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor Washington, DC 20416, (202) 205–3049.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Introduction to the Risk Rating System

In 2005, the Small Business Administration (SBA) developed an SBA internal Lender Risk Rating System (Risk Rating System). The Risk Rating System is an internal tool that primarily uses data in SBA's Loan and Lender Monitoring System (L/LMS) to assist SBA in assessing the risk of an SBA Lender's SBA loan performance on a uniform basis and identifying those SBA Lenders whose portfolio performance, or other Lender-specific risk-related factors, may demonstrate the need for additional SBA monitoring or other action. The Risk Rating System also serves as a vehicle to measure the aggregate strength of SBA's overall 7(a) and 504 loan portfolios and to assist SBA in managing the related risk. In addition, SBA uses risk ratings and the underlying components to make more effective use of its on-site and off-site Lender review and assessment resources.

Under SBA's Risk Rating System, SBA assigns all SBA Lenders a composite risk rating of 1 to 5, based on empirical data. The rating reflects SBA's assessment of the potential risk to the government of that SBA Lender's SBA portfolio performance. The composite rating is calculated using several component factors. The component factors were developed using step-wise regression analysis to determine the components that provided a linear regression formula that was most predictive of actual purchases over a one year period.

On May 1, 2006, SBA published a notice and request for comment in the **Federal Register** seeking comments on the proposed Risk Rating System (72 FR 25624). A final notice was published in the **Federal Register** on May 16, 2007 (72 FR 27611).

B. Redevelopment

Typically, under industry best practices, custom credit scoring models are redeveloped approximately every three to five years to reflect changing conditions, portfolio shifts, and to incorporate additional data that may have become available. This redevelopment is consistent with such practices and is necessary to ensure that SBA's risk ratings provide an accurate assessment of Lenders' SBA portfolio performance. SBA's portfolio has changed substantially over the past five years; the portfolio has grown dramatically, and the composition of loan products (delivery methods) has greatly shifted. In addition, over the past five years the economy, and in particular the small business lending environment, has changed. Given these circumstances and that SBA now has five years' experience with this modeling and the type of SBA data available, SBA determined to test for additional or different components to increase the model's predictiveness.

SBA reviewed 86 possible variables; of which 26 were tested in detail. These variable factors were derived from SBA's experience working with the model over the past five years and feedback from Lenders, including comments received in response to the Proposed Risk Rating System Notice. 71 FR 25624 (May 1, 2006). The factors were run through the model in various combinations and the most predictive combinations of factors were chosen for each loan program (7(a) and 504). In so doing, SBA selected additional components that proved to enhance the predictive value of the model over the earlier model factors.

II. The Redeveloped Risk Rating Model

The redeveloped model used to calculate the composite risk ratings is an updated version of the previous model. It remains a custom credit score model, at the Lender-level, based on the same outcome as the previous system—the likelihood of a Lender's purchases over the next 12 months. It models the relative risk levels of Lenders. The model continues to use loan-level SBA performance data (as provided by the Lenders and SBA centers), and it continues to use external risk assessment data in the form of off-the-shelf Small Business Predictive Score (SBPS) credit scores, derived from third party business and consumer credit bureau data.

The SBA will continue to report the risk ratings by SBA peer groups based on SBA loan portfolio size, as determined by outstanding SBA guaranteed dollars. Peer group sizes will remain the same as under the former Lender Risk Rating Notice, and they will continue to reflect SBA's relative level of risk from Lenders in each peer group. The existing peer groups will continue to significantly reduce the possibility of the same event (for example, a loan purchase) having a different impact on Lenders in the same peer group. Splitting SBA Lenders into peer groups based on portfolio size also helps SBA to better monitor those SBA Lenders in the largest peer groups that represent the overwhelming majority of guaranteed dollars at risk, and allows SBA to make the best use of its oversight resources. The most notable changes that will result from the redevelopment are:

1. Updated components in the linear regression formulas for both 7(a) Lenders and CDCs in the 504 program, chosen in conjunction with a full step-wise regression analysis.

2. Modeling of the overall portfolios, with the age and/or size of a Lender's portfolio represented by a component (consisting of three segments for 7(a) Lenders). These segments replace the need for a separate linear regression model for each Peer Group in 7(a).

3. Both components and weightings of the components are the same across the 7(a) portfolio. The components and weightings of the rating formula are also the same across all CDCs.

The rating components in the new risk rating model include:

1. Several previously used rating components;

2. Additional performance-related components;

3. Components to account for differences in performance between delivery methods;

4. Assessment of the age of a loan portfolio;

5. Other measures of loan credit quality;

6. Measures of net flow (dollars in and dollars out); and

7. An additional commercial off the shelf risk score.

SBA had received a number of comments when it initially proposed the Risk Rating System in May 2006 regarding the need to include losses and recoveries in the risk rating models. Due to the substantial time lag for losses to occur, adding a loss factor did not directly improve the predictive power of the Lender risk ratings. However, a similar factor, net flow, did add to the predictive values of the risk rating model for 7(a) Lenders and was therefore included as a new 7(a) rating component. Net flow incorporates a measure of losses and recoveries, as it is calculated by summing all fees and recoveries coming in, less purchases going out.

These new components provide SBA and its Lenders with a more diverse set of factors that add predictive value to the risk ratings calculated by the risk rating model. A description of all of the rating components used in the redeveloped risk rating model may be found in the overview section below.

III. Other Changes to the Risk Rating System

In addition to employing new rating components, the redeveloped risk rating model also relies on a newer version of the SBPS scoring tool. As of June 30, 2009, SBA switched from SBPS version 5 to an improved SBPS version 6 recently produced by Dun & Bradstreet (D&B) and FICO. Version 6 has been validated numerous times for more than a year by D&B/FICO and an SBA subcontractor, TrueNorth, and it has been found to be predictive on both the 7(a) and 504 loan portfolios. In addition, since the commercial release of SBPS version 6 in December 2006, the SBPS has also been validated on multiple independent account portfolios of industry leading financial institutions.

This notice provides program participants and other parties with an explanation of the components and a description of other modeling enhancements. In addition, SBA is soliciting comments on the components and enhancements. These changes have been made to the model and included in the risk rating update for the quarter ending September 30, 2009, and will be made available to Lenders through SBA's Lender Portal upon publication of this notice.

IV. Text of the SBA Lender Risk Rating System

A. Overview

Under SBA's Risk Rating System, SBA assigns all SBA Lenders a composite risk rating. The composite rating reflects SBA's assessment of the potential risk to the government of that SBA Lender's SBA portfolio performance.

For 7(a) Lenders, SBA will base the composite rating on eleven components. The components for 7(a) Lenders are as follows:

1. Past 12 Months Actual Purchase Rate;
2. Six (6) Month Liquidation Rate;
3. Gross Delinquency Rate;
4. Gross Past-Due Rate;
5. Six (6) Month Net Flow Indicator;
6. Average Small Business Predictive Scores (SBPS);
7. Projected Purchase Rate (PPR);
8. Dollar Weighted Average Financial Stress Score (FSS);
9. PLP Percent;
10. SBA Express Percent; and
11. Portfolio Size/Age.

The statistical analysis performed showed that incorporating the Portfolio Size/Age component improved the predictive power of the 7(a) Lender risk rating. This component is further broken down into three segments:

(1) Lenders with 7(a) portfolios equal to or less than $4 million SBA guaranteed outstanding;

(2) Lenders with 7(a) portfolios over $4 million SBA guaranteed outstanding, and whose average loan age is over 30 months; and

(3) Lenders with 7(a) portfolios over $4 million SBA guaranteed outstanding, and whose average loan age is equal to or under 30 months.

For CDCs, SBA will base the Lender rating on six common components. The components for CDCs follow:

1. Past 12 Months Actual Purchase Rate;
2. Six (6) Month Delinquency Rate;
3. Gross Delinquency Rate;
4. Gross Past-Due Rate;
5. Average Small Business Predictive Score (SBPS); and
6. Low Month on Book Indicator.

In general, these 7(a) and CDC components reflect both historical SBA Lender performance and projected future performance. The components were selected through statistical analysis using step-wise regression analysis. The selected components were then used in an overall regression model to create the Lender risk rating. No single component normally decides an SBA Lender's risk rating. SBA updates the Lender risk ratings on a quarterly basis, using refreshed Lender data. Each of the risk rating factors is described in more detail in the Rating Components section below.

SBA generally does not intend to use the risk ratings as the sole basis for taking enforcement actions against SBA Lenders. The primary purpose is to focus SBA's oversight resources on those SBA Lenders whose portfolio performance or other Lender-specific risk-related factors demonstrate a need for further review and evaluation by SBA.

All SBA Lenders have on-line access to their Lender risk rating and rating component values along with peer group and portfolio component averages through SBA's Lender Portal. Information on the Lender Portal can be found at 72 FR 27611, 27619 (May 16, 2007).

B. Lender Risk Rating

The SBA Lender risk rating (LRR) is a measure of predicted performance over the next 12 months. SBA uses its risk rating model to calculate and assign a composite rating of 1 to 5 to each SBA Lender. SBA may make adjustments to the composite rating based on results of reviews, third party information on a SBA Lender's operations, portfolio trends and other information that could impact a SBA Lender's risk profile. (*See* Overriding Factors section for further detail.) In general, a rating of 1 indicates strong portfolio performance, least risk, and that the least degree of SBA oversight is likely needed (relative to other SBA Lenders), while a 5 rating indicates weak portfolio performance, highest risk, and that the highest degree of SBA oversight is likely needed. SBA provides the following general descriptions for the Lender risk ratings:

LRR 1—The SBA operations of an SBA Lender rated 1 are generally considered strong in every respect, typically score well above average in all or nearly all of the rating components described in this Notice, are more likely to have well below average historical purchase rate, and have loans that demonstrate highly acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance.

LRR 2—The SBA operations of an SBA Lender rated 2 are generally considered good, typically are above average in all or nearly all of the rating components described in this Notice, are more likely to have below average previous (12 months) purchase rates, and have loans that demonstrate better-than-acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance.

LRR 3—The SBA operations of an SBA Lender rated 3 are generally considered about average in all or nearly all of the rating components described in this Notice, are likely to have average previous (12 months) purchase rates, and have loans that demonstrate acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance.

LRR 4—The SBA operations of an SBA Lender rated 4 are generally considered below average in all or nearly all of the rating components described in this Notice, are likely to have below average component factors and above average previous (12 months) purchase rates, and have loans that demonstrate somewhat less-than-acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance.

LRR 5—The SBA operations of an SBA Lender rated 5 are generally considered well below average in all or nearly all of the rating components described in this Notice, are most likely to have well above average previous (12 months) purchase rates, and have loans that demonstrate less-than-acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance.

The descriptions for each rating value are not meant as definitions of the ratings and do not limit or dictate SBA's dealings with any SBA Lender.

C. Rating Components

1. 7(a) Lenders

SBA's quantitative composite risk ratings for 7(a) Lenders rely on eleven components, selected because of their power to predict loan purchases over the next 12 months. For the 7(a) program, the eleventh component is broken down into three different segments based on age and size of a 7(a) Lender's portfolio. Each of the eleven rating components is defined below.

(i) *Past 12–Months Actual Purchase Rate.* The Past 12–Month Actual Purchase Rate is a historical measure of SBA loan guarantee purchases from the 7(a) Lender in the 12 months preceding the rating date. Thus, this component provides a measure of 7(a) Lender performance and risk reflective of actual SBA guarantee purchases. SBA calculates this rate by dividing the sum of total gross dollars of the 7(a) Lender's loans purchased during the past 12 months (numerator), by the sum of total gross dollars of the 7(a) Lender's SBA loans outstanding at the end of the 12-month period. Gross dollars purchased in the last 12 months are added to the denominator, as they are not included in the outstanding figure.

(ii) *6 Month Liquidation Rate.* The Six (6) Month Liquidation Rate is the liquidation rate (loans in liquidation but not yet purchased by SBA) calculated over the past six (6) months. This component provides a measure of 7(a) Lender performance and risk as indicated by dollars in liquidation over the past six (6) months, as placed in that status by SBA at the request of the Lender. SBA calculates this ratio by dividing the sum of the total gross dollars of the 7(a) Lender's SBA loans in liquidation status in each of the six (6) months prior to the rating date (numerator), by the sum of total gross dollars of the (7a) Lender's SBA loans outstanding in each of the six (6) months prior to the rating date (denominator).

(iii) *Gross Delinquency Rate.* The Gross Delinquency Rate is the delinquency rate (loans 60 days past due or more, but not in liquidation) as of the rating date. This component provides a measure of 7(a) Lender performance and risk as indicated by SBA loan dollars in delinquency status as reported by the Lender. SBA calculates this ratio by dividing the sum of the total gross dollars of the 7(a) Lender's SBA loans in delinquency status as of the rating date (numerator), by the sum of total gross dollars of the 7(a) Lender's SBA loans outstanding as of the rating date (denominator).

(iv) Gross Past-Due Rate. The Gross Past-Due Rate is the past-due rate (30 to 59 days past-due) as of the rating date. This component provides a measure of 7(a) Lender performance and risk as indicated by SBA loan dollars in past-due status as reported by the Lender. SBA calculates this rate by dividing the sum of the total gross dollars of the 7(a) Lender's SBA loans in past-due status as of this date (numerator), by the sum of the total gross dollars of the 7(a) Lender's SBA loans outstanding as of this date (denominator).

(v) *6 Month Net Flow Indicator.* The Six (6) Month Net Flow Indicator measures net flows, or dollars-in and dollars-out, over the last six (6) months preceding the rating date. Dollars-in includes guarantee fee payments and recoveries by SBA from a 7(a) Lender; dollars-out reflects guarantee purchases made by SBA. The net flow indicator is calculated by summing up all guarantee fees and recoveries submitted by the 7(a) Lender to SBA over the six (6) months prior to the rating date. From the six (6) month total, all of the purchases paid out by SBA to the 7(a) Lender over the same six (6) months are subtracted. If the net flow of dollars is positive, the component value is a 1; if the net flow of dollars is negative, the component value is 0.

(vi) *Average Small Business Predictive Score (SBPS).* The SBPS is a portfolio management (not origination) credit score based upon a borrower's business credit report and principal's consumer credit report. SBPS is a proprietary calculation provided by Dun & Bradstreet, under contract with SBA, and is compatible with FICO's "Liquid Credit" origination score. This component provides an indication of the relative credit quality of the loans in a 7(a) Lender's SBA portfolio. The score is calculated from the average SBPS score of the loans in a 7(a) Lender's portfolio, weighted by each loan's guaranteed dollars outstanding.

(vii) *Projected Purchase Rate (PPR).* The PPR is a predictive measure of the relative future riskiness of the 7(a) Lender's SBA loans over the next 12-months, calculated as of the rating date. This is a credit quality, leading indicator, predictive factor. The PPR is derived from the annual and quarterly statistical validations of SBPS credit scores on the entire SBA 7(a) portfolio. As part of this validation process, Dun & Bradstreet and FICO compare the SBPS credit scores, by delivery method, of all outstanding 7(a) loans at the beginning of the validation period to the actual purchases observed over the next 12-months. From this comparison, a projected purchase rate is developed for each 7(a) loan based on the loan's delivery method and current SBPS credit score. A 7(a) Lender's PPR is then determined by calculating the dollar-weighted average PPR of the 7(a) loans in the Lender's portfolio. SBA calculates this rate by dividing the sum of the PPRs for each loan (multiplied by the guaranteed dollars outstanding for each loan) by the total guaranteed dollars outstanding for all the Lender's loans.

(viii) *Dollar Weighted Average Financial Stress Score (FSS).* The FSS predicts the likelihood that a small business borrower will experience one or more of the following conditions over the next 12 months, based on the information in D&B's files: obtaining legal relief from creditors; ceasing business operations without paying all creditors in full; voluntarily withdrawing from business operation, leaving unpaid obligations; going into receivership or reorganization; or making an arrangement for the benefit of creditors. FSS uses statistical probabilities to classify businesses into a score range, where the lowest score has the highest likelihood of business failure. The score includes D&B data related to payment trends, business

financial statements, industry position, business size and age, and public filings.

(ix) *PLP Percent.* The PLP Percent is the percent of the 7(a) Lender's PLP loan dollars outstanding (disbursed but not purchased or paid-in-full), compared to the 7(a) Lender's total outstanding SBA portfolio as of the rating date. This variable is reflective of the fact that there is a strong correlation among various SBA delivery methods and loan risk, with PLP loans generally providing the least risk. This component is calculated by taking the sum of the 7(a) Lender's total PLP loan gross dollars outstanding (numerator), and dividing it by the sum of the total gross dollars outstanding for the 7(a) Lender (denominator).

(x) *SBA Express Percent.* The SBA Express Percent is the percent of the 7(a) Lender's SBA Express loan dollars outstanding (disbursed but not purchased or paid-in-full), compared to the 7(a) Lender's total outstanding SBA portfolio as of the rating date. This variable is reflective of the fact that there is a strong correlation among various SBA delivery methods and loan risk, with SBA Express loans being among those delivery methods with generally greater risk. This component is calculated by taking the sum of the 7(a) Lender's total SBA Express loan gross dollars outstanding (numerator), and dividing it by the sum of the total gross dollars outstanding for the 7(a) Lender (denominator).

(xi) *Portfolio Size/Age Segment Component.* During the redevelopment process, it was found that 7(a) Lender performance differed depending on the size and age of the Lender's SBA portfolio. To account for these differences, 7(a) Lenders were analyzed and divided into three different segments based on the differences seen in the performance outcome variable. The first segment of 7(a) Lenders consists of Lenders with SBA portfolios less than or equal to $4 million in outstanding SBA guarantees regardless of portfolio age. This segment generally presents the least portfolio risk. The second segment of 7(a) Lenders consists of Lenders with an outstanding SBA guaranteed portfolio of more than $4 million and an average loan age ("month on book") of greater than 30 months. The third segment of 7(a) Lenders consists of Lenders with an outstanding SBA guaranteed portfolio of more than $4 million and an average loan age ("month on book") of less than or equal to 30 months. This segment generally presents the greatest portfolio risk. Factor weight is dependent on which segment is applicable.

2. Certified Development Companies (CDCs)

SBA's quantitative composite risk ratings for CDCs rely on six components, selected because of their power to predict loan purchases over the next 12 months. Each of the six rating components is defined below.

(i) *Past 12–Months Actual Purchase Rate.* The Past 12 Months Actual Purchase Rate is a historical measure of SBA loan guarantee purchases from the CDC in the 12 months preceding the rating date. Thus, this component provides a measure of the CDC's performance and risk reflective of actual SBA guarantee purchases. SBA calculates this rate by dividing the sum of total gross dollars of the CDC's loans purchased during the past 12 months (numerator), by the sum of total gross dollars of the CDC's SBA loans outstanding at the end of the 12-month period. Gross dollars purchased in the last 12 months are added to the denominator, as they are not included in the outstanding figure.

(ii) *6 Month Delinquency Rate.* The Six (6) Month Delinquency Rate is the delinquency rate calculated over the past six (6) months. It is calculated by dividing the sum of the total gross dollars of the CDC's loans in delinquency status in each of the six (6) months prior to the rating date (numerator) by the sum of total gross dollars of the CDC's SBA loans outstanding in each of the six (6) months prior to the rating date.

(iii) *Gross Delinquency Rate.* The Gross Delinquency Rate is the delinquency rate (loans 60 days past due or more, but not in liquidation) as of the rating date. This component provides a measure of CDC performance and risk as indicated by SBA loan dollars in delinquency status as reported by the CDC. SBA calculates this rate by dividing the sum of the total gross dollars of the CDC's SBA loans in delinquency status as of the rating date (numerator) by the sum of total gross SBA dollars of the CDC's SBA loans outstanding as of the rating date (denominator).

(iv) *Gross Past-Due Rate.* The Gross Past-Due Rate is the past-due rate (30 to 59 days past-due) as of the rating date. This component provides a measure of CDC's performance and risk as indicated by SBA loan dollars in past-due status as reported by the CDC. SBA calculates this rate by dividing the sum of the total gross dollars of the CDC's SBA loans in delinquency status as of this date (numerator), by the sum of the total gross dollars of its SBA loans outstanding as of this date (denominator).

(v) *Average Small Business Predictive Score (SBPS).* The SBPS is a portfolio management (not origination) credit score based upon a borrower's business credit report and principal's consumer credit report. SBPS is a proprietary calculation provided by Dun & Bradstreet, under contract with SBA, and is compatible with FICO's "Liquid Credit" origination score. This component provides an indication of the relative credit quality of the loans in a CDC's SBA portfolio. The score is calculated from the average SBPS score of the loans in a CDC's portfolio, weighted by each loan's guaranteed dollars outstanding.

(vi) *Low Month on Book Indicator.* The Low Month on Book Indicator component is triggered for a CDC if that CDC has a month-on-book age (average age) of 30 months or less. CDCs with a portfolio with less than 30 months on book or exactly 30 months on book generally have portfolios that are growing rapidly. The modeling process showed that there is a marked difference in these CDCs' performance compared to those CDCs with more established portfolios. If a CDC has a portfolio with an average age of more than 30 months on book, this component has a zero weight in its rating.

3. Overriding Factors

In addition to the common components referenced above, the Risk Rating System allows for consideration of additional factors. The occurrence of these factors may lead SBA to conclude that an individual SBA Lender's composite rating, as calculated by the risk rating model, is not fully reflective of its true risk. Therefore, the Risk Rating System provides for the consideration of overriding factors, which may only apply to a particular SBA Lender or group of SBA Lenders, and permit SBA to adjust an SBA Lender's calculated composite rating. The allowance of overriding factors in helping determine an SBA Lender's risk rating enables SBA to use key risk factors that are not necessarily applicable to all SBA Lenders, but indicate a greater or lower level of risk from a particular SBA Lender than that which the calculated rating provides.

Overriding factors may result from SBA Lenders' on-site risk based reviews/assessments and off-site evaluations. SBA routinely conducts on-site reviews of large SBA Lenders, performs safety and soundness examinations of SBA Small Business Lending Companies (SBLCs) and Non-Federally Regulated Lenders, and uses

certain off-site evaluation measures for other SBA Lenders.

Examples of other overriding factors that may be considered include, but are not limited to: enforcement or other actions of regulators or other authorities, including, but not limited to, Cease & Desist orders by federal financial regulators; early loan default trends; purchase rate or projected purchase rate trends; abnormally high default, purchase or liquidation rates; denial of liability occurrences; lending concentrations; rapid growth of SBA lending; net yield rate significantly worse than average; and inadequate, incomplete, or untimely reporting to SBA or inaccurate submission of required fees to SBA.

In conclusion, industry best practices and changes in the SBA portfolio, programs, and available data necessitate that SBA's risk rating model be periodically redeveloped. This notice marks the first redevelopment of SBA's risk rating model. In addition to the redevelopment, SBA has and will continue to perform annual validation testing on the calculated composite risk ratings, and will further refine the model as necessary to maintain or possibly improve the predictability of its risk scoring.

Authority: 15 U.S.C. 634(b)(7), and 15 U.S.C. 687(f).

Karen G. Mills,

Administrator.

[FR Doc. 2010–4266 Filed 2–26–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61566; File No. SR–FINRA–2009–065]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Require the Reporting of Transactions in Asset-Backed Securities to TRACE

February 22, 2010.

I. Introduction

On October 1, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to designate asset-backed securities, mortgage-backed securities, and other similar securities (collectively, "Asset-Backed Securities") as eligible for the Trade Reporting and Compliance Engine ("TRACE"), and to establish reporting, fee, and other requirements relating to such securities. The proposed rule change was published for comment in the **Federal Register** on October 28, 2009.[3] The Commission received four comments in response to the proposal.[4] On December 22, 2009, FINRA responded to the comments[5] and on January 19, 2010, FINRA filed Amendment No. 1 to the proposal.[6] The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

FINRA utilizes TRACE to collect from its members and publicly disseminate information on secondary over-the-counter transactions in corporate debt securities and, pursuant to a recent rule change to the Rule 6700 Series,[7] Agency Debt Securities and certain primary market transactions. In this proposal, FINRA has proposed to expand TRACE to include the reporting (but not public dissemination) of Asset-Backed Securities. Specifically, the proposed rule change would:

(1) In Rule 6710, amend the defined terms (a) "TRACE–Eligible Security" to include Asset-Backed Securities; (b) "Reportable TRACE Transaction" to include specific requirements regarding certain Asset-Backed Securities; (c) "Agency Debt Security" to incorporate new defined terms; (d) "TRACE System Hours" to transfer the defined term from Rule 6730(a) to Rule 6710(bb); and (e) "Asset-Backed Security" to clarify that the definition included a residual tranche of an Asset-Backed Security;[8]

(2) To Rule 6710, add the defined terms, "Sponsor," "Issuing Entity," "TBA," "Agency Pass-Through Mortgage-Backed Security," "Factor," "Specified Pool Transaction," "Stipulation Transaction," "Dollar Roll," and "Remaining Principal Balance";

(3) Amend the definitions of "List or Fixed Offering Price Transaction" and "Takedown Transaction" in Rule 6710(q) and Rule 6710(r), respectively, to exclude from those defined terms transactions in any type of Asset-Backed Security;

(4) In Rule 6710(y), amend the defined term "Stipulation Transaction" to delete the condition relating to the settlement of transactions not in conformity with certain uniform practices established as "good delivery";

(5) In Rule 6710(w), amend the defined term "Factor";[9]

(6) In Rule 6730, require the reporting of Asset-Backed Securities transactions;

(7) In Rule 6730(a)(6)(A), and for a six-month pilot period, establish the reporting period for Asset-Backed Securities transactions to no later than T + 1 during TRACE System Hours;[10]

(8) In Rule 6730(d)(1), amend the requirement that a member input a commission stated in points per bond, and instead require reporting of the total dollar amount of a commission;

(9) In Rule 6730(d)(2), modify the manner that a member reports the Factor to require a member to report the Factor only if the Factor used is not the current most publicly available Factor for the Asset-Backed Security;

(10) In Rule 6730(d)(4)(B), add subparagraphs (i) and (ii) and, in subparagraph (ii), require members to report, for all transactions in Asset-Backed Securities, the actual date of settlement and indicate if the transaction will or will not settle "regular way";[11]

(11) In Rule 6750, provide that information on a transaction in a TRACE–Eligible Security that is an Asset-Backed Security will not be disseminated;

(12) In Rule 6760, require a member that is a Sponsor or an Issuing Entity of an Asset-Backed Security to provide the required notice to FINRA, and modify the notification requirements to accept a mortgage pool number in certain circumstances;

(13) In Rule 7730, establish reporting fees for transactions in Asset-Backed Securities that are TRACE–Eligible Securities at the same rates in effect for transactions in corporate debt securities;[12] and

(14) In Rule 6700 Series, incorporate certain technical, administrative, and clarifying changes.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60860 (October 21, 2009), 74 FR 55600 ("Notice").

[4] *See infra* note 13.

[5] *See* letter from Sharon Zackula, Associate Vice President and Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated December 22, 2009 ("FINRA Letter").

[6] *See infra* Section III.

[7] *See* Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009) (approving SR–FINRA–2009–010).

[8] *See* Amendment No. 1, *infra* Section III.

[9] *See id.*

[10] *See id.*

[11] *See id.*

[12] *See id.*

III. Summary of Comments and Amendment No. 1

The Commission received four comments on the proposed rule change,[13] all of which generally supported the proposal.[14]

However, two commenters argued that FINRA's proposal did not go far enough, and recommended that FINRA also disseminate information about transactions in Asset-Backed Securities.[15] In contrast, a third commenter supported FINRA's decision not to disseminate such information at the present time, and urged FINRA to study data collected on Asset-Backed Securities before making any determination regarding dissemination.[16] FINRA agreed with the third commenter and stated that the information on Asset-Backed Securities transactions should be collected and analyzed before it makes a decision regarding dissemination. FINRA added that, if it determines that the trading data provide a reasonable basis to seek dissemination of transaction information on Asset-Backed Securities, market participants and the public would have an opportunity to comment on a proposed rule change at that time.[17]

Two commenters expressed concern about FINRA's proposal to allow reports to be made by the close of business on the date of trade ("T"), and for transactions executed after 5 p.m. Eastern Time ("ET"), to the close of business on T+1.[18] One of those commenters stated that the addition of Asset-Backed Securities to the TRACE system is a positive development, but questioned the usefulness of data that is not reported until T+1.[19] A third commenter requested that FINRA extend the proposed reporting period for Asset-Backed Securities to the close of business on T+1 for all transactions, given the operational complexity of reporting such securities.[20] FINRA responded by proposing, in Amendment No. 1, for a six-month pilot period, to extend the reporting period for all transactions in Asset-Backed Securities to no later than T+1 during TRACE system hours.[21] Upon expiration of the pilot program, the reporting requirements would revert to the period originally proposed.[22] FINRA also stated that, because the data are not subject to dissemination, allowing addition time for the reporting of Asset-Backed Securities transactions does not impact transparency.[23]

One comment letter, submitted jointly by the American Securitization Forum and the Securities Industry and Financial Markets Association ("SIFMA–ASF"), raised a number of operational and technical issues. SIFMA–ASF noted, for example, that many Asset-Backed Securities do not have CUSIP numbers, and questioned how members could meet their reporting obligations for such securities.[24] In response, FINRA stated that it is working to develop a process for the efficient and timely identification of such securities and to provide a non-CUSIP security identifier when necessary.[25] Additionally, SIFMA–ASF requested that FINRA update and maintain the TRACE Issue Master File with information for all available Asset-Backed Securities, including Factor information in the TRACE system, prior to implementing its proposed rule change.[26] In response, FINRA agreed that, to facilitate and reduce reporting and notification burdens to its members, it will obtain security information to update the TRACE Issue Master file prior to implementation of reporting requirements.[27]

SIFMA–ASF suggested that FINRA modify the proposed requirement that a member report the specific Factor used to price an Asset-Backed Security transaction, recommending instead that FINRA obtain and maintain Factor information from master data files that are commercially available.[28] FINRA agreed with this comment and amended the proposal accordingly, and also proposed to add a sentence clarifying a member's reporting obligation for Asset-Backed Securities that are not priced using a Factor.

In the initial filing, FINRA proposed amendments regarding reporting the days to settlement. Specifically, FINRA proposed that: (1) For a transaction in an Agency Pass-Through Mortgage-Backed Security, no settlement-related indicator or modifier stating the number of days to settlement would be required in the transaction report if the settlement would be done in conformity with the uniform practices established as "good delivery" for such transactions on the next occurring monthly settlement date for such securities; and (2) for all other Asset-Backed Securities transactions, including transactions in Agency Pass-Through Mortgage-Backed Securities transactions not included in (1) above, members would report the number of days to settlement (*e.g.,* ".s45," for a settlement scheduled to occur 45 days following execution). SIFMA–ASF suggested that FINRA amend these provisions to require members to report the actual date of settlement for all transactions in Asset-Backed Securities, rather than modifiers such as "regular way" or ".sNN." FINRA agreed with this comment[29] and proposed new rule text in Amendment No. 1 to effect this change.

SIFMA–ASF further requested that FINRA phase in compliance for the new reporting requirements, making secondary market trades in Asset-Backed Securities reportable first, followed by primary market trades after six months.[30] FINRA disagreed with this suggestion and stated that, if it delayed implementation of the requirement for primary market reporting, it would not

[13] *See* letter from Beth N. Lowson, The Nelson Law Firm, LLC, dated November 13, 2009 ("Nelson Letter"); letter from Willard Stein, Ph.D., CFA, dated November 15, 2009 ("Stein Letter"); letter from John Hogue, Associate Portfolio Manager, Alexandria Capital Management Inc., dated November 17, 2009 ("Hogue Letter"); and letter from George P. Miller, Executive Director, American Securitization Forum and Randolph C. Snook, Senior Managing Director and Executive Vice President, Securities Industry and Financial Markets Association, dated November 18, 2009 ("SIFMA–ASF Letter") (collectively, the "Comment Letters").

[14] *See* Nelson Letter (expressing strong support for increased price transparency); Stein Letter (supporting FINRA's proposal to designate Asset-Backed Securities as TRACE-eligible); Hogue Letter (stating that adding Asset-Backed Securities to the TRACE systems is a positive development); SIFMA–ASF Letter (stating that improvements to the transparency of structured finance products and markets are a necessary component to broad-based economic recovery).

[15] *See* Stein Letter; Nelson Letter.

[16] *See* SIFMA–ASF Letter at 2–3, 11–12.

[17] *See* FINRA Letter at 3–4.

[18] *See* Stein Letter; Hogue Letter. FINRA Rule 6730(a) currently provides that all transactions in TRACE–Eligible Securities must be reported within 15 minutes of the time of execution, with certain exceptions for trades executed during non-TRACE System Hours. Rule 6730(a)(1) through (4) provides exceptions to the standard 15-minute reporting requirement if a member executes a transaction after or before TRACE System Hours or less than 15 minutes before the TRACE system closes.

[19] *See* Hogue Letter.

[20] *See* SIFMA–ASF Letter at 6.

[21] *See* Amendment No. 1; FINRA Letter at 2–3.

[22] Rule 6730(a)(5) allows for an extended reporting period (until T+1) for "List or Fixed Offering Price Transaction" and "Takedown Transactions." In this proposal, FINRA excluded Asset-Backed Securities from the definitions of List or Fixed Offering Price Transaction and Takedown Transaction. Therefore, upon the expiration of the pilot period, such transactions in Asset-Backed Securities would be required to be reported in accordance with the original proposal—*i.e.,* by the close of business on the date of trade ("T"), and for transactions executed after 5 p.m. ET, to the close of business on T+1. In contrast, any other List or Fixed Offering Price Transactions and Takedown Transactions would continue to be subject to T+1 reporting under Rule 6730(a)(5).

[23] *See* FINRA Letter at 2.

[24] *See* SIFMA–ASF Letter at 5.

[25] *See* FINRA Letter at 6.

[26] *See* SIFMA–ASF Letter at 9–10.

[27] *See* FINRA Letter at 8.

[28] *See* SIFMA–ASF Letter at 3–6.

[29] *See* FINRA Letter at 6.

[30] *See* SIFMA–ASF Letter at 10.

be aware of Asset-Backed Securities sold into the market during that period. FINRA further stated that its approach eliminates the implementation issue associated with determining if a transaction is a primary or secondary market transaction.[31]

Additionally, SIFMA–ASF requested that FINRA follow the approach where changes to several fields in customer transaction are separately classified as "amendments" rather than "late trades" to avoid penalizing broker-dealers for facilitating legitimate modifications to customer transactions that may occur in the normal course of business or that are the result of factors beyond their control.[32] In response, FINRA stated that amended transaction reports are generally not required when modifications occur relating to delivery of assets or collateral or to settlement of a transaction.[33] SIFMA–ASF further asked that FINRA consider the additional costs to members for complying with the new reporting requirements and suggested eliminating the fees for modifying TRACE transaction reports.[34] FINRA responded that it is premature to consider any fee adjustments, as FINRA may incur greater costs in overseeing the market in light of the new data generated by reporting of transactions in Asset-Backed Securities.[35]

In Amendment No. 1, FINRA also made certain changes to the proposed rule text independent of any issues raised by commenters. FINRA determined that neither Rule 6730(a)(5)[36] nor the fee relief in Rule 7730(b)(1)(C) should apply to new issue Asset-Backed Securities, and in Amendment No. 1, FINRA proposed changes to certain rule text to effect this determination. Specifically, in Amendment No. 1, FINRA amended the definitions "List or Fixed Offering Price Transaction" in proposed Rule 6710(q) and "Takedown Transaction" in proposed Rule 6710(r) to exclude from such defined terms transactions in any type of Asset-Backed Security. As a result of this change, members will be required to pay reporting fees for all primary market transactions in Asset-Backed Securities, as no new issue transactions in Asset-Backed Securities would be eligible for the fee relief set forth in Rule 7730(b)(1)(C), which applies only to transactions that are a "List or Fixed Offering Price Transaction" or a "Takedown Transaction."

Rule 6730(d)(1) currently requires a member to report a commission stated in points per bond. However, recognizing that many Asset-Backed Securities do not have par or principal values of $1,000, FINRA is proposing in Amendment No. 1 to amend Rule 6730(d)(1) to require members to input the total dollar amount of a commission when reporting a transaction in an Asset-Backed Security, rather than stating the commission in points per bond.

Amendment No. 1 also would delete references to uniform practices established as "good delivery" in the defined terms "TBA" in Rule 6710(u) and "Stipulation Transaction" in Rule 6710(y), and revise the defined term "Factor" in Rule 6710(w). Also in Amendment No. 1, FINRA proposed to incorporate certain non-substantive, technical, clarifying, and formatting amendments in the Rule 6700 series and in Rule 7730.

Finally, FINRA modified certain aspects of the proposed rule change to account for changes in the TRACE rules that had been approved recently by the Commission.[37] FINRA also represented in Amendment No. 1 that, if the Commission approves SR–FINRA–2009–065, as amended, it undertakes not to not make this proposal effective until the rule changes from the two intervening filings have become effective.

IV. Discussion

After carefully considering the proposal and the comments submitted, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[38] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[39] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission does not believe that the comments raise any issue that would preclude approval of the proposal.

Prior to TRACE's implementation, the NASD (FINRA's predecessor) did not have routine access to comprehensive transaction information for the over-the-counter corporate bond market, even though the NASD bore responsibility for surveilling and regulating that market. In originally approving TRACE, the Commission stated that obtaining such information to better conduct market surveillance was a fundamental means of promoting fairness and confidence in U.S. capital markets.[40] Similarly, with respect to the over-the-counter market for Asset-Backed Securities, FINRA currently does not possess the comprehensive transaction information that would help it carry out its statutory duties to regulate this market. The Commission believes, therefore, that it is reasonable and consistent with the Act for FINRA to expand TRACE to designate Asset-Backed Securities as TRACE-Eligible Securities, and to establish reporting, fee, and other requirements relating to such securities in the manner set forth in the proposal. Expanding TRACE to include Asset-Backed Securities is reasonably designed to help FINRA fulfill its mandate in Section 15A(b)(6) of the Act[41] to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission acknowledges the potential for firms covered by these new reporting requirements to incur certain compliance burdens. However, the Commission believes that any such burdens are justified by the overall benefits of regulators having access to more comprehensive trade information in the fixed income markets. The Commission notes that FINRA has proposed, for a six-month pilot period, a T+1 reporting period for Asset-Backed Securities, rather than a same-day reporting period as originally proposed.[42] The Commission believes that this modification is reasonably designed to ease the compliance burdens on those affected by the proposal without significantly compromising FINRA's ability to obtain

[31] *See* FINRA Letter at 7.

[32] *See* SIFMA–ASF Letter at 7.

[33] *See* FINRA Letter at 8.

[34] *See* SIFMA–ASF Letter at 11.

[35] *See* FINRA Letter at 9.

[36] *See supra* note 22.

[37] *See* Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009) (approving SR–FINRA–2009–010); FINRA *Regulatory Notice* 09–57 (September 2009) (stating that the rule text of SR–FINRA–2009–010 becomes effective March 1, 2010); Securities Exchange Act Release No. 61012 (November 16, 2009), 74 FR 61189 (November 23, 2009) (approving SR–FINRA–2007–006). FINRA will publish a *Regulatory Notice* announcing the effective date of SR–FINRA–2007–006, which shall be a day shortly following the effective date of SR–FINRA–2009–010.

[38] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78o–3(b)(6).

[40] *See* Securities Exchange Act Release No. 43873 (January 23, 2001) 66 FR 8131, 8136 (January 29, 2001).

[41] 15 U.S.C. 78o–3(b)(6).

[42] *See* Amendment No. 1.

comprehensive transaction information regarding the market for Asset-Backed Securities.

The Commission notes that FINRA has not proposed to publicly disseminate any transaction information relating to Asset-Backed Securities at this time. FINRA believes that information on Asset-Backed Securities transactions should be collected and analyzed before making any decision regarding the utility of such information for transparency purposes or the consequences of dissemination on this market. FINRA has stated that, after a period of study, it would file a proposed rule change if it determined that its study of the trading data provides a reasonable basis to seek dissemination of transaction information on Asset-Backed Securities. The Commission has historically been supportive of efforts to improve post-trade transparency in the fixed income markets and encourages FINRA to carry out that study.

The Commission further finds that the proposed fees set forth in Rule 7730 for the reporting of transactions in Asset-Backed Securities are consistent with Section 15A(b)(5) of the Act,[43] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.[44]

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[45] for approving the proposed rule change, as modified by Amendment No. 1 thereto, prior to the 30th day after the date of publication of the amended proposal in the **Federal Register.** The changes proposed in Amendment No. 1 are minor and technical in nature or are designed to respond to specific concerns raised by commenters. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–065 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–065. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2009–065 and should be submitted on or before March 22, 2010.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–FINRA–2009–065), as modified by Amendment No.1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4067 Filed 2–26–10; 8:45 am]

BILLING CODE 8011–01–P

[43] 15 U.S.C. 78o–3(b)(5).

[44] The Commission notes that, because transaction information regarding Asset-Backed Securities will not be disseminated, FINRA has not proposed any market data fees for this information at this time.

[45] 15 U.S.C. 78s(b)(2).

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61571; File No. SR–NYSEAmex–2010–09]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending Its Trust Unit Rules and Proposing the Listing of the Nuveen Diversified Commodity Fund

February 23, 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 January 29, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Amex proposes to amend NYSE Amex Rule 1600 *et seq.,* to provide that the issuers of Trust Units listed thereunder may invest directly in commodities and commodity derivatives rather than solely in the assets of a trust, partnership, limited liability company, corporation or other similar entity constituted as a commodity pool that holds such investments. Other minor changes are also made to conform to changes made to other NYSE Amex rules. Pursuant to these rules, the Exchange proposes to list and trade shares of the Nuveen Diversified Commodity Fund. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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 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 Amex previously adopted Rule 1600 *et seq.* to permit the listing of Trust Units, which are defined as securities that are issued by a trust or other similar entity that invests in the assets of a trust, partnership, limited liability company, corporation or other similar entity constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts and/or commodities.[4] Rule 1600 was adopted in contemplation of the listing of shares of the Nuveen Commodities Income and Growth Fund (the "Fund"), a fund sponsored by Nuveen Investments, Inc. ("Nuveen") and the investment plan of the Fund was described in detail in the Exchange's Form 19b–4 and the Commission's Notice.[5] Nuveen now proposes to go forward with a listing of shares (the "Shares") of the Fund under a new name, the Nuveen Diversified Commodity Fund, and with a somewhat modified investment plan, which is described below under "Nuveen Diversified Commodity Fund." The Shares will conform to the initial and continued listing criteria under Rule 1602. The initial public offering and sale of the Shares will be registered under the Securities Act of 1933.

In order to use income tax reporting procedures more familiar to investors in investment trusts, it was originally contemplated that the Fund would have a "master/feeder" structure in which the Fund would hold no assets directly except the equity of a separate investment vehicle, which would serve as the conduit through which the Fund would make its investments. However, due to a change in the interpretation of applicable tax law by the Internal Revenue Service, the originally expected trust reporting procedures would no longer be available under a master/feeder structure. In light of this interpretative change, Nuveen proposes to modify its approach and have the listed Fund make its own direct investments. Rule 1600 as currently in effect permits only the listing of Trust Units whose issuers utilize the master/feeder structure originally intended to be used for the Fund. The rule was drafted in this way simply because it accommodated the security proposed to be listed at that time and was not designed to provide any protections to investors, but merely facilitated the now-unavailable trust-based tax reporting procedures. Consequently, the Exchange proposes to amend the definition of Trust Units in Rule 1600 to remove the master/feeder structure requirement and permit the listing of Trust Units where the issuer is constituted as a commodity pool which invests directly in commodities and commodity derivatives. The Exchange believes that this amendment does not in any way increase the risk to investors of investing in the Trust Units or give rise to any new regulatory concerns. Nuveen has represented to the Exchange that there are no material revisions to the Fund's structure or investment approach other than those described in this filing and the Exchange believes that these revisions do not give rise to any new regulatory issues or raise significant new investor protection concerns.

Nuveen Diversified Commodity Fund

The Fund was formed as a Delaware statutory trust on December 7, 2005 pursuant to a Declaration of Trust signed by Wilmington Trust Company, as the Delaware Trustee.[6] The Fund's primary investment objective is to seek total return through broad exposure to the commodities markets. The Fund's secondary objective is to provide investors with monthly income and capital distributions not commonly associated with commodity investments. The Fund will invest in commodity futures and forward contracts, options on commodity futures and forward contracts and over-the-counter ("OTC") commodity options in the following commodity groups: energy, industrial metals, precious metals, livestock, agriculturals, and tropical foods and fibers and may in the future include other commodity investments that become the subject of commodity futures trading.[7]

The Fund is a commodity pool. The Fund is managed by Nuveen Commodities Asset Management, LLC (the "Manager"). The Manager is registered as a commodity pool operator (the "CPO") and a commodity trading advisor (the "CTA") with the Commodity Futures Trading Commission ("CFTC") and is a member of the National Futures Association ("NFA").

The Manager will serve as the CPO and a CTA of the Fund. The Manager will determine the Fund's overall investment strategy, including: (i) The selection and ongoing monitoring of the Fund's sub-advisors; (ii) the management of the Fund's business affairs; and (iii) the provision of certain clerical, bookkeeping and other administrative services. Gresham Investment Management LLC (the "Commodity Sub-Advisor") will invest on a notional basis substantially all of the Fund's assets in commodity futures and forward contracts pursuant to the commodity investment strategy (its proprietary Tangible Asset Program® ("TAP®")[8] and a risk management program. The Commodity Sub-Advisor is a Delaware limited liability company and is registered with the CFTC as a

[4] *See* Securities Exchange Act Release No. 56880 (December 3, 2007), 72 FR 69259 (December 3 [sic], 2007).

[5] *See* Securities Exchange Act Release No. 56465 (September 19, 2007), 72 FR 54489 (September 25, 2007).

[6] The Fund, as a commodity pool, will not be subject to registration and regulation under the Investment Company Act of 1940 (the "1940 Act").

[7] Following is a list of futures contracts and other commodity interests in which the Fund intends to invest, and the exchanges on which they trade, based on systematic calculations of global commodity production and U.S. dollar volume traded: Lumber, Milk, Feeder Cattle, Lean Hogs, Live Cattle, Pork Bellies—Chicago Mercantile Exchange ("CME"); Cocoa, Arabica Coffee, Cotton, Orange Juice, Sugar—New York Board of Trade ("NYBOT"); Gold, Silver, Copper—Commodity Exchange ("COMEX") which is a division of the New York Mercantile Exchange ("NYMEX"); Palladium, Platinum, WTI Crude Oil, Heating Oil, Natural Gas, Gasoline—NYMEX; Aluminum, Copper, Lead, Nickel, Tin, Zinc—London Metals Exchange ("LME"); Bean Oil, Corn, Oats, Soy Meal, Soybeans, Wheat—Chicago Board of Trade ("CBOT"); Brent Crude Oil, Gas Oil—InterContinental Exchange ("ICE"); Robustta Coffee— London International Financial Futures Exchange ("LIFFE"); Wheat— Kansas City Board of Trade ("KCBOT").

[8] The Fund does not intend to utilize leverage. However, the Fund may borrow for temporary or emergency purposes in an amount up to 5% of the value of the Fund's net assets should the need arise. Such short term borrowings would mature in less than 60 days from the date of borrowing. In order to facilitate any such borrowing, the Fund intends to establish a standby credit facility with State Street Bank and Trust Company that will be entered into as of the closing of the offering of its common shares. Any temporary or emergency borrowings would be used to provide the Fund with added potential flexibility in managing short-term portfolio liquidity needs and managing the payment of distributions.

CTA and a CPO and is a member of the NFA. The Commodity Sub-Advisor is also registered with the Commission as an investment adviser. Nuveen Asset Management (the "Collateral Sub-Advisor"), an affiliate of the Manager, will invest the Fund's collateral in short-term, investment grade quality debt instruments. The Collateral Sub-Advisor is registered with the Commission as an investment adviser.

Investment Description

The Fund's investment objective is to generate attractive risk-adjusted total returns as compared to investments in commodity indexes.

The Fund intends to pursue its investment objective by utilizing: (a) An actively managed rules-based commodity investment strategy, whereby the Fund will invest in a diversified basket of commodity futures and forward contracts with an aggregate notional value substantially equal to the net assets of the Fund; and (b) a risk management program designed to moderate the overall risk and return characteristics of the Fund's commodity investments. In pursuing the risk management program, the Fund will write (sell) "out-of-the-money" commodity call options to obtain option premium cash flow, on individual futures and forward contracts, on baskets of commodities or on broad based commodity indices. The Fund may also purchase "out-of-the-money" commodity put options for protection against significant asset value declines on an opportunistic basis. Initially, the Fund does not expect to purchase commodity put options.

The Fund will typically: (i) Invest in commodity futures and forward contracts that are traded either on U.S. or non-U.S. commodity futures exchanges; and (ii) sell call options on commodity futures and forward contracts that are traded either on U.S. or non-U.S. exchanges. The Fund may also purchase put options on commodity futures and forward contracts that are traded either on U.S. or non-U.S. exchanges or may purchase OTC commodity put options through dealers pursuant to negotiated, bi-lateral arrangements. The Fund also may invest in other commodity contracts that are presently, or may hereafter become, the subject of commodity futures trading. Except for certain limitations described below, there are no restrictions or limitations on the specific commodity investments in which the Fund may invest.

Commodity Investment Strategy (TAP®). The Commodity Sub-Advisor will invest on a notional basis substantially all of the Fund's assets in commodity futures and forward contracts pursuant to the commodity investment strategy TAP®, an actively managed, rules-based [9] commodity investment strategy. TAP® is fundamental in nature and is designed to maintain consistent, fully collateralized exposure to commodities as an asset class. TAP® does not require the existence of price trends in order to be successful.

Risk Management Program. Pursuant to the risk management program, the Fund will write (or sell) commodity call options that may be up to 20% "out-of-the-money" [10] on a continual basis on up to approximately 50% of the notional value of each of its commodity futures and forward contract positions that have sufficient option trading volume and liquidity. The Commodity Sub-Advisor will write call options on individual futures and forward contracts held by the Fund, on baskets of commodities or on broad based commodity indices. As the writer of call options for which a premium is received, the Fund will forego the right to any appreciation in the value of each commodity futures or forward contract in its portfolio that effectively underlies a call option to the extent the value of the commodity futures or forward contract exceeds the exercise price of such option on or before the expiration date.

Initially, the Fund does not expect to purchase commodity put options. In order to seek protection against significant asset value declines, the Fund may from time to time purchase "out-of-the-money" put options on broad-based commodity indices such as the DJ–UBS Commodity Index® ("DJ–UBS"), the S&P GSCI Commodity Index ("GSCI"), or on certain custom indices, whose prices are expected to closely correspond to a substantial portion of the long commodity futures and forward contracts held by the Fund. The Fund also may purchase put options on baskets of commodities and on individual futures and forward contracts held by it. On an absolute basis, the Fund does not expect that the cost to purchase put options at any one time will exceed 5% of the value of the Fund's net assets.

Debt Instruments Used as Collateral. The Fund's investments in commodity futures and forward contracts, and options on commodity futures and forward contracts, generally will not require significant outlays of principal. To support its commodity investments, the Fund anticipates that it will maintain significant collateral that will be invested in short-term debt instruments with maturities of up to two years that, at the time of investment, are investment grade quality, including obligations issued or guaranteed by the U.S. government or its agencies and instrumentalities, as well as corporate obligations and asset-backed securities. Although earning interest income, the collateral is subject on a continual basis to additional margin calls by the commodity broker and to additional deposits in the commodity account if the levels of notional trading change.

Commodity Futures and Forward Contracts and Related Options

The prices of the commodity futures and forward contracts, options on commodity futures and forward contracts, and OTC commodity options are volatile with fluctuations expected to affect the value of the Shares. Commodity futures and forward contracts and options on commodity futures and forward contracts to be held by the Fund will be traded on U.S. and/or non-U.S. exchanges. The commodity futures and forward contracts to be entered into by the Fund are listed and traded on organized and regulated exchanges based on the various commodities in the groups described above.[11] Forward contracts are contracts for the purchase and sale of a commodity for delivery on or before a future date or during a specified period at a specified price. Futures contracts are essentially forward contracts that are traded on exchanges. Options on commodity futures and forward contracts are contracts giving the purchaser the right, as opposed to the obligation, to acquire or to dispose of the commodity futures or forward contract underlying the option on or before a future date at a specified price. The Fund may purchase OTC commodity put options through dealers

[9] TAP® currently requires investment in futures or forward contracts for commodities in each of the energy, industrial metals, livestock, agriculturals, tropical foods and fibers and precious metal commodity groups. Commodity group weightings and individual commodity weightings are chosen by a process that blends two-thirds of five year global production value and one-third of five year value of commodity futures contracts traded in dollars. The process constrains the weightings of each commodity group such that no group may constitute more than 35% of TAP® and no single commodity interest can constitute more than 70% of its group. In addition, each commodity is rebalanced periodically to its target weighting if its actual weighting deviates from its target substantially (currently, by more than 10%).

[10] A call option is "out-of-the-money" when the strike price is above the current trading price of the underlying commodity. A put option is "out-of-the-money" when the strike price is below the current trading price of the underlying commodity.

[11] *See supra* note 7.

pursuant to negotiated, bi-lateral arrangements.

The potential futures contracts are traded on U.S. and non-U.S. exchanges, including the CBOT, the CME, the ICE, the LIFFE, the LME, the NYMEX, the COMEX, the NYBOT and the KCBOT.

The Manager will assess or review, as appropriate, the creditworthiness of each potential or existing, as appropriate, counterparty to an OTC contract pursuant to guidelines approved by the Manager's board of directors. Furthermore, the Manager, on behalf of the Fund, will only enter into OTC contracts with: (a) Members of the Federal Reserve System or foreign banks with branches regulated by the Federal Reserve Board; (b) primary dealers in U.S. government securities; (c) broker-dealers; (d) futures commission merchants; or (e) affiliates of the foregoing.

Structure of the Fund

Fund. The Fund is a statutory trust formed pursuant to the Delaware Statutory Trust Act and will issue shares that represent units of fractional undivided beneficial interest in and ownership of the Fund.

Trustee. Wilmington Trust Company is the Delaware Trustee of the Fund. The Delaware Trustee is unaffiliated with the Manager.

Individual Trustees. The individual trustees of the Fund, all of whom will be unaffiliated with the Manager, will fulfill those functions required under the NYSE Amex listing standards and certain other functions as set forth in the Fund's Trust Agreement.

Manager. The Manager is a Delaware limited liability company that is registered with the CFTC as a CPO and a CTA and is a wholly-owned subsidiary of Nuveen Investments, Inc. The Manager will serve as the CPO and a CTA of the Fund and through the Commodity Sub-Advisor will be responsible for determining the Fund's overall investment strategy and its implementation. It is anticipated that the individual trustees, pursuant to the Fund's Trust Agreement, will delegate all authority (other than the individual trustees' limited requirements to serve on the Fund's Audit Committee and Nominating Committee) to the Manager to operate the business of the Fund and to be responsible for the conduct of the Fund's commodity affairs. As a registered CPO and CTA, the Manager is required to comply with various regulatory requirements under the CEA and the rules and regulations of the CFTC and the NFA.

Commodity Sub-Advisor. The Commodity Sub-Advisor is a Delaware limited liability company that is registered with the CFTC as a CTA and a CPO and is a member of the NFA. As a registered CPO and CTA, the Commodity Sub-Advisor is required to comply with various regulatory requirements under the CEA and the rules and regulations of the CFTC and the NFA. The Commodity Sub-Advisor is also registered with the SEC as an investment adviser.

Collateral Sub-Advisor. The Collateral Sub-Advisor is an affiliate of the Manager and a wholly owned subsidiary of Nuveen Investments, Inc. The Collateral Sub-Advisor is registered with the Commission as an investment adviser.

Custodian, Transfer Agent and Registrar. State Street Bank and Trust Company ("State Street") will be the Custodian and Accounting Agent for the assets of the Fund and its affiliate, Computershare Shareholder Services, Inc. will be the Transfer Agent and Registrar for the Shares of the Fund.

Commodity Broker. Newedge USA, LLC ("Newedge") will act as the commodity broker for the Fund and will clear transactions that may be executed by it or other brokerage firms on a "give-up" basis. Newedge is registered as a futures commission merchant and a CPO and is a member of the NFA. Newedge also is registered with the Commission as a broker-dealer.

The Exchange notes that each of the Manager, the Commodity Broker, and the Commodity Sub-Advisor have represented to the Exchange that they each have erected and maintain firewalls within their respective institutions to prevent the flow of non-public information regarding the portfolio of underlying securities from the personnel involved in the development and implementation of the investment strategy to others such as sales and trading personnel.

Product Description

The Shares represent units of fractional undivided beneficial interest in and ownership of the Fund. Following the original issuance, the Shares will be traded on the Exchange similar to other equity securities.

Commencing with the Fund's first distribution, the Fund intends to make regular monthly distributions to its shareholders (stated in terms of a fixed cents per share distribution rate) based on past and projected performance of the Fund.[12] The Fund's monthly distributions are sometimes referred to as "managed distributions." The Fund will seek to establish a distribution rate that roughly corresponds to the Manager's projections of the total return that could reasonably be expected to be generated by the Fund over an extended period of time, although the distribution rate will not be solely dependent on the amount of income earned or capital gains realized by the Fund. The Fund's ability to make regular monthly distributions will depend on a number of factors, including, most importantly, the long-term total returns generated by the Fund's portfolio investments and the risk management program.

As portfolio and market conditions change, the Fund's rate of distributions and the Fund's distribution policies could change.[13]

State Street will calculate the net asset value ("NAV") of the Fund's Shares shortly after 4:00 p.m. Eastern Time ("ET") on each trading day.[14]

---

[12] The Fund's actual financial performance will vary so that the distribution rate may exceed the Fund's actual total returns. The Fund does not anticipate borrowing to obtain the cash necessary to make its distributions; however, in the event that the Fund's distribution rate exceeds its actual returns, the Fund may be required to liquidate investments in order to make such a distribution. To the extent that the Fund's total return exceeds the distribution rate for an extended period of time, the Fund may increase the distribution rate or distribute supplemental amounts to shareholders. Conversely, if the Fund's total return is less than the distribution rate for an extended period of time, the Fund will be drawing upon its net assets to meet the distribution payments.

[13] In connection with any change in distribution policies, the Fund will provide written advance notice to investors.

[14] NAV per Share will be computed by dividing the value of all assets of the Fund (including any accrued interest and dividends), less all liabilities (including accrued expenses and distributions declared but unpaid), by the total number of Shares outstanding. Under the Fund's current operational procedures, the Fund's net asset value will be calculated after close of the Exchange each day. The values of the Fund's exchange-traded futures and forward contracts and options on futures and forward contracts will be valued at the settlement price determined by the principal exchange through which they are traded. Market quotes for the Fund's exchange-traded futures and forward contracts and options on futures and forward contracts may not be readily available if a contract cannot be liquidated due to the operation of daily limits or, due to extraordinary circumstances, the exchanges or markets on which the investments are traded do not open for trading the entire day and no other market prices are available. In addition, events may occur after the close of the relevant market, but prior to the determination of the Fund's net asset value, that materially affect the values of the Fund's investments. In such circumstances, the Fund will use an independent pricing service to value such investments. The Commodity Sub-Advisor will review the values as determined by the independent pricing service and discuss those valuations with the pricing service if appropriate based on guidelines established by the Manager that it believes are consistent with industry standards. The values of the Fund's OTC derivatives will be valued by the Commodity Sub-Advisor by taking either the arithmetic mean of prices obtained by several dealers, the prices as determined by the average of two (2) or more independent means or the prices as reported by an independent pricing

The normal trading hours for those investments of the Fund traded on the various commodity exchanges may differ from the normal trading hours of the Exchange, which are from 9:30 a.m. to 4 p.m. ET. Therefore, there may be time periods during the trading day where the Shares will be trading on the Exchange, but the futures contracts on various commodity exchanges will not be trading. The value of the Shares may accordingly be influenced by the non-concurrent trading hours between the Exchange and the various futures exchanges on which the futures contracts based on the underlying commodities are traded.

The trading prices of the Fund's Shares listed on the Exchange may differ from the NAV and can be affected not only by movements in the NAV, but by market forces of supply and demand, economic conditions and other factors as well. Accordingly, the trading prices of the Shares should not be viewed as a real-time update of the NAV.

Shares will be registered in book entry form through DTC. Trading in the Shares on the Exchange will be effected until 4 p.m. ET each business day. The minimum trading increment for such shares will be $.01.

Underlying Commodity Interests Information

The daily settlement prices for the commodity futures and forward contracts held by the Fund are publicly available on the Web sites of the futures and forward exchanges trading the particular contracts. Various data vendors and news publications publish futures prices and data. The Exchange represents that futures, forwards and related exchange traded options quotes and last sale information for the commodity contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such futures, forwards and exchange traded options is available by subscription from Reuters and Bloomberg. The relevant futures and forward exchanges also provide delayed futures and forward contract information on current and past trading sessions and market news free of charge on their respective Web sites. The contract specifications for the futures and forward contracts are also available from the futures and forward exchanges on their Web sites as well as other financial informational sources. Information related to OTC commodity options is disclosed by the Fund on a monthly basis as discussed below.

Availability of Information Regarding the Shares

The Web site for the Fund and the Manager, *http://www.nuveen.com,* which will be publicly accessible at no charge, will contain the following information: (a) The prior business day's NAV and the reported closing price; (b) calculation of the premium or discount of such price against such NAV; and (c) other applicable quantitative information. The Fund's prospectus also will be available on the Fund's Web site.

The Fund's total portfolio holdings will also be disclosed and updated on its Web site on each business day that the Exchange is open for trading.[15] This Web site disclosure of portfolio holdings (as of the previous day's close) will be made daily and will include, as applicable: (a) The name and value of each commodity investment; (b) the value of over-the-counter commodity put options, if any, and the value of the collateral as represented by cash; (c) cash equivalents; and (d) debt securities held in the Fund's portfolio. The values of the Fund's portfolio holdings will, in each case, be determined in accordance with the Fund's valuation policies.

As described above, the NAV for the Fund will be calculated and disseminated daily. The Manager has represented to the Exchange that the NAV will be disseminated to all market participants at the same time. The Exchange will also make available on its Web site daily trading volume, closing prices, and the NAV. The closing price and settlement prices of the futures contracts held by the Fund are also readily available from the relevant futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at *http://www.nyse.com* to the Manager's Web site.

As noted above, State Street will calculate the NAV of the Fund once each trading day shortly after 4 p.m. ET. The NAV will be disclosed on the Fund's Web site and the Exchange's Web site.

Termination Events

The Fund will dissolve in certain prescribed circumstances. Upon termination of the Fund, shareholders will surrender their shares and receive in cash their portion of the value of the Fund.

Criteria for Initial and Continued Listing

The Fund will be subject to the criteria in Rule 1602 for initial and continued listing of the Shares. A minimum of 2,000,000 shares will be required to be publicly distributed at the start of trading. It is anticipated that the initial price of a share will be approximately $25. The Fund will accept subscriptions for a minimum of 100 shares during the initial offering which is expected to last no more than 60 days. After the completion of the initial offering, shares can be bought and sold throughout the trading day like any other publicly-traded security. The Exchange believes that the anticipated minimum number of shares outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the Fund's objectives.

The Fund has represented to the Exchange that, for initial and continued listing of the Shares, it will be in compliance with Section 803 of the NYSE Amex Company Guide (Independent Directors and Audit Committee) and Rule 10A–3 under the Act.

Original and Annual Listing Fees

The NYSE Amex original listing fee applicable to the listing of the Fund is $5,000. In addition, the annual listing fee applicable under Section 141 of the NYSE Amex Company Guide will be based upon the year-end aggregate number of shares in all series of the Fund outstanding at the end of each calendar year.

Trading Rules

The Shares are equity securities subject to NYSE Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, DMM responsibilities and account opening and customer suitability (Rule 405—NYSE Amex Equities). Initial equity margin requirements of 50% will apply to transactions in the Shares. Shares will trade on the Exchange until 4 p.m. ET each business day and will trade in the minimum price variants established

service. In the event the Commodity Sub-Advisor uses an independent pricing service to value any of its commodity futures and forward contracts, options on futures and forward contracts and OTC derivatives, the pricing service typically will value such commodity futures and forward contracts, options on futures and forward contracts and OTC derivatives using a wide range of market data and other information and analysis, including reference to transactions in other comparable investments if available. The procedures of any independent pricing service provider will be reviewed by the Manager on a periodic basis.

[15] The total portfolio holdings will be disseminated to all market participants at the same time.

under Rule 62—NYSE Amex Equities. Trading rules pertaining to odd-lot trading in NYSE Amex equities (Rule 124—NYSE Amex Equities) will also apply.

The Exchange states that Rule 15A—NYSE Amex Equities complies with Rule 611 of Regulation NMS, which requires among other things, that the Exchange adopt and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations. The trading of the Shares will be subject to certain conflict of interest provisions set forth in NYSE Amex Equities Rules 1603 and 1604.

NYSE Amex Equities Rule 1603 provides that, if a DMM unit is operating under Rule 98 (Former)—NYSE Amex Equities, Rule 105(b) (Former)—NYSE Amex Equities and section (m) of the Guidelines thereunder shall be deemed to prohibit a DMM, his or her member organization, other member, or approved person of such member organization or employee or officer thereof from acting as a market maker or functioning in any capacity involving market-marking responsibilities in an underlying asset or commodity, related futures or options on futures, or any related derivative. If an approved person of a DMM unit is entitled to an exemption from Rule 105(b) (Former) under Rule 98 (Former), such approved person may act in a market making capacity, other than as a specialist in Trust Units on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives. NYSE Amex Equities Rule 1603 provides that, if a DMM unit is operating under Rule 98—NYSE Amex Equities, Rule 105(b)—NYSE Amex Equities and section (m) of the Guidelines thereunder shall be deemed to prohibit the DMM unit or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-marking responsibilities in an underlying asset or commodity, related futures or options on futures, or any other related derivatives.

Under the proposed amendments, NYSE Amex Rule 1604 will provide that DMMshandling [sic] the Shares must maintain in a readily accessible place and provide to the Exchange upon request, and keep current a list identifying all accounts for trading the underlying physical assets or commodities, related futures or options on futures, or any other related derivatives, which the DMM may have or over which it may exercise investment discretion.

Suitability

The Information Circular (described below) will inform members and member organizations of the characteristics of the Fund and of applicable Exchange rules, as well as of the requirements of Rule 405—NYSE Amex Equities (Diligence as to Accounts).

The Exchange notes that, pursuant to Rule 405—NYSE Amex Equities, member organizations are required in connection with recommending transactions in the Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

Information Circular

The Exchange will distribute an Information Circular to its members in connection with the trading of the Shares. The Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Circular, among other things, will discuss what the Shares are, the requirement that members and member firms deliver a prospectus to investors purchasing the Shares prior to or concurrently with the confirmation of a transaction during the initial public offering, applicable NYSE Amex rules, and trading information and applicable suitability rules. The Circular will also explain that the Fund is subject to various fees and expenses described in the Registration Statement. The Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities and note the respective jurisdictions of the SEC and CFTC. The Circular will also note that the forward contracts are traded on the LME, which is subject to regulation by the Securities and Investment Board in the United Kingdom and the Financial Services Authority. In addition, the Circular will indicate that OTC instruments or products may effectively be unregulated.

The Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Shares. The Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

The Circular will disclose that the NAV for shares will be calculated shortly after 4:00 p.m. ET each trading day.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares and to deter and detect violations of Exchange rules and applicable Federal securities laws.[16] NYSE Amex will rely on its existing surveillance procedures. The Exchange currently has in place Information Sharing Agreements with ICE FUTURES, LME, NYMEX, and KCBOT for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges. The Exchange also notes that the CBOT, CME, LIFFE and NYBOT are members of the Intermarket Surveillance Group ("ISG"). As a result, the Exchange asserts that market surveillance information is available from the CBOT, CME, NYBOT and LIFFE through ISG, if necessary, due to regulatory concerns that may arise in connection with the futures contracts.

Conforming Changes and Updating Amendments

Since the original adoption of Rule 1600 *et seq.,* the Exchange has adopted a completely new set of rules governing both equity and options trading on the Exchange. Consequently, a number of references to Exchange rules in Rule 1600 *et seq.* are no longer correct and have been appropriately modified. References to equity specialists have been modifiedto refer to "designated market makers" ("DMMs"), which is the designation used throughout the amended NYSE Amex equity trading rules. A typographical error in Rule 1602 is also corrected in this filing.

Commentary .03 to Rule 1600 provides that member organizations shall not enter limit orders into the Exchange's order routing system as agent (*i.e.* for customer agency orders) in the same trust, for the account or accounts of the same or related beneficial owner, in such a manner that the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such Trust Units on a regular or continuous basis. The Amex adopted provisions of this kind because the ability of non-members to function effectively as market makers gave those non-members an advantage over the specialist who was required to yield priority to their orders. That advantage no longer exists under current NYSE Amex rules, as all

[16] *See* e-mail from John Carey, Chief Counsel—U.S. Equities, Exchange, to Geoffrey Pemble and Michou Nguyen, Special Counsels, Commission, dated February 23, 2010.

market participants (including the DMM) trade on parity unless they establish priority under Exchange rules, which can be done by all market participants including the DMM. As such Commentary .03 to rule 1600 no longer serves any purpose and the Exchange proposes to delete it.

As originally adopted, Rule 1603 provided that NYSE Amex Rule 175(c) was deemed to prohibit an equity specialist, his member organization, or any other member, limited partner, officer, or approved person thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in an underlying asset or commodity, related futures or options on futures, or any other related derivatives, unless the Exchange granted an exemption under Rule 193. Rule 1603 as amended provides that, if a DMM unit is operating under Rule 98 (Former)—NYSE Amex Equities, Rule 105(b) (Former)—NYSE Amex Equities and section (m) of the Guidelines thereunder shall be deemed to prohibit a DMM, his or her member organization, other member, or approved person of such member organization or employee or officer thereof from acting as a market maker or functioning in any capacity involving market-marking responsibilities in an underlying asset or commodity, related futures or options on futures, or any related derivative. If an approved person of a DMM unit is entitled to an exemption from Rule 105(b) (former) under Rule 98 (former), such approved person may act in a market making capacity, other than as a specialist in Trust Units on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives.

As originally adopted, Commentary .01 to Rule 1603 provided that trading in the Shares was generally subject to the Exchange's Stabilization rule, except that specialists would be permitted to buy on "plus ticks" and sell on "minus ticks," in order to bring the Shares into parity with the underlying commodity or commodities and/or futures contract price. The Exchange's new stabilization rule (Rule 104—NYSE Amex Equities) does not contain the same prohibitions on buying on "plus ticks" and selling on "minus ticks" as was formerly the case under Rule 170—AIMI. Consequently, the Exchange proposes to delete Commentary .01 to Rule 1603, as it is no longer relevant.

Rule 1604(a) as originally adopted, provided that the member organization acting as specialist in Trust Units was obligated to conduct all trading in the Trust Units in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange (See Rule 170—AEMI). The Exchange proposes to delete this requirement, as DMMs are now governed by Rule 104—NYSE Amex Equities, which does not limit the DMM's use of investment accounts to trade its assigned securities or require the DMM to report activity in such accounts to the Exchange.[17] Rule 1604(a) also provides that the member organization acting as DMM in the Shares must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the member organization acting as DMM may have or over which it may exercise investment discretion. The Exchange proposes to amend this requirement to provide that, rather than filing the list with the Exchange, the DMM must maintain it in a readily accessible place and provide it to the Exchange upon request. The Exchange believes that this is sufficient for its regulatory needs, as it will only review the list when as specific regulatory need arises, so it is sufficient to have the list readily available upon request.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[18] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[19] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to protect investors and the public interest because it will impose appropriate restrictions on the listing and trading of Trust Units.

[17] The Exchange notes that Rule 104—NYSE Amex Equities in its current form has been approved by the SEC on a pilot program basis. In the event that the pilot program is not made permanent or is amended, DMMs may at that time become subject to limitations on their ability to trade Trust Units in investment accounts.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–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–NYSEAmex–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,[20] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–09 and should be submitted on or before March 22, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary

[FR Doc. 2010–4136 Filed 2–26–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61559; File No. SR–NYSE–2010–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending the Provisions of NYSE Rules 116 and 123C To Repeal the Temporary Provision That Allows the Exchange To Report Multiple Closing Prints to the Consolidated Tape When a Closing Transaction Exceeds 99,999,999 Shares

February 22, 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 18, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the provisions of NYSE Rules 116 ("Stop" Constitutes Guarantee) and 123C (Market On The Close Policy And Expiration Procedures) to repeal the temporary provision that allows the Exchange to report multiple closing prints to the Consolidated Tape when a closing transaction exceeds 99,999,999 shares. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

New York Stock Exchange LLC ("NYSE" or the "Exchange") proposes to amend the provisions of NYSE Rules 116 ("Stop" Constitutes Guarantee) and 123C (Market On The Close Policy And Expiration Procedures) to repeal the temporary provision that allows the Exchange to report multiple closing prints to the Consolidated Tape when a closing transaction exceeds 99,999,999 shares.

The Exchange amended NYSE Rules 116.40(C) and 123C(3) to report multiple closing prints to the Consolidated Tape last sale reporting system in order to compensate for a temporary size limitation in a new market data distribution system.[4] At that time, Exchange's market data distribution system was unable to support prints greater than 99,999,999 shares. Executions of greater than 99,999,999 shares had to be sent to the Consolidated Tape in multiple prints. The multiple prints reflected the cumulative volume of the single closing transaction.

The Exchange's market data distribution system is now capable of reporting in a single transaction, executions that exceed 99,999,999 shares to the Consolidated Tape last sale reporting system in a single print.[5] The Exchange therefore seeks to remove the temporary amendments to Rules 116.40(C) and 123C(3) and once again require all closing transactions to be reported in a single print.

The Exchange also proposes to add an inadvertently omitted parenthesis in the second paragraph of Rule 123C(3)(A).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will facilitate the timely and efficient reporting of the closing transaction on the Exchange and thus ultimately serve 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.

[20] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[21] 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] *See* Securities Exchange Act Release No. 61235 (December 23, 2009), 75 FR 168 (January 4, 2010) (SR–NYSE–2009–126). The Exchange represented that it anticipated correction of the limitation no later than the end of February 2010. *Id.* at Footnote 3.

[5] The size limitation was corrected as of January 25, 2010.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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 effective upon filing pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(5).[9]

The Exchange submits that the proposed rule change qualifies for immediate effectiveness in that it effects a change in an existing order-entry or trading system of a self-regulatory organization that does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) have the effect of limiting the access to or availability of the system. This proposed rule change simply seeks to remove a temporary amendment that was implemented to compensate for a systemic limitation in its market data distribution system. The resolution of the systemic limitation obviates the need for the work-around implemented by the temporary rule. The instant filing simply reinstates provisions for printing the closing transactions to their original state now that the market data system is functioning correctly.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–08 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–2010–08. 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,[10] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–08 and should be submitted on or before March 22, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4165 Filed 2–26–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(5).

[10] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61570; File No. SR–Phlx-2010–19]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Routing Fees

February 23, 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 2, 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. On February 19, 2010, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Routing Fees.

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.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Partial Amendment No. 1 includes minor clarifications to the purpose section of the proposed rule change, and makes a non-substantive change to the rule text itself.

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 recoup costs that the Exchange incurs for routing and executing customer orders in equity and index options to certain better-priced away markets.

In May, 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.[4] NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

Currently, the Exchange's Fee Schedule includes a Routing Fee of $0.50 per contract side for customer orders routed to NYSE Arca, Inc. ("NYSEArca") in penny options for execution[5] and a Routing Fee of $.40 per contract side for orders routed to the NASDAQ Options Market ("NOM") in penny options for execution.[6] The Exchange proposes adding a Routing Fee of $.56 per contract side for customer orders routed to NOM in the NASDAQ 100 Index Option ("NDX") and the mini NASDAQ 100 Index Option ("MNX").[7]

There will be no Routing Fees for orders routed to away markets other than NYSEArca and NOM in penny options. Also, except for NDX, there will be no cost for executing orders at away markets in non-penny classes. The Exchange is currently only proposing to assess a Routing Fee in NDX and MNX for orders routed to NOM.

NOS incurs a cost of $.50 in routing to NOM in NDX and MNX. Additionally, the Exchange incurs a clearing charge from the Options Clearing Corporation. Accordingly, the Exchange is proposing this fee to recoup transaction and clearing costs. The Exchange believes that the routing fees proposed will enable the Exchange to recover these costs.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members because all members and member organizations would be assessed the same fee for NDX and MNX orders routed to and executed on NOM. The Exchange believes that this fee would enable it to recoup costs associated with routing customer orders on behalf of its members.

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[10] and paragraph (f)(2) of Rule 19b–4[11] 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–2010–19 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-2010–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–19 and should be submitted on or before March 22, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4135 Filed 2–26–10; 8:45 am]

BILLING CODE 8011–01–P

[4] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx-2009–32).

[5] *See* Securities Exchange Act Release No. 61374 (January 19, 2010), 75 FR 4123 (January 26, 2010) (SR–PHLX–2010–01).

[6] *See* SR–Phlx-2010–15.

[7] *See* SR–NASDAQ–2010–06. The NASDAQ Stock Market LLC ("NASDAQ") recently established pricing for NDX and MNX. Specifically, NASDAQ established a fee of $.50 per executed contract for Customers, Firms, and Non-NOM Market Makers to remove liquidity in NDX and MNX Options and a $.40 per executed contract for NOM Market Makers to remove liquidity in NDX and MNX.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: March 11, 2010, 12 noon to 3 p.m., Eastern Standard Time.

PLACE: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free number and pass code needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: February 19, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–4268 Filed 2–25–10; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Covington & Burling on behalf of Union Pacific Corporation (WB468–11–1/8/10), for permission to use certain data from the Board's 2008 Carload Waybill Sample. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–4157 Filed 2–26–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of 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, 44 U.S.C. 3506(c)(2)(A). Currently, the Community Development Financial Institutions (CDFI) Fund, Department of the Treasury, is soliciting comments concerning an information collection required by the allocation agreement that is entered into by the CDFI Fund and recipients of tax credit authority allocations through New Markets Tax Credit (NMTC). The specific information collection relates to the allocation agreement requirement that allocatees provide notice to the CDFI Fund of the receipt of Qualified Equity Investments as defined at 26 CFR part 1.45D–1(c). The CDFI Fund has published separate notices seeking public comments regarding other information collections contained in the allocation agreement (*e.g.,* use of Qualified Equity Investment proceeds).

DATES: Written comments should be received on or before April 30, 2010 to be assured of consideration.

ADDRESSES: Direct all comments to Charles McGee, Program Manager for Certification, Compliance Monitoring and Evaluation, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to *cme@cdfi.treas.gov* or by facsimile to (202) 622–7754. Please note this is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: A draft of the information collection may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Charles McGee, Program Manager for Certification, Compliance Monitoring and Evaluation, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or by phone to (202) 622–8453.

SUPPLEMENTARY INFORMATION:

Title: New Markets Tax Credit (NMTC) Allocation Tracking System.

OMB Number: 1559–0024.

Abstract: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1 (a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding I.R.C. § 45D, New Markets Tax Credit. Pursuant to I.R.C. § 45D, the Department of the Treasury, through the CDFI Fund, administers NMTC, which provides an incentive to investors in the form of tax credits over seven years, which stimulates the provision of private investment capital that, in turn, facilitates economic and community development in low-income communities. In order to qualify for an allocation of NMTC authority, an entity must be certified as a qualified community development entity and submit an allocation application to the CDFI Fund. Upon receipt of such applications, the CDFI Fund conducts a competitive review process to evaluate applications for the receipt of NMTC allocations. Entities receiving an NMTC allocation must enter into an allocation agreement with the CDFI Fund. The allocation agreement contains the terms and conditions, including all reporting requirements, associated with the receipt of a NMTC allocation. The CDFI Fund requires each allocatee to use an electronic data collection and submission system, known as the allocation tracking system, to report on the information related to its receipt of a Qualified Equity Investment.

The CDFI Fund has developed the allocation tracking system to, among other things: (1) Enhance the allocatee's ability to report to the CDFI Fund timely information regarding the issuance of its Qualified Equity Investments; (2) enhance the Treasury Department's ability to monitor the issuance of Qualified Equity Investments to ensure that no allocatee exceeds its allocation authority, and to ensure that Qualified Equity Investments are issued within the timeframes required by the allocation agreement and NMTC regulations; and (3) provide the Treasury Department with basic investor data which may be aggregated

and analyzed in connection with NMTC evaluation efforts.

Current Actions: Extension of a currently approved collection.

Type of review: Regular review.

Affected Public: Business or other for-profit institutions, not-for-profit institutions, and State, local and Tribal entities.

Estimated Number of Respondents: 495.

Estimated Annual Time per Respondent: 12 hours.

Estimated Total Annual Burden Hours: 5,940 hours.

Requests 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. The specific section of the allocation agreement for which comments are sought is the reporting requirement that allocatees provide notice to the CDFI Fund, through the CDFI Fund's allocation tracking system, of the receipt of a Qualified Equity Investment. 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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 12 U.S.C. 4701 *et seq.;* 26 U.S.C. 45D.

Dated: February 19, 2010.

Jeffrey C. Berg,

Legal Counsel, Community Development Financial Institutions Fund.

[FR Doc. 2010–3900 Filed 2–26–10; 8:45 am]

BILLING CODE 4810–70–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–35: OTS No. H–4649]

Harvard Illinois Bancorp, Inc., Harvard, Illinois; Approval of Conversion Application

Notice is hereby given that on February 12, 2010, the Office of Thrift Supervision approved the application of Harvard Savings Bank, Harvard, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail *Public.Info@OTS.Treaas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Central Regional Office, 1 South Wacker Drive, Suite 2000, Chicago, Illinois 60606.

Dated: February 19, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–3897 Filed 2–26–10; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0219]

Proposed Information Collection (Application for CHAMPVA Benefits); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine eligibility of persons applying for healthcare benefits under Civilian Health and Medical Program—VA and to request preauthorization of certain health care services and benefits for children of Vietnam veterans born with spina bifida and certain other covered birth defects.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 30, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov.* Please refer to "OMB Control No. 2900–0219" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout at (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application for CHAMPVA Benefits, VA Form 10–10d.

b. CHAMPVA Claim Form, VA Form 10–7959a.

c. CHAMPVA Other Health Insurance (OHI) Certification, VA Form 10–7959c.

d. CHAMPVA Potential Liability Claim, VA Form 10–7959d.

e. Claim for Miscellaneous Expenses, VA Form 10–7959e

OMB Control Number: 2900–0219.

Type of Review: Extension of a currently approved collection.

Abstracts:

a. VA Form 10–10d is used to determine eligibility of persons applying for healthcare benefits under the CHAMPVA program.

b. VA Form 10–7959a is used to accurately adjudicate and process beneficiaries claims for payment/reimbursement of related healthcare expenses.

c. VA Form 10–7959c is used to systematically obtain other health insurance information and to correctly coordinate benefits among all liable parties.

d. VA Form 10–7959d is used to gather additional information relative to the injury or illness as well as third party claim information.

e. Beneficiaries complete VA Form 10–7959e to claim payment/

reimbursement of expenses related to spina bifida and certain covered birth defects.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 10–10d—4,411 hours.
b. VA Form 10–7959a—37,336 hours.
c. VA Form 10–7959c—13,456 hours.
d. VA Form 10–7959d—467 hours.
e. VA Form 10–7959e—725 hours

Estimated Average Burden per Respondent:

a. VA Form 10–10d—10 minutes.
b. VA Form 10–7959a—10 minutes.
c. VA Form 10–7959c—10 minutes.
d. VA Form 10–7959d—7 minutes.
e. VA Form 10–7959e—10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 10–10d—26,468.
b. VA Form 10–7959a—224,018.
c. VA Form 10–7959c—80,733.
d. VA Form 10–7959d—4,000.
e. VA Form 10–7959e—4,400.

Dated: February 23, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–4061 Filed 2–26–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0712]

Proposed Information Collection (Nation-Wide Customer Satisfaction Surveys) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify problems or complaints in VA's health care services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 30, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov*. Please refer to "OMB Control No. 2900–0712" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Nation-wide Customer Satisfaction Surveys, VA Forms 1465–2 through 1465–4.

OMB Control Number: 2900–0712.

Type of Review: Extension of a previously approved collection.

Abstract: The Survey of Health Experience of Patients (SHEP) Survey is used to obtain information from VA patients that will be used to identify problems or compliant and to improve the quality of health care services delivered to veterans. Data will be use to measure improvement toward the goal of matching or exceeding non-VA external benchmark performance.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Inpatient Short Form, VA Form 10–1465–2—16,875 hours.
b. Ambulatory Care Long Form, VA Form 10–1465–3—9,802 hours.
c. Ambulatory Care Short Form, VA Form 10–1465–4—67,573 hours.

Estimated Average Burden per Respondent:

a. Inpatient Short Form, VA Form 10–1465–2—15 minutes.
b. Ambulatory Care Long Form, VA Form 10–1465–3—25 minutes.
c. Ambulatory Care Short Form, VA Form 10–1465–4—20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Inpatient Short Form, VA Form 10–1465–2—75,000.
b. Ambulatory Care Long Form, VA Form 10–1465–3—23,524.
c. Ambulatory Care Short Form, VA Form 10–1465–4—202,720.

Dated: February 23, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–4062 Filed 2–26–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 0924)]

Proposed Information Collection (VA National Rehabilitation Special Events, Event Registration Applications); Comment Request

AGENCY: Office of National Programs and Special Events, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of National Programs and Special Events (NPSE), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed collection in use without an OMB control number, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to participant in VA national rehabilitation special events.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 30, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Matt Bristol, Office of National Programs and Special Events (002C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *matt.bristol@va.gov*. Please refer to "OMB Control No. 2900–New (VA Form 0924)" in any

correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Matt Bristol at (202) 461–7447 or FAX (202) 273–5717.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NSPE invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NSPE's functions, including whether the information will have practical utility; (2) the accuracy of NPSE's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. National Disabled Veterans Winter Sports Clinic Application, VA Form 0924—233 hours.

b. National Veterans Wheelchair Games Application, VA Form 0925—238 hours.

c. National Veterans Golden Age Games Application, VA Form 0926—533 hours.

d. National Veterans TEE Tournament Application, VA Form 0927—133 hours.

e. National Veterans Summer Sports Clinic Application, VA Form 0928—53 hours.

f. National Veterans Creative Arts Festival Application, VA Form 0929—67 hours.

OMB Control Number: 2900–New (VA Form 0924).

Type of Review: Existing collection in use without an OMB control number.

Abstract: Veterans who are enrolled for VA health care may apply to participate in therapeutic rehabilitation programs such as the National Veterans Wheelchair Games, National Veterans Golden Age Games, National Veterans Creative Arts Festival, National Veterans TEE Tournament, National Disabled Veterans Winter Sports Clinic and the National Veterans Summer Sports Clinic. The data collected will be used to plan, distribute and utilize resources and to allocate clinical and administrative support to patient treatment services.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 0924—233 hours.
b. VA Form 0925—238 hours.
c. VA Form 0926—533 hours.
d. VA Form 0927—133 hours.
e. VA Form 0928—53 hours.
f. VA Form 0929—67 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 0924—700.
b. VA Form 0925—715.
c. VA Form 0926—1,600.
d. VA Form 0927—400.
e. VA Form 0928—160.
f. VA Form 0929—200.

Dated: February 23, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–4063 Filed 2–26–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0600]

Proposed Information Collection (Regulation for Reconsideration of Denied Claims) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to request an informal review of veterans' denied healthcare benefits claims.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 30, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *mary.stout@va.gov*. Please refer to "OMB Control No. 2900–0600" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout at (202) 461–5867.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L.104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Regulation for Reconsideration of Denied Claims.

OMB Control Number: 2900–0600.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans who disagree with the initial decision denying their healthcare benefits in whole or in part may obtain reconsideration by submitting a request in writing within one year of the date of the initial decision. The request must state why the decision is in error and include any new and relevant information not previously considered. This process reduces both formal appeals and allows decision making to be more responsive to veterans using the VA healthcare system.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 50,826 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 101,652.

Dated: February 23, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–4064 Filed 2–26–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (DES)]

Proposed Information Collection (Survey of Satisfaction With the Disability Evaluation System (DES)) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to assess the effectiveness of current DES Pilot procedures and to develop better methods of serving the VA customers, namely, Service members, Veterans and their families.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 30, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–New (DES)" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Survey of Satisfaction with the Disability Evaluation System (DES).

OMB Control Number: 2900–New (DES).

Type of Review: New collection.

Abstract: Data obtained through the DES survey will be used to evaluate and, if necessary, revise the way the DES Pilot is conducted in an effort to raise customer service standards.

Affected Public: Individuals or households.

Estimated Annual Burden: 37 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 149.

Dated: February 23, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–4065 Filed 2–26–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
March 1, 2010

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 10 and 21

General Provisions; Migratory Birds Revised List and Permits; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 10

[FWS–R9–MB–2007–0109;91200–1231–9BPP]

RIN 1018–AB72

General Provisions; Revised List of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, revise the List of Migratory Birds by both adding and removing numerous species. Reasons for the changes to the list include correcting previous mistakes including misspellings, adding species based on new evidence of occurrence in the United States or U.S. territories, removing species no longer known to occur within the United States, and changing names based on new taxonomy. The net increase of 175 species (186 added and 11 removed) brings the total number of species protected by the Migratory Bird Treaty Act (MBTA) to 1007. We regulate most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds. An accurate and up-to-date list of species protected by the MBTA is essential for regulatory purposes.

DATES: This rule is effective March 31, 2010.

FOR FURTHER INFORMATION CONTACT: Terry Doyle, Wildlife Biologist, Division of Migratory Bird Management, at 703–358–1799.

SUPPLEMENTARY INFORMATION:

What Statutory Authority Does the Service Have for This Rulemaking?

We have statutory authority and responsibility for enforcing the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–711), the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712), and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–j). The MBTA implements Conventions between the United States and four neighboring countries for the protection of migratory birds, as follows:

(1) *Canada:* Convention for the Protection of Migratory Birds, August 16, 1916, United States-Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628;

(2) *Mexico:* Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-United Mexican States (Mexico), 50 Stat. 1311, T.S. No. 912;

(3) *Japan:* Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States-Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990; and

(4) *Russia:* Convention for the Conservation of Migratory Birds and Their Environment, United States-Union of Soviet Socialist Republics (Russia), November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073.

What Is the Purpose of This Rulemaking?

Our purpose is to inform the public of the species protected by the MBTA and its implementing regulations. These regulations are found in Title 50, Code of Federal Regulations (CFR), Parts 10, 20, and 21. We regulate most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds. An accurate and up-to-date list of species protected by the MBTA is essential for regulatory purposes.

Why Is This Amendment of the List of Migratory Birds Necessary?

The amendment is needed to: (1) Add two species covered by the Japanese and Russian Conventions that were mistakenly omitted from previous lists; (2) add 29 species of accidental or casual occurrence documented prior to April 1985, but not included in prior lists; (3) add 65 species based on new distributional records documenting their occurrence in the United States since April 1985; (4) add 24 species that occur naturally in the United States only in Hawaii; (5) add 28 species that occur naturally in the United States only in the Pacific island territories of American Samoa, Baker and Howland Islands, Guam, or the Northern Mariana Islands; (6) add 38 species newly recognized as a result of taxonomic changes; (7) remove 10 species not known to occur within the boundaries of the United States or its territories; (8) remove one species that is now treated as a subspecies; (9) change the common (English) names of 48 species to conform with accepted use; (10) change the scientific names of 66 species to conform with accepted use; (11) change the common and scientific names of seven species to conform with accepted use; (12) change the scientific names of four species in the alphabetical list to conform with accepted use and to correct inconsistencies between the alphabetical and taxonomic lists; (13) correct errors in the common (English) name of two species; (14) correct errors in the scientific names of three species in the taxonomic list; and (15) change the status of one taxon from protected subspecies to non-protected species (due to lack of natural occurrence in the United States or its territories). In accordance with the Migratory Bird Treaty Reform Act of 2004 (Pub. L. 108–447) (MBTRA), we also reaffirm our determination of March 15, 2005 (70 FR 12710), that the Mute Swan (*Cygnus olor*), which was never formally listed in 50 CFR 10.13 but was briefly treated as protected by the MBTA as the result of a court order (*Hill* v. *Norton,* 275 F.3d 98 (D.C. Cir. 2001)), is no longer afforded protection because it is nonnative and human-introduced. *See Fund for Animals* v. *Norton,* 374 F. Supp. 2d 91 (D. D.C. 2005, denying injunction because of the clear language of the MBTRA). The District Court's judgment was later affirmed on appeal (*Fund for Animals* v. *Kempthorne,* 472 F.3d 872, D.C. Cir. 2006).

The List of Migratory Birds (50 CFR 10.13) was last revised on April 5, 1985 (50 FR 13710). In a proposed rule published May 9, 1995 (60 FR 24686), we suggested updating the List of Migratory Birds by adding 20 species, removing 1 species, and revising the common (English) or scientific names of 23 previously listed species to conform to the most recent nomenclature. The proposed amendments were necessitated by five published supplements to the 6th (1983) edition of the American Ornithologists' Union's (AOU's) *Check-list of North American birds.* Knowing that additional amendments would be necessary following the anticipated publication of a 7th edition of the *Check-list,* we elected to delay publication of a final rule until after the appearance of the revised *Check-list.* The 1995 proposed rule generated just two public comments, from the American Ornithologists' Union and the Association of Scientific Collections. The comments of those organizations, mostly editorial in nature, are reflected in this document, as appropriate.

Following publication of the 7th edition of the *Check-list* in July 1998, administrative workloads and staff shortages prevented work on a final rule until September 2000. A followup proposed rule was deemed necessary because of the five-year delay since publication of the initial proposed rule, and the many new changes necessitated by the 7th edition of the *Check-list.* In a second proposed rule published October 12, 2001 (66 FR 52282), we suggested adding 30 species, removing one species, and revising the common

(English) or scientific names of 78 previously-listed species to conform to accepted use.

Of the 116 letters received on the proposed rule of October 12, 2001, 109 dealt solely with the presumed protective status of the Mute Swan (*Cygnus olor*) under the MBTA. Of the remaining seven letters, three provided comments of a general nature (including recommendations for adding or deleting certain species); two expressed general support without offering specific comments; one questioned the legality of extending MBTA protection to species that do not cross State or international boundaries; and one expressed concern about the harvest of MBTA-protected shorebirds in the Caribbean. These comments remain part of the public record and were incorporated, as appropriate, into this final rule.

Because of the delay since publication of the 2001 proposed rule, plus the many new changes necessitated by six published supplements (AOU 2000, 2002, 2003, 2004, 2005, 2006) to the 7th edition of the *Check-list,* we published a third proposed rule on August 24, 2006 (71 FR 50194). This allowed the public to review and comment on all of the desired changes that have come to light since publication of the 1995 and 2001 proposed rules. In addition, this final rule incorporates the changes in the AOU supplement published in 2007.

What Scientific Authorities Are Used To Amend the List of Migratory Birds?

Although bird names (common and scientific) are relatively stable, staying current with standardized use is necessary to avoid confusion in communications. In making our determinations, we primarily relied on the American Ornithologists' Union's *Check-list of North American birds* (AOU 1998), as amended (AOU 1999, 2000, 2002, 2003, 2004, 2005, 2006 and 2007), on matters of taxonomy, nomenclature, and the sequence of species and other higher taxonomic categories (orders, families, subfamilies) for species that occur in North America. For the few species that occur outside the geographic area covered by the *Check-list,* we relied primarily on Monroe and Sibley (1993). Though we primarily rely on the above checklists, when informed taxonomic opinion is inconsistent or controversial, we evaluate available published and unpublished information and come to our own conclusion regarding the validity of taxa.

What Criteria Are Used To Identify Individual Species Protected by the MBTA?

A species qualifies for protection under the MBTA by meeting one or more of the following four criteria:

(1) It is a species covered by the Canadian Convention of 1916, as amended in 1996, by virtue of meeting the following three criteria: (a) It belongs to a family or group of species named in the Canadian Convention, as amended; (b) specimens, photographs, videotape recordings, or audiotape recordings provide convincing evidence of natural occurrence in the United States or its territories; and (c) the documentation of such records has been recognized by the AOU or other competent scientific authorities.

(2) It is a species covered by the Mexican Convention of 1936, as amended in 1972, by virtue of meeting the following three criteria: It (a) belongs to a family or group of species named in the Mexican Convention, as amended; (b) specimens, photographs, videotape recordings, or audiotape recordings provide convincing evidence of natural occurrence in the United States or its territories; and (c) the documentation of such records has been recognized by the AOU or other competent scientific authorities.

(3) It is a species listed in the annex to the Japanese Convention of 1972, as amended.

(4) It is a species listed in the appendix to the Russian Convention of 1976.

In accordance with the MBTRA, we have not listed species whose occurrences in the United States are solely the result of intentional or unintentional human-assisted introduction(s). We hereby adopt the definition of "human-assisted introduction" as used in the notice implementing the MBTRA (70 FR 12710): "An intentional introduction is one that was purposeful—for example, the person(s) or institution(s) involved intended for it to happen. An unintentional introduction is one that was unfore*see*n or unintended, for example, the establishment of self-sustaining populations following repeated escapes from captive facilities."

How Do the Scientific Names Used Here Compare to Those That Appear in the Japanese and Russian Conventions?

The Japanese and Russian Conventions list individual species of birds that are covered. For 37 of these species, the scientific (genus or species) name currently recognized by scientific authorities (AOU 1998, 1999; Monroe and Sibley 1993) differs from that which appears in the Conventions. The following cross-reference provides a linkage between the scientific names used in this list and those that appear in the annex to the Japanese Convention and the appendix to the Russian Convention. The first name is the modern equivalent proposed here, and the second name is that which appears in one or both of the Conventions. These changes modernize the regulatory list without revising either the Japanese or the Russian Convention (indicated by J and R, respectively):

Accipiter gularis (Japanese Sparrowhawk) is listed as *Accipiter virgatus* (J & R);

Actitis hypoleucos (Common Sandpiper) is listed as *Tringa hypoleucos* (J & R);

Aethia psittacula (Parakeet Auklet) is listed as *Cyclorrhynchus psittacula* (R);

Anas americana (American Wigeon) is listed as *Mareca americana* (J);

Anas clypeata (Northern Shoveler) is listed as *Spatula clypeata* (J);

Anas penelope (Eurasian Wigeon) is listed as *Mareca penelope* (J);

Anous minutus (Black Noddy) is listed as *Anous tenuirostris* (J);

Anthus rubescens (American Pipit) is listed as *Anthus spinoletta* (J & R);

Branta bernicla (Brant) incorporates *Branta nigricans* (R);

Calidris alba (Sanderling) is listed as *Crocethia alba* (J);

Calidris subminuta (Long-toed Stint) is listed as part of *Calidris minutilla* (J);

Carduelis flammea (Common Redpoll) is listed as *Acanthis flammea* (J);

Carduelis hornemanni (Hoary Redpoll) is included as part of *Carduelis flammea* (J), and is listed as *Acanthis hornemanni* (R);

Charadrius morinellus (Eurasian Dotterel) is listed as *Eudromias morinellus* (J & R);

Chen caerulescens (Snow Goose) is listed as *Anser caerulescens* (J);

Chen canagica (Emperor Goose) is listed as *Anser canagicus* (J), and *Philacte canagica* (R);

Cygnus columbianus (Tundra Swan) incorporates *Cygnus bewickii* (R);

Egretta sacra (Pacific Reef-Egret) is listed as *Demigretta sacra* (J);

Ficedula narcissina (Narcissus Flycatcher) is listed as *Muscicapa narcissina* (J);

Fratercula cirrhata (Tufted Puffin) is listed as *Lunda cirrhata* (J & R);

Gallinago gallinago (Common Snipe) is listed as *Capella gallinago* (R);

Gallinago megala (Swinhoe's Snipe) is listed as *Capella megala* (R);

Gallinago stenura (Pin-tailed Snipe) is listed as *Capella stenura* (R);

Heteroscelus brevipes (Gray-tailed Tattler) is included as part of *Tringa incana* (J);
Heteroscelus incanus (Wandering Tattler) is listed as *Tringa incana* (J);
Luscinia calliope (Siberian Rubythroat) is listed as *Erithacus calliope* (J);
Melanitta fusca (White-winged Scoter) incorporates *Melanitta deglandi* (J);
Mergellus albellus (Smew) is listed as *Mergus albellus* (J & R);
Milvus migrans (Black Kite) is listed as *Milvus korschun* (R);
Numenius borealis (Eskimo Curlew) is included as part of *Numenius minutus* (J);
Phalaropus lobatus (Red-necked Phalarope) is listed as *Lobipes lobatus* (R);
Phoebastria albatrus (Short-tailed Albatross) is listed as *Diomedea albatrus* (J & R);
Phoebastria immutabilis (Laysan Albatross) is listed as *Diomedea immutabilis* (J & R);
Phoebastria nigripes (Black-footed Albatross) is listed as *Diomedea nigripes* (J & R);
Pterodroma hypoleuca (Bonin Petrel) is listed as *Pterodroma leucoptera* (R);
Tachycineta bicolor (Tree Swallow) is listed as *Iridoprocne bicolor* (R); and
Turdus obscurus (Eyebrowed Thrush) is listed as *Turdus pallidus* (R).

How Do the Changes Affect the List of Migratory Birds?

The amendments (186 additions, 11 removals, 121 name changes, and 9 corrections) affect a grand total of 327 species and result in a net addition of 175 species to the List of Migratory Birds, increasing the species total from 832 to 1007. Of the 175 species that we add to the list, 38 were previously covered under the MBTA as subspecies of listed species. These amendments can be logically arranged in the following 15 categories:

(1) Add two species that are included in the Appendix of the Russian Convention and in the Annex to the Japanese Convention, respectively; the omission of these species in previous lists was an oversight. These species also qualify for protection under the Canadian and Mexican Conventions as members of the families Anatidae and Laridae, respectively:

Duck, Spot-billed, *Anas poecilorhyncha;* and
Gull, Black-tailed, *Larus crassirostris.*

(2) Add 29 species based on review and acceptance by AOU (prior to April 1985) of distributional records documenting their occurrence in the United States, Puerto Rico, or the U.S. Virgin Islands. These species belong to families covered by the Canadian and/or Mexican Conventions. They were excluded from the 1985 list because their occurrence was viewed as accidental or casual, a criterion no longer viewed as inconsistent with the MBTA or its underlying Conventions. A species of accidental or casual occurrence is one whose normal range is far enough removed from the United States as to make regular occurrence unlikely or improbable (AOU 1983). For each species, we list the State(s) in which it has been recorded plus the relevant AOU publication(s):

Albatross, Shy, *Thalassarche cauta*—Washington (AOU 1982, 1983, 1997, 1998);
Albatross, Wandering, *Diomedea exulans*—California (AOU 1982, 1983, 1998);
Bunting, Blue, *Cyanocompsa parellina*—Louisiana, Texas (AOU 1982, 1983, 1998);
Bunting, Gray, *Emberiza variabilis*—Alaska (AOU 1982, 1983, 1998);
Bunting, Little, *Emberiza pusilla*—Alaska (AOU 1982, 1983, 1998);
Chaffinch, Common, *Fringilla coelebs*—Maine to Massachusetts (AOU 1982, 1983, 1998);
Crake, Paint-billed, *Neocrex erythrops*—Texas, Virginia (AOU 1982, 1983, 1998);
Curlew, Eurasian, *Numenius arquata*—Massachusetts, New York (AOU 1982, 1983, 1998);
Flycatcher, La Sagra's, *Myiarchus sagrae*—Alabama, Florida (AOU 1982, 1983, 1998);
Flycatcher, Variegated, *Empidonomus varius*—Maine, Tennes*see* (AOU 1982, 1983, 1998);
Gull, Belcher's, *Larus belcheri*—Florida (AOU 1982, 1983, 1998, 2003);
Hawk, Roadside, *Buteo magnirostis*—Texas (AOU 1982, 1983, 1998);
Hummingbird, Bumblebee, *Atthis heloisa*—Arizona (AOU 1982, 1983, 1998);
Martin, Southern, *Progne elegans*—Florida (AOU 1982, 1983, 1998);
Mockingbird, Bahama, *Mimus gundlachii*—Florida (AOU 1982, 1983, 1998);
Petrel, Black-winged, *Pterodroma nigripennis*—Hawaii (AOU 1982, 1983, 1998);
Petrel, Jouanin's, *Bulweria fallax*—Hawaii (AOU 1982, 1983, 1998);
Pewee, Hispaniolan, *Contopus hispaniolensis*—Puerto Rico (AOU 1983, 1995, 1998);
Pipit, Tree, *Anthus trivialis*—Alaska (AOU 1982, 1983, 1995);
Rail, Spotted, *Pardirallus maculatus*—Pennsylvania, Texas (AOU 1982, 1983, 1998);
Scops-Owl, Oriental, *Otus sunia*—Alaska (AOU 1982, 1983, 1998);
Shearwater, Streaked, *Calonectris leucomelas*—California (AOU 1982, 1983, 1998);
Shrike, Brown, *Lanius cristatus*—Alaska, California (AOU 1982, 1983, 1998);
Swift, Short-tailed, *Chaetura brachyura*—U.S. Virgin Islands (AOU 1983, 1998);
Tern, Large-billed, *Phaetusa simplex*—Illinois, New Jersey, Ohio (AOU 1983, 1998);
Vireo, Thick-billed, *Vireo crassirostris*—Florida (AOU 1983, 1998);
Warbler, Dusky, *Phylloscopus fuscatus*—Alaska, California (AOU 1982, 1983, 1998);
Warbler, Fan-tailed, *Euthlypis lachrymosa*—Arizona (AOU 1982, 1983, 1998); and
Warbler, Wood, *Phylloscopus sibilatrix*—Alaska (AOU 1982, 1983, 1998).

(3) Add 65 species based on review and acceptance by AOU (since April 1985) of new distributional records documenting their occurrence in the United States, Puerto Rico, or the U.S. Virgin Islands. These species belong to families covered by the Canadian and/or Mexican Conventions and most are considered to be of accidental or casual occurrence. For each species, we list the State(s) in which it has been recorded plus the relevant publication(s):

Albatross, Black-browed, *Thalassarche melanophris*—Virginia (AOU 2002);
Albatross, Light-mantled, *Phoebetria palpebrata*—California (AOU 1997, 1998);
Bluetail, Red-flanked, *Tarsiger cyanurus*—Alaska (AOU 1995, 1998);
Bunting, Pine, *Emberiza leucocephalos*—Alaska (AOU 1995, 1998);
Bunting, Yellow-breasted, *Emberiza aureola*—Alaska (AOU 1989, 1998);
Bunting, Yellow-throated, *Emberiza elegans*—Alaska (AOU 2000);
Carib, Purple-throated, *Eulampis jugularis*—U.S. Virgin Islands (AOU 1998);
Catbird, Black, *Melanoptila glabrirostris*—Texas (AOU 1998);
Duck, Muscovy, *Cairina moschata*—Texas (AOU 1998);
Egret, Little, *Egretta garzetta*—Massachusetts, New Hampshire, Puerto Rico, Virginia (AOU 1998);
Elaenia, Greenish, *Myiopagis viridicata*—Texas (AOU 1989, 1998);
Falcon, Red-footed, *Falco vespertinus*—Massachusetts, (AOU 2007);
Flycatcher, Piratic, *Legatus leucophalus*—Florida, New Mexico, Texas (AOU 2002);

Flycatcher, Social, *Myiozetetes similis*—Texas (AOU 2006);
Flycatcher, Tufted, *Mitrephanes phaeocercus*—Texas (AOU 1998);
Forest-Falcon, Collared, *Micrastur semitorquatus*—Texas (AOU 1998)
Frog-Hawk, Gray, *Accipiter soloensis*—Hawaii (AOU 1997, 1998);
Gallinule, Azure, *Porphyrio flavirostris*—New York (AOU 1991, 1998, 2002);
Golden-Plover, European, *Pluvialis apricaria*—Alaska (Western Birds 2001);
Goose, Lesser White-fronted, *Anser erythropus*—Alaska (AOU 1995, 1998);
Gull, Gray-hooded, *Larus cirrocephalus*—Florida (AOU 2002);
Gull, Kelp, *Larus dominicanus*—Indiana, Louisiana, Maryland, Texas (AOU 2002);
Gull, Yellow-legged, *Larus michahellis* (=*cachinnans*)—Maryland (AOU 1993, 1998, 2007);
Hawk, Crane, *Geranospiza caerulescens*—Texas (AOU 1998);
Hobby, Eurasian, *Falco subbuteo*—Alaska (AOU 1985, 1995, 1998);
Hummingbird, Cinnamon, *Amazilia rutila*—Arizona, New Mexico (AOU 1998);
Hummingbird, Xantus's, *Hylocharis xantusii*—California (AOU 1998);
Mango, Green-breasted, *Anthracothorax prevostii*—Texas (AOU 1998);
Martin, Brown-chested, *Progne tapera*—Massachusetts (AOU 1985, 1995, 1998);
Mockingbird, Blue, *Melanotis caerulescens*—Arizona, Texas (AOU 1998);
Nightingale-Thrush, Black-headed, *Catharus mexicanus*—Texas (AOU 2006);
Nightingale-Thrush, Orange-billed, *Catharus aurantiirostris*—Texas (AOU 2002);
Owl, Mottled, *Ciccaba virgata*—Texas (AOU 1989, 1998);
Owl, Stygian, *Asio stygius*—Texas (AOU 2002);
Petrel, Bermuda, *Pterodroma cahow*—North Carolina (AOU 1998);
Petrel, Great-winged, *Pterodroma macroptera*—California (AOU 2004);
Petrel, Stejneger's, *Pterodroma longirostris*—California, Hawaii (AOU 1989, 1998);
Pewee, Cuban, *Contopus caribaeus*—Florida (AOU 2004);
Plover, Collared, *Charadrius collaris*—Texas (AOU 1998);
Pond-Heron, Chinese, *Ardeola bacchus*—Alaska (AOU 2000);
Reef-Heron, Western, *Egretta gularis*—Massachusetts (AOU 1985, 1998);
Robin, Siberian Blue, *Luscinia cyane*—Alaska (AOU 1987, 1998);
Robin, White-throated, *Turdus assimilis*—Texas (AOU 1998);
Sandpiper, Green, *Tringa ochropus*—Alaska (AOU 1985, 1998);
Shearwater, Cape Verde, *Calonectris edwardsii*—North Carolina (AOU 2006);
Silky-flycatcher, Gray, *Ptilogonys cinereus*—Texas (AOU 1998);
Siskin, Eurasian, *Carduelis spinus*—Alaska (AOU 1995, 1998);
Stilt, Black-winged, *Himantopus himantopus*—Alaska (AOU 1985, 1998);
Stonechat, *Saxicola torquatus*—Alaska (AOU 1987, 1998, 2004);
Storm-Petrel, Black-bellied *Fregetta tropica*—North Carolina (AOU 2006);
Storm-Petrel, Ringed, *Oceanodroma hornbyi*—California (AOU 2007);
Swallow, Mangrove, *Tachycineta albilinea*—Florida (AOU 2005);
Swift, Alpine, *Apus melba*—Puerto Rico (AOU 1998);
Tanager, Flame-colored, *Piranga bidentata*—Arizona, Texas (AOU 1987, 1998);
Tern, Great Crested, *Thalasseus bergii*—Hawaii (AOU 1991, 1998, 2006);
Tern, Whiskered, *Chlidonias hybrida*—Delaware, New Jersey (AOU 1997, 1998, 2003);
Tityra, Masked, *Tityra semifasciata*—Texas (AOU 1998);
Turtle-Dove, Oriental, *Streptopelia orientalis*—Alaska (AOU 1991, 1998);
Vireo, Yucatan, *Vireo magister*—Texas (AOU 1987, 1998);
Wagtail, Citrine, *Motacilla citreola*—Alabama (AOU 1995, 1998);
Warbler, Crescent-chested, *Parula superciliosa*—Arizona (AOU 1987, 1998);
Warbler, Lanceolated, *Locustella lanceolata*—Alaska, California (AOU 1985, 1998);
Warbler, Yellow-browed, *Phylloscopus inornatus*—Alaska (AOU 2002);
Whitethroat, Lesser, *Sylvia curruca*—Alaska (AOU 2004); and
Woodpecker, Great Spotted, *Dendrocopos major*—Alaska (AOU 1987, 1998).

(4) Add 24 species that belong to families covered by the Canadian and/or Mexican Conventions, but occur naturally in the United States only in Hawaii:

Akekee, *Loxops caeruleirostris*
Akepa, *Loxops coccineus*
Akialoa, Greater, *Hemignathus ellisianus*
Akiapolaau, *Hemignathus munroi*
Akikiki, *Oreomystis bairdi*
Akohekohe, *Palmeria dolei*
Alauahio, Maui, *Paroreomyza montana*
Alauahio, Oahu, *Paroreomyza maculata*
Amakihi, Hawaii, *Hemignathus virens*
Amakihi, Kauai, *Hemignathus kauaiensis*
Amakihi, Oahu, *Hemignathus flavus*
Anianiau, *Magumma parva*
Apapane, *Himatione sanguinea*
Creeper, Hawaii, *Oreomystis mana*
Finch, Laysan, *Telespiza cantans*
Finch, Nihoa, *Telespiza ultima*
Iiwi, *Vestiaria coccinea*
Kakawahie, *Paroreomyza flammea*
Millerbird, *Acrocephalus familiaris*
Nukupuu, *Hemignathus lucidus*
Ou, *Psittirostra psittacea*
Palila, *Loxioides bailleui*
Parrotbill, Maui, *Pseudonestor xanthophrys*
Poo-uli, *Melamprosops phaeosoma*

(5) Add 28 species that belong to families covered by the Canadian and/or Mexican Conventions, but occur naturally in the United States only in the Pacific island territories of American Samoa, Baker and Howland Islands, Guam, or the Northern Mariana Islands (Pratt *et al.* 1987). We also list the territory or territories in which each species is known to occur:

Bittern, Black, *Ixobrychus flavicollis* (Guam);
Cormorant, Little Pied, *Phalacrocorax melanoleucos* (Northern Marianas);
Crake, Spotless, *Porzana tabuensis* (American Samoa);
Crow, Mariana, *Corvus kubaryi* (Guam, Northern Marianas);
Duck, Pacific Black, *Anas superciliosa* (American Samoa);
Fruit-Dove, Crimson-crowned, *Ptilinopus porphyraceus* (American Samoa);
Fruit-Dove, Many-colored, *Ptilinopus perousii* (American Samoa);
Fruit-Dove, Mariana, *Ptilinopus roseicapilla* (Guam, Northern Marianas);
Greenshank, Nordmann's, *Tringa guttifer* (Guam);
Ground-Dove, Friendly, *Gallicolumba stairi* (American Samoa);
Ground-Dove, White-throated, *Gallicolumba xanthonura* (Guam, Northern Marianas);
Heron, Gray, *Ardea cinerea* (Northern Marianas);
Imperial-Pigeon, Pacific, *Ducula pacifica* (American Samoa);
Kingfisher, Collared, *Todirhamphus chloris* (American Samoa, Northern Marianas);
Kingfisher, Micronesian, *Todirhamphus cinnamominus* (Guam);
Oystercatcher, Eurasian, *Haematopus ostralegus* (Guam);
Petrel, Gould's, *Pterodroma leucoptera* (American Samoa);
Petrel, Phoenix, *Pterodroma alba* (Baker and Howland Islands);
Petrel, Tahiti, *Pterodroma rostrata* (American Samoa);

Rail, Buff-banded, *Gallirallus philippensis* (American Samoa);
Rail, Guam, *Gallirallus owstoni* (Guam);
Reed-Warbler, Nightingale, *Acrocephalus luscinia* (Northern Marianas, formerly Guam);
Storm-Petrel, Matsudaira's, *Oceanodroma matsudairae* (Guam, Northern Marianas);
Storm-Petrel, Polynesian, *Nesofregata fuliginosa* (American Samoa);
Storm-Petrel, White-bellied, *Fregetta grallaria* (American Samoa);
Swamphen, Purple, *Porphyrio porphyrio* (American Samoa);
Swiftlet, Mariana, *Aerodramus bartschi* (Guam, Northern Marianas); and
Swiftlet, White-rumped, *Aerodramus spodiopygius* (American Samoa).

(6) Add 38 species because of recent taxonomic changes in which taxa formerly treated as subspecies have been determined to be distinct species. Given that each of these species was formerly treated as subspecies of a listed species, these additions will not change the protective status of any of these taxa, only the names by which they are known. In each case, we reference the AOU publication(s) supporting the change:

Bean-Goose, Tundra, *Anser serrirostris* (formerly treated as subspecies of *Anser fabalis,* Taiga Bean-Goose [=Bean Goose]) [AOU 2007];
Coot, Hawaiian, *Fulica alai* (formerly treated as subspecies of *Fulica americana,* American Coot) [AOU 1993, 1998];
Flicker, Gilded, *Colaptes chrysoides* (formerly treated as subspecies of *Colaptes auratus,* Northern Flicker) [AOU 1995, 1998];
Flycatcher, Cordilleran, *Empidonax occidentalis* (formerly treated as subspecies of *Empidonax difficilis,* Western [=Pacific-slope] Flycatcher) [AOU 1989, 1998];
Gnatcatcher, California, *Polioptila californica* (formerly treated as subspecies of *Polioptila melanura,* Black-tailed Gnatcatcher) [AOU 1989, 1998];
Golden-Plover, Pacific, *Pluvialis fulva* (formerly treated as subspecies of *Pluvialis dominica,* Lesser [=American] Golden-Plover) [AOU 1993, 1998];
Grebe, Clark's, *Aechmophorus clarkii* (formerly treated as subspecies of *Aechmophorus occidentalis,* Western Grebe) [AOU 1985, 1998];
Heron, Green, *Butorides virescens* (formerly treated as subspecies of *Butorides striatus,* Green-backed [=Striated] Heron) [AOU 1993, 1998];
Kamao, *Myadestes myadestinus* (formerly treated as subspecies of *Phaeornis obscurus,* Hawaiian Thrush [=Omao]) [AOU 1985, 1998];
Kite, White-tailed, *Elanus leucurus* (formerly treated as subspecies of *Elanus caeruleus,* Black-shouldered Kite) ([AOU 1983, 1993, 1998]);
Loon, Pacific, *Gavia pacifica* (formerly treated as subspecies of *Gavia arctica,* Arctic Loon) [AOU 1985, 1998];
Magpie, Black-billed, *Pica hudsonia* (formerly treated as subspecies of *Pica pica,* Black-billed [=Eurasian] Magpie) [AOU 2000];
Murrelet, Long-billed, *Brachyramphus perdix*—formerly treated as a subspecies of *Brachyramphus marmoratus,* Marbled Murrelet (AOU 1997);
Olomao, *Myadestes lanaiensis* (formerly treated as subspecies of *Phaeornis obscurus,* Hawaiian Thrush [=Omao]) [AOU 1985, 1998];
Oriole, Bullock's, *Icterus bullockii* (formerly treated as subspecies of *Icterus galbula,* Northern [=Baltimore] Oriole) [AOU 1995, 1998];
Petrel, Hawaiian, *Pterodroma sandwichensis* (formerly treated as subspecies of *Pterodroma phaeopygia,* Dark-rumped [=Galapagos] Petrel) [AOU 2002];
Petrel, White-necked, *Pterodroma cervicalis* (formerly treated as subspecies of *Pterodroma externa,* White-necked [=Juan Fernandez] Petrel) [AOU 1991, 1998];
Pipit, American, *Anthus rubescens* (formerly treated as subspecies of *Anthus spinoletta,* Water Pipit (AOU 1989, 1998);
Rosy-Finch, Black, *Leucosticte atrata* (formerly treated as subspecies of *Leucosticte arctoa,* Rosy Finch) [AOU 1993, 1998];
Rosy-Finch, Brown-capped, *Leucosticte australis* (formerly treated as subspecies of *Leucosticte arctoa,* Rosy Finch) [AOU 1993, 1998];
Rosy-Finch, Gray-crowned, *Leucosticte tephrocotis* (formerly treated as subspecies of *Leucosticte arctoa,* Rosy Finch) [AOU 1993, 1998];
Sapsucker, Red-naped, *Sphyrapicus nuchalis* (formerly treated as subspecies of *Sphyrapicus varius,* Yellow-bellied Sapsucker) [AOU 1985, 1998];
Scrub-Jay, Island, *Aphelocoma insularis* (formerly treated as subspecies of *Aphelocoma coerulescens,* Scrub [=Florida] Jay [=Scrub-Jay]) [AOU 1995, 1998];
Scrub-Jay, Western, *Aphelocoma californica* (formerly treated as subspecies of *Aphelocoma coerulescens,* Scrub [=Florida] Jay [=Scrub-Jay]) [AOU 1995, 1998];
Snipe, Wilson's, *Gallinago delicata* (formerly treated as subspecies of *Gallinago gallinago,* Common Snipe) [AOU 2002];
Sparrow, Nelson's Sharp-tailed, *Ammodramus nelsoni* (formerly treated as subspecies of *Ammodramus caudacutus,* Sharp-tailed [=Saltmarsh Sharp-tailed] Sparrow) [AOU 1995, 1998];
Spindalis, Puerto Rican, *Spindalis portoricensis* (formerly treated as subspecies of *Spindalis zena,* Stripe-headed [=Western] Tanager [=Spindalis]) [AOU 2000];
Thrush, Bicknell's, *Catharus bicknelli* (formerly treated as subspecies of *Catharus minimus,* Gray-cheeked Thrush) [AOU 1995, 1998];
Titmouse, Black-crested, *Baeolophus atricristatus* (formerly treated as subspecies of *Parus* [=*Baeolophus*] *bicolor,* Tufted Titmouse) [AOU 2002];
Titmouse, Juniper, *Baeolophus ridgwayi* (formerly treated as subspecies of *Parus* [=*Baeolophus*] *inornatus,* Plain [=Oak] Titmouse) [AOU 1997, 1998];
Towhee, California, *Pipilo crissalis* (formerly treated as subspecies of *Pipilo fuscus,* Brown [=Canyon] Towhee) [AOU 1989, 1998];
Towhee, Spotted, *Pipilo maculatus* (formerly treated as subspecies of *Pipilo erythrophthalmus,* Rufous-sided [=Eastern] Towhee) [AOU 1995, 1998];
Vireo, Cassin's, *Vireo cassinii* (formerly treated as subspecies of *Vireo solitarius,* Solitary [=Blue-headed] Vireo) [AOU 1997, 1998];
Vireo, Plumbeous, *Vireo plumbeus* (formerly treated as subspecies of *Vireo solitarius,* Solitary [=Blue-headed] Vireo) [AOU 1997, 1998];
Vireo, Yellow-green, *Vireo flavoviridis* (formerly treated as subspecies of *Vireo olivaceus,* Red-eyed Vireo) [AOU 1987, 1998];
Wagtail, Eastern Yellow, *Motacilla tschutschensis* (formerly treated as subspecies of *Motacilla flava,* Yellow Wagtail) [AOU 2004];
Woodpecker, American Three-toed, *Picoides dorsalis* (formerly treated as subspecies of *Picoides tridactylus,* Three-toed [=Eurasian Three-toed] Woodpecker) [AOU 2003]; and
Woodpecker, Arizona, *Picoides arizonae* (formerly treated as subspecies of *Picoides stricklandi,* Strickland's Woodpecker) [AOU 2000].

(7) Remove 10 species based on revised taxonomic treatments and new distributional evidence confirming that their known geographic ranges lie entirely outside the political boundaries of the United States and its territories. In each case, we reference the AOU publication(s) supporting these changes:

Finch, Rosy, *Leucosticte arctoa* (AOU 1993, 1998);
Heron, Green-backed (=Striated), *Butorides striatus* (AOU 1993, 1998);
Kite, Black-shouldered, *Elanus caeruleus* (AOU 1983, 1993, 1998);
Magpie, Black-billed (=Eurasian), *Pica pica* (AOU 2000);
Noddy, Lesser, *Anous tenuirostris* (AOU 1998; treated as conspecific with Black Noddy, *Anous minutus*);
Petrel, Dark-rumped (=Galapagos), *Pterodroma phaeopygia* (AOU 2002);
Pipit, Water, *Anthus spinoletta* (AOU 1983, 1989, 1998);
Wagtail, Yellow, *Motacilla flava* (AOU 2004);
Woodpecker, Strickland's, *Picoides stricklandi* (AOU 2000); and
Woodpecker, Three-toed (=Eurasian Three-toed), *Picoides tridactylis* (AOU 2003).

(8) Remove one former species that is now treated as a subspecies:

Wagtail, Black-backed, *Motacilla lugens* (*lugens* will remain protected as a subspecies of *Motacilla alba,* White Wagtail) [AOU 2005].

(9) Revise the common (English) names of 48 species to conform to the most recent nomenclatural treatment. These revisions do not change the protective status of any of these taxa, only the names by which they are known. In each case, we reference the published source(s) for the name change:

Barn-Owl, Common, *Tyto alba,* becomes Owl, Barn (AOU 1989, 1998);
Bittern, Chinese, *Ixobrychus sinensis,* becomes Bittern, Yellow (AOU 1991, 1998);
Crow, Mexican, *Corvus imparatus,* becomes Crow, Tamaulipas (AOU 1997, 1998);
Curlew, Least, *Numenius minutus,* becomes Curlew, Little (AOU 1987, 1998);
Flycatcher, Gray-spotted, *Muscicapa griseisticta,* becomes Flycatcher, Gray-streaked (AOU 2004);
Flycatcher, Western, *Empidonax difficilis,* becomes Flycatcher, Pacific-slope (AOU 1989, 1998);
Golden-Plover, Lesser, *Pluvialis dominica,* becomes Golden-Plover, American (AOU 1993, 1998);
Goose, Bean, *Anser fabalis,* becomes Bean-Goose, Taiga (AOU 2007)
Goose, Ross', *Chen rossii,* becomes Goose, Ross's (AOU 1998);
Gull, Common Black-headed, *Larus ridibundus,* becomes Gull, Black-headed (AOU 1995, 1998);
Gull, Ross', *Rhodostethia rosea,* becomes Gull, Ross's (AOU 1998);
Hawk, Asiatic Sparrow, *Accipiter gularis,* becomes Sparrowhawk, Japanese (Monroe and Sibley 1993);
Hawk, Harris', *Parabuteo unicinctus,* becomes Hawk, Harris's (AOU 1998);
Hawk-Owl, Northern, *Surnia ulula,* becomes Owl, Northern Hawk (AOU 1989, 1998);
Heron, Pacific Reef, *Egretta sacra,* becomes Reef-Egret, Pacific (Monroe and Sibley 1993);
Hoopoe, *Upupa epops,* becomes Hoopoe, Eurasian (AOU 1998);
Jay, Gray-breasted, *Aphelocoma ultramarina,* becomes Jay, Mexican (AOU 1995, 1998);
Jay, Scrub, *Aphelocoma coerulescens,* becomes Scrub-Jay, Florida (AOU 1995, 1998);
Kite, American Swallow-tailed, *Elanoides forficatus,* becomes Kite, Swallow-tailed (AOU 1995, 1998);
Murrelet, Xantus', *Synthliboramphus hypoleucus,* becomes Murrelet, Xantus's (AOU 1998);
Nightjar, Jungle, *Caprimulgus indicus,* becomes Nightjar, Gray (AOU 2004);
Oldsquaw, *Clangula hyemalis,* becomes Duck, Long-tailed (AOU 2000);
Oriole, Black-cowled, *Icterus dominicensis,* becomes Oriole, Greater Antillean (AOU 2000);
Oriole, Northern, *Icterus galbula,* becomes Oriole, Baltimore (AOU 1995, 1998);
Petrel, White-necked, *Pterodroma externa,* becomes Petrel, Juan Fernandez (AOU 1991, 1998);
Plover, Great Sand, *Charadrius leschenaultii,* becomes Sand-Plover, Greater (AOU 2004);
Plover, Mongolian, *Charadrius mongolus,* becomes Sand-Plover, Lesser (AOU 2004);
Reed-Bunting, Common, *Emberiza schoeniclus,* becomes Bunting, Reed (AOU 1995, 1998);
Reed-Bunting, Pallas', *Emberiza pallasi,* becomes Bunting, Pallas's (AOU 1995, 1998);
Sandpiper, Spoonbill, *Eurynorhynchus pygmeus,* becomes Sandpiper, Spoon-billed (AOU 2004);
Skylark, Eurasian, *Alauda arvensis,* becomes Lark, Sky (AOU 1995, 1998);
Sparrow, Harris', *Zonotrichia querela,* becomes Sparrow, Harris's (AOU 1998);
Sparrow, Sharp-tailed, *Ammodramus caudacutus,* becomes Sparrow, Saltmarsh Sharp-tailed (AOU 1995, 1998);
Starling, Ashy, *Sturnus cineraceus,* becomes Starling, White-cheeked (Monroe and Sibley 1993);
Starling, Violet-backed, *Sturnus philippensis,* becomes Starling, Chestnut-cheeked (Monroe and Sibley 1993);
Stint, Rufous-necked, *Calidris ruficollis,* becomes Stint, Red-necked (AOU 1995);
Storm-Petrel, Sooty, *Oceanodroma tristrami,* becomes Storm-Petrel, Tristram's (AOU 1989, 1998);
Swift, Antillean Palm, *Tachornis phoenicobia,* becomes Palm-Swift, Antillean (AOU 1983, 1998);
Tanager, Stripe-headed, *Spindalis zena,* becomes Spindalis, Western (AOU 2000);
Teal, Falcated, *Anas falcata,* becomes Duck, Falcated (AOU 1997, 1998);
Thrush, Eye-browed, *Turdus obscurus,* becomes Thrush, Eyebrowed (AOU 1989, 1998);
Towhee, Brown, *Pipilo fuscus,* becomes Towhee, Canyon (AOU 1989, 1998);
Towhee, Rufous-sided, *Pipilo erythrophthalmus,* becomes Towhee, Eastern (AOU 1995, 1998);
Tree-Pipit, Olive, *Anthus hodgsoni,* becomes Pipit, Olive-backed (AOU 1995, 1998);
Trogon, Eared, *Euptilotis neoxenus,* becomes Quetzel, Eared (AOU 2002);
Vireo, Solitary, *Vireo solitarius,* becomes Vireo, Blue-headed (AOU 1997, 1998);
Warbler, Elfin Woods, *Dendroica angelae,* becomes Warbler, Elfin-woods (AOU 1998); and
Woodpecker, Lewis', *Melanerpes lewis,* becomes Woodpecker, Lewis's (AOU 1998).

(10) Revise the scientific names of 66 species to conform to the most recent nomenclatural treatment. These revisions do not change the protective status of any of these taxa, only the names by which they are known. In each case, we reference the AOU publication(s) documenting the name change:

Actitis macularia (Spotted Sandpiper) becomes *Actitis macularius* (AOU 2004);
Ajaia ajaja (Roseate Spoonbill) becomes *Platalea ajaja* (AOU 2002);
Amphispiza quinquestriata (Five-striped Sparrow) becomes *Aimophila quinquestriata* (AOU 1997, 1998);
Casmerodius albus (Great Egret) becomes *Ardea alba* (AOU 1995, 1998);
Catharacta maccormicki (South Polar Skua) becomes *Stercorarius maccormicki* (AOU 2000);
Catharacta skua (Great Skua) becomes *Stercorarius skua* (AOU 2000);
Catoptrophorus semipalmatus (Willet) becomes *Tringa semipalmata* (AOU 2006);
Ceryle alcyon (Belted Kingfisher) becomes *Megaceryl alcyon* (AOU 2007);
Ceryle torquatus (= *Ceryle torquata*) (Ringed Kingfisher) becomes *Megaceryl torquata* (AOU 2004, 2007);

Columba fasciata (Band-tailed Pigeon) becomes *Patagioenas fasciata* (AOU 2003);
Columba flavirostris (Red-billed Pigeon) becomes *Patagioenas flavirostris* (AOU 2003);
Columba inornata (Plain Pigeon) becomes *Patagioenas inornata* (AOU 2003);
Columba leucocephala (White-crowned Pigeon) becomes *Patagioenas leucocephala* (AOU 2003);
Columba squamosa (Scaly-naped Pigeon) becomes *Patagioenas squamosa* (AOU 2003);
Contopus borealis (Olive-sided Flycatcher) becomes *Contopus cooperi* (AOU 1997, 1998);
Cuculus saturatus (Oriental Cuckoo) becomes *Cuculus optatus* (AOU 2006);
Cyclorrhynchus psittacula (Parakeet Auklet) becomes *Aethia psittacula* (AOU 1997, 1998);
Delichon urbica (Common House-Martin) becomes *Delichon urbicum* (AOU 2004);
Diomedea albatrus (Short-tailed Albatross) becomes *Phoebastria albatrus* (AOU 1997, 1998);
Diomedea chlororhynchos (Yellow-nosed Albatross) becomes *Thalassarche chlororhynchos* (AOU 1997, 1998);
Diomedea immutabilis (Laysan Albatross) becomes *Phoebastria immutabilis* (AOU 1997, 1998);
Diomedea nigripes (Black-footed Albatross) becomes *Phoebastria nigripes* (AOU 1997, 1998);
Guiraca caerulea (Blue Grosbeak) becomes *Passerina caerulea* (AOU 2002);
Heteroscelus brevipes (Gray-tailed Tattler) becomes *Tringa brevipes* (AOU 2006);
Heteroscelus incanus (Wandering Tattler) becomes *Tringa incana* (AOU 2006);
Helmitheros vermivora (Worm-eating Warbler) becomes *Helmitheros vermivorum* (AOU 2004);
Hirundo fulva (Cave Swallow) becomes *Petrochelidon fulva* (AOU 1997, 1998);
Hirundo pyrrhonota (Cliff Swallow) becomes *Petrochelidon pyrrhonota* (AOU 1997, 1998);
Muscicapa narcissina (Narcissus Flycatcher) becomes *Ficedula narcissina* (AOU 1991, 1998);
Nesochen sandvicensis (Hawaiian Goose) becomes *Branta sandvicensis* (AOU 1993, 1998);
Nyctea scandiaca (Snowy Owl) becomes *Bubo scandiacus* (AOU 2003);
Nycticorax goisagi (Japanese Night-Heron) becomes *Gorsachius goisagi* (Monroe and Sibley 1993);
Nycticorax violaceus (Yellow-crowned Night-Heron) becomes *Nyctanassa violacea* (AOU 1998);
Orthorhynchus cristatus (Antillean Crested Hummingbird) becomes *Orthorhyncus cristatus* (AOU 1987);
Otus asio (Eastern Screech-Owl) becomes *Megascops asio* (AOU 2003);
Otus kennicottii (Western Screech-Owl) becomes *Megascops kennicottii* (AOU 2003);
Otus nudipes (Puerto Rican Screech-Owl) becomes *Megascops nudipes* (AOU 2003);
Otus trichopsis (Whiskered Screech-Owl) becomes *Megascops trichopsis* (AOU 2003);
Oxyura dominica (Masked Duck) becomes *Nomonyx dominicus* (AOU 1997, 1998);
Parus atricapillus (Black-capped Chickadee) becomes *Poecile atricapillus* (AOU 1997, 1998, 2003);
Parus bicolor (Tufted Titmouse) becomes *Baeolophus bicolor* (AOU 1997, 1998);
Parus carolinensis (Carolina Chickadee) becomes *Poecile carolinensis* (AOU 1997, 1998);
Parus gambeli (Mountain Chickadee) becomes *Poecile gambeli* (AOU 1997, 1998);
Parus hudsonicus (Boreal Chickadee) becomes *Poecile hudsonica* (AOU 1997, 1998, 2000);
Parus rufescens (Chestnut-backed Chickadee) becomes *Poecile rufescens* (AOU 1997, 1998);
Parus sclateri (Mexican Chickadee) becomes *Poecile sclateri* (AOU 1997, 1998);
Parus wollweberi (Bridled Titmouse) becomes *Baeolophus wollweberi* (AOU 1997, 1998);
Phalaropus fulicaria (Red Phalarope) becomes *Phalaropus fulicarius* (AOU 2002);
Polyborus plancus (Crested Caracara) becomes *Caracara cheriway* (AOU 1993, 1998, 2000);
Porphyrula martinica (Purple Gallinule) becomes *Porphyrio martinica* (AOU 2002);
Saurothera vieilloti (Puerto Rican Lizard-Cuckoo) becomes *Coccyzus vieilloti* (AOU 2006);
Seiurus aurocapillus (Ovenbird) becomes *Seiurus aurocapilla* (AOU 2003);
Sterna albifrons (Little Tern) becomes *Sternula albifrons* (AOU 2006);
Sterna aleutica (Aleutian Tern) becomes *Onychoprion aleuticus* (AOU 2006);
Sterna anaethetus (Bridled Tern) becomes *Onychoprion anaethetus* (AOU 2006);
Sterna antillarum (Least Tern) becomes *Sternula antillarum* (AOU 2006);
Sterna caspia (Caspian Tern) becomes *Hydroprogne caspia* (AOU 2006);
Sterna elegans (Elegant Tern) becomes *Thalasseus elegans* (AOU 2006);
Sterna fuscata (Sooty Tern) becomes *Onychoprion fuscatus* (AOU 2006);
Sterna lunata (Gray-backed Tern) becomes *Onychoprion lunatus* (AOU 2006);
Sterna maxima (Royal Tern) becomes *Thalasseus maximus* (AOU 2006);
Sterna nilotica (Gull-billed Tern) becomes *Gelochelidon nilotica* (AOU 2006);
Sterna sandvicensis (Sandwich Tern) becomes *Thalasseus sandvicensis* (AOU 2006);
Sula bassanus (Northern Gannet) becomes *Morus bassanus* (AOU 1989, 1998);
Tiaris olivacea (Yellow-faced Grassquit) becomes *Tiaris olivaceus* (AOU 2004); and
Toxostoma dorsale (Crissal Thrasher) becomes *Toxostoma crissale* (AOU 1985, 1998).

(11) Revise the common (English) and scientific names of seven species to conform with the most recent nomenclatural treatment. These revisions do not change the protective status of any of these taxa, only the names by which they are known. In each case, we reference the publication(s) supporting the name change:

Cormorant, Olivaceous, *Phalacrocorax olivaceus,* becomes Cormorant, Neotropic, *Phalacrocorax brasilianus* (AOU 1991, 1998);
Egret, Plumed, *Egretta intermedia,* becomes Egret, Intermediate, *Mesophoyx intermedia* (Monroe and Sibley 1993);
Night-Heron, Malay, *Nycticorax melanolophus,* becomes Night-Heron, Malayan, *Gorsachius melanolophus* (Monroe and Sibley 1993);
Thrush, Hawaiian, *Phaeornis obscurus,* becomes Omao, *Myadestes obscurus* (AOU 1985, 1998);
Thrush, Small Kauai, *Phaeornis palmeri,* becomes Puaiohi, *Myadestes palmeri* (AOU 1985, 1998);
Tit, Siberian, *Parus cinctus,* becomes Chickadee, Gray-headed, *Poecile cincta* (AOU 1998, 2000); and
Titmouse, Plain, *Parus inornatus,* becomes Titmouse, Oak, *Baeolophus inornatus* (AOU 1997, 1998).

(12) Revise incorrect or invalid scientific names of four species in the alphabetical list to reflect the most recent nomenclatural treatment and to correct inconsistencies between the alphabetical and taxonomic lists:

Kittiwake, Black-legged, *Larus tridactyla,* becomes *Rissa trydactyla* (AOU 1998);

Kittiwake, Red-legged, *Larus brevirostris,* becomes *Rissa brevirostris* (AOU 1998);

Skimmer, Black, *Rhynchops niger,* becomes *Rynchops niger* (AOU 1998); and

Thrush, Wood, *Hylocichla minima,* becomes *Hylocichla mustelina* (AOU 1998).

(13) Revise the common (English) name of two species in the alphabetical and taxonomic lists to correct misspellings:

Bittern, Schrenk's, *Ixobrychus eurhythmus,* becomes Bittern, Schrenck's (Monroe and Sibley 1993); and

Redstart, Slaty-throated, *Myioborus miniatus,* becomes Redstart, Slate-throated (AOU 1998).

(14) Revise the scientific names of three species in the taxonomic list to correct misspellings and inconsistencies between the alphabetical and taxonomic lists:

Sialis currucoides (Mountain Bluebird) becomes *Sialia currucoides* (AOU 1998);

Sialis mexicana (Western Bluebird) becomes *Sialia mexicana* (AOU 1998); and

Sialis sialis (Eastern Bluebird) becomes *Sialia sialis* (AOU 1998).

(15) Change the status of one taxon from protected subspecies to non-protected species (because there is no known natural occurrence of the newly recognized species in the United States or its territories). In accordance with the AOU (1998), the Barbary Falcon has been treated as a subspecies (*pelegrinoides*) of the Peregrine Falcon (*Falco peregrinus*) in 50 CFR 10.13. We defer to the taxonomic treatment of Monroe and Sibley (1993) in recognizing *F. peregrinus pelegrinoides* as a distinct species, *Falco pelegrinoides,* the Barbary Falcon. This brings our treatment of this taxon into conformity with that adopted by the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), thereby removing an inconsistency between the MBTA (50 CFR 10.13) and CITES (50 CFR 23.23) lists. This simple taxonomic change does not add or remove any species from the list:

Falco peregrinus pelegrinoides, formerly considered a subspecies of the Peregrine Falcon, is changed to *Falco pelegrinoides,* Barbary Falcon (Monroe and Sibley 1993). TheBarbary Falcon is not subject to the MBTA because its known geographic range lies entirely outside the political boundaries of the United States and its territories. This does not change the legal status of any other subspecies of the Peregrine Falcon, all of which will continue to be protected under the MBTA.

We continue to consider all previously recognized subspecies of the Canada Goose (*Branta canadensis*) as one species.

As a general practice, we use the AOU as a key source for taxonomic decisions. However, for species that are hunted, we may *see* a higher level of certainty about taxonomic changes before modifying hunting regulations and management plans, and communicating those changes to the public.

The AOU recently adopted nomenclature that divides the 11 subspecies of the previously-recognized single Canada Goose species into two species groups, Canada Goose and Cackling Goose (*Branta hutchinsii*) (AOU 2004). However, we choose to include the four subspecies AOU now considers Cackling Goose in the listing of Canada Goose, rather than include them in a separate species. Some waterfowl specialists do not agree that the data on which the AOU relied warranted the separation into two species. The AOU recommendation is based on research in large part supported by analysis of mitochondrial DNA (Van Wagner and Baker 1986, Shields and Wilson 1987, Quinn *et al.* 1991, Paxinos *et al.* 2002, Scribner *et al.* 2003). These studies suggest a difference between Cackling and Canada Geese primarily based on maternally inherited nonrecombinate mitochondrial DNA (mtDNA). We believe the mtDNA analyzed from geese in the geographic areas sampled indicate a substantial evolutionary distance between groups the AOU classifies as Cackling and Canada Geese. However, the nuclear (recombinant) microsatellite DNA (nuDNA) assessment presented in Scribner *et al.* (2003: Fig. 3) suggests either that the nuDNA has not yet sorted (nuDNA takes approximately four times as long to consolidate as does mtDNA [Zink and Barrowclough 2008]), or that this historical division is not being maintained because hybridization is occurring. An assessment of the nuDNA group samples from the North Slope of Alaska (now considered *B. h. taverneri,* a subspecies of Cackling Goose, by the AOU) suggests that this group is most closely paired with samples from South Central Alaska (*B. c. parvipes,* considered a subspecies of Canada Goose by the AOU). These results are consistent with those reported by Van Wagner and Baker (1990). If Cackling and Canada Geese are hybridizing, it is unclear what the outcome will be. Consequently, FWS is concerned whether the sample size and geographic distribution of specimens obtained for genetic analysis was adequate to determine the extent of hybridization. We suggest additional analysis of samples collected at several potential zones of integration to reduce this uncertainty, including the north slope of Alaska (*B. h. taverneri* and *B. c. parvipes*), and Arctic Canada (*B. h. hutchinsii* and *B. c. parvipes,* and *B. h. hutchinsii* and *B. c. interior*). Some of this work is already underway.

Issues related to monitoring and assessment of the proposed two species/Canada Goose complex also need to be resolved to ensure that the continuity in status assessments is maintained. We are also reluctant to begin informing the public, both hunters and non-hunters alike, of the implications of this change until further studies confirm that this separation is warranted. Additional research on Canada/Cackling Goose taxonomy and breeding distribution is currently being conducted and better techniques for field and harvest identification are in development. We will consider this additional information when it is available, at which time we may reconsider our decision. In any case, we emphasize that, regardless of name, goose subspecies identified as Cackling Goose by the AOU remain protected under the Migratory Bird Treaty Act as Canada Goose.

For ease of comparison, changes are summarized in the following table (numbers reference the categories treated above). Species whose names have been revised (categories 9–14) appear in both the left-hand column (old name removed) and right-hand column (new name added). To ensure that these two separate actions appear on the same line of the table, we employ brackets to identify old (removed) or new (added) names that are listed in correct alphabetical order elsewhere in the table:

Removed (alphabetically)	Added (alphabetically)
	Akekee, *Loxops caeruleirostris* (4).
	Akepa, *Loxops coccineus* (4).

Removed (alphabetically)	Added (alphabetically)
	Akialoa, Greater, *Hemignathus ellisianus* (4).
	Akiapolaau, *Hemignathus munroi* (4).
	Akikiki, *Oreomystis bairdi* (4).
	Akohekohe, *Palmeria dolei* (4).
	Alauahio, Maui, *Paroreomyza montana* (4).
	Alauahio, Oahu, *Paroreomyza maculate* (4).
	Albatross, Black-browed, *Thalassarche melanophris* (3).
Albatross, Black-footed, *Diomedea nigripes* (10)	Albatross, Black-footed, *Phoebastria nigripes* (10).
Albatross, Laysan, *Diomedea immutabilis* (10)	Albatross, Laysan, *Phoebastria immutabilis* (10).
	Albatross, Light-mantled, *Phoebetria palpebrata* (3).
Albatross, Short-tailed, *Diomedea albatrus* (10)	Albatross, Short-tailed, *Phoebastria albatrus* (10).
	Albatross, Shy, *Thalassarche cauta* (2).
	Albatross, Wandering, *Diomedea exulans* (2).
Albatross, Yellow-nosed, *Diomedea chlororhynchos* (10)	Albatross, Yellow-nosed, *Thalassarche chlororhynchos* (10).
	Amakihi, Hawaii, *Hemignathus virens* (4).
	Amakihi, Kauai, *Hemignathus kauaiensis* (4).
	Amakihi, Oahu, *Hemignathus flavus* (4).
	Anianiau, *Magumma parva* (4).
	Apapane, *Himatione sanguinea* (4).
Auklet, Parakeet, *Cyclorrhynchus psittacula* (10)	Auklet, Parakeet, *Aethia psittacula* (10).
Barn-Owl, Common, *Tyto alba* (9)	[*see* Owl, Barn].
	Bean-Goose, Taiga, *Anser fabalis* (9).
	Bean-Goose, Tundra, *Anser serrirostris* (6).
	Bittern, Black, *Ixobrychus flavicollis* (5).
Bittern, Chinese, *Ixobrychus sinensis* (9)	Bittern, Yellow, *Ixobrychus sinensis* (9).
Bittern, Schrenk's, *Ixobrychus eurhythmus* (13)	Bittern, Schrenck's, *Ixobrychus eurhythmus* (13).
Bluebird, Eastern, *Sialis sialis* (14)	Bluebird, Eastern, *Sialia sialis* (14).
Bluebird, Mountain, *Sialis currucoides* (14)	Bluebird, Mountain, *Sialia currucoides* (14).
Bluebird, Western, *Sialis mexicana* (14)	Bluebird, Western, *Sialia mexicana* (14).
	Bluetail, Red-flanked, *Tarsiger cyanurus* (3).
	Bunting, Blue, *Cyanocompsa parellina* (2).
	Bunting, Gray, *Emberiza variabilis* (2).
	Bunting, Little, *Emberiza pusilla* (2).
[*see* Reed-Bunting, Pallas']	Bunting, Pallas's, *Emberiza pallasi* (9).
	Bunting, Pine, *Emberiza leucocephalos* (3).
[*see* Reed-Bunting, Common]	Bunting, Reed, *Emberiza schoeniclus* (9).
	Bunting, Yellow-breasted, *Emberiza aureola* (3).
	Bunting, Yellow-throated, *Emberiza elegans* (3).
	Carib, Purple-throated, *Eulampis jugularis* (3).
Caracara, Crested, *Polyborus plancus* (10)	Caracara, Crested, *Caracara cheriway* (10).
	Catbird, Black, *Melanoptila glabrirostris* (3).
	Chaffinch, Common, *Fringilla coelebs* (2).
Chickadee, Black-capped, *Parus atricapillus* (10)	Chickadee, Black-capped, *Poecile atricapillus* (10).
Chickadee, Boreal, *Parus hudsonicus* (10)	Chickadee, Boreal, *Poecile hudsonica* (10).
Chickadee, Carolina, *Parus carolinensis* (10)	Chickadee, Carolina, *Poecile carolinensis* (10).
Chickadee, Chestnut-backed, *Parus rufescens* (10)	Chickadee, Chestnut-backed, *Poecile rufescens* (10).
[*see* Tit, Siberian]	Chickadee, Gray-headed, *Poecile cincta* (11).
Chickadee, Mexican, *Parus sclateri* (10)	Chickadee, Mexican, *Poecile sclateri* (10).
Chickadee, Mountain, *Parus gambeli* (10)	Chickadee, Mountain, *Poecile gambeli* (10).
	Coot, Hawaiian, *Fulica alai* (6).
	Cormorant, Little Pied, *Phalacrocorax melanoleucos* (5).
Cormorant, Olivaceous, *Phalacrocorax olivaceus* (11)	Cormorant, Neotropic, *Phalacrocorax brasilianus* (11).
	Crake, Paint-billed, *Neocrex erythrops* (2).
	Crake, Spotless, *Porzana tabuensis* (5).
	Creeper, Hawaii, *Oreomystis mana* (4).
	Crow, Mariana, *Corvus kubaryi* (5).
Crow, Mexican, *Corvus imparatus* (9)	Crow, Tamaulipas, *Corvus imparatus* (9).
Cuckoo, Oriental, *Cuculus saturatus* (10)	Cuckoo, Oriental, *Cuculus optatus* (10).
	Curlew, Eurasian, *Numenius arquata* (2).
Curlew, Least, *Numenius minutus* (9)	Curlew, Little, *Numenius minutus* (9).
[*see* Teal, Falcated]	Duck, Falcated, *Anas falcata* (9).
[*see* Oldsquaw]	Duck, Long-tailed, *Clangula hyemalis* (9).
Duck, Masked, *Oxyura dominica* (10)	Duck, Masked, *Nomonyx dominicus* (10).
	Duck, Muscovy, *Cairina moschata* (3).
	Duck, Pacific Black, *Anas superciliosa* (5).
	Duck, Spot-billed, *Anas poecilorhyncha* (1).
Egret, Great, *Casmerodius albus* (10)	Egret, Great, *Ardea alba* (10).
Egret, Plumed, *Egretta intermedia* (11)	Egret, Intermediate, *Mesophoyx intermedia* (11).
	Egret, Little, *Egretta garzetta* (3).
	Elaenia, Greenish, *Myiopagis viridicata* (3).
[Falcon, Barbary, *Falco peregrinus pelegrinoides* (=*Falco pelegrinoides*)] (15).	Falcon, Red-footed, *Falco vespertinus* (3).
	Finch, Laysan, *Telespiza cantans* (4).
	Finch, Nihoa, *Telespiza ultima* (4).

Removed (alphabetically)	Added (alphabetically)
Finch, Rosy, *Leucosticte arctoa* (7)	[*see* Rosy-Finch].
	Flicker, Gilded, *Colaptes chrysoides* (6).
	Flycatcher, Cordilleran, *Empidonax occidentalis* (6).
Flycatcher, Gray-spotted, *Muscicapa griseisticta* (9)	Flycatcher, Gray-streaked, *Muscicapa griseisticta* (9).
	Flycatcher, La Sagra's, *Myiarchus sagrae* (2).
Flycatcher, Narcissus, *Muscicapa narcissina* (10)	Flycatcher, Narcissus, *Ficedula narcissina* (10).
Flycatcher, Olive-sided, *Contopus borealis* (10)	Flycatcher, Olive-sided, *Contopus cooperi* (10).
Flycatcher, Western, *Empidonax difficilis* (9)	Flycatcher, Pacific-slope, *Empidonax difficilis* (9).
	Flycatcher, Piratic, *Legatus leucophalus* (3).
	Flycatcher, Social, *Myiozetetes similis* (3).
	Flycatcher, Tufted, *Mitrephanes phaeocercus* (3).
	Flycatcher, Variegated, *Empidonomus varius* (2).
	Forest-Falcon, Collared, *Micrastur semitorquatus* (3).
	Frog-Hawk, Gray, *Accipiter soloensis* (3).
	Fruit-Dove, Crimson-crowned, *Ptilinopus porphyraceus* (5).
	Fruit-Dove, Many-colored, *Ptilinopus perousii* (5).
	Fruit-Dove, Mariana, *Ptilinopus roseicapilla* (5).
	Gallinule, Azure, *Porphyrio flavirostris* (3).
Gallinule, Purple, *Porphyrula martinica* (10)	Gallinule, Purple, *Porphyrio martinica* (10).
Gannet, Northern, *Sula bassanus* (10)	Gannet, Northern, *Morus bassanus* (10).
	Gnatcatcher, California, *Polioptila californica* (6).
Golden-Plover, Lesser, *Pluvialis dominica* (9)	Golden-Plover, American, *Pluvialis dominica* (9).
	Golden-Plover, European, *Pluvialis apricaria* (3).
	Golden-Plover, Pacific, *Pluvialis fulva* (6).
Goose, Bean, *Anser fabalis* (9)	[*see* Bean-Goose, Taiga].
Goose, Hawaiian, *Nesochen sandvicensis* (10)	Goose, Hawaiian, *Branta sandvicensis* (10).
	Goose, Lesser White-fronted, *Anser erythropus* (3).
Goose, Ross', *Chen rossii* (9)	Goose, Ross's, *Chen rossii* (9).
Grassquit, Yellow-faced, *Tiaris olivacea* (10)	Grassquit, Yellow-faced, *Tiaris olivaceus* (10).
	Grebe, Clark's, *Aechmophorus clarkii* (6).
	Greenshank, Nordmann's, *Tringa guttifer* (5).
Grosbeak, Blue, *Guiraca caerulea* (10)	Grosbeak, Blue, *Passerina caerulea* (10).
	Ground-Dove, Friendly, *Gallicolumba stairi* (5).
	Ground-Dove, White-throated, *Gallicolumba xanthonura* (5).
	Gull, Belcher's, *Larus belcheri* (2).
Gull, Common Black-headed, *Larus ridibundus* (9)	Gull, Black-headed, *Larus ridibundus* (9).
	Gull, Black-tailed, *Larus crassirostris* (1).
	Gull, Gray-hooded, *Larus cirrocephalus* (3).
	Gull, Kelp, *Larus dominicanus* (3).
Gull, Ross', *Rhodostethia rosea* (9)	Gull, Ross's, *Rhodostethia rosea* (9).
	Gull, Yellow-legged, *Larus michahellis* (3).
Hawk, Asiatic Sparrow, *Accipiter gularis* (9)	[*see* Sparrowhawk, Japanese].
	Hawk, Crane, *Geranospiza caerulescens* (3).
Hawk, Harris', *Parabuteo unicinctus* (9)	Hawk, Harris's, *Parabuteo unicinctus* (9).
	Hawk, Roadside, *Buteo magnirostris* (2).
Hawk-Owl, Northern, *Surnia ulula* (9)	[*see* Owl, Northern Hawk].
	Heron, Gray, *Ardea cinerea* (5).
	Heron, Green, *Butorides virescens* (6).
Heron, Green-backed, *Butorides striatus* (7)	[*see* Heron, Green].
Heron, Pacific Reef, *Egretta sacra* (9)	[*see* Reef-Egret, Pacific].
	Hobby, Eurasian, *Falco subbuteo* (3).
Hoopoe, *Upupa epops* (9)	Hoopoe, Eurasian, *Upupa epops* (9).
House-Martin, Common, *Delichon urbica* (10)	House-Martin, Common, *Delichon urbicum* (10).
Hummingbird, Antillean Crested, *Orthorhynchus cristatus* (10)	Hummingbird, Antillean Crested, *Orthorhyncus cristatus* (10).
	Hummingbird, Bumblebee, *Atthis heloisa* (2).
	Hummingbird, Cinnamon, *Amazilia rutila* (3).
	Hummingbird, Xantus's, *Hylocharis xantusii* (3).
	Iiwi, *Vestiaria coccinea* (4).
	Imperial-Pigeon, Pacific, *Ducula pacifica* (5).
Jay, Gray-breasted, *Aphelocoma ultramarina* (9)	Jay, Mexican, *Aphelocoma ultramarina* (9).
Jay, Scrub, *Aphelocoma coerulescens* (9)	[*see* Scrub-Jay, Florida].
	Kakawahie, *Paroreomyza flammea* (4).
	Kamao, *Myadestes myadestinus* (6).
	Kingfisher, Collared, *Todirhamphus chloris* (5).
	Kingfisher, Micronesian, *Todirhamphus cinnamominus* (5).
Kingfisher, Belted, *Ceryle alcyon* (10)	Kingfisher, Belted, *Megaceryle alcyon* (10).
Kingfisher, Ringed, *Ceryle torquatus* (10)	Kingfisher, Ringed, *Megaceryle torquata* (10).
Kite, American Swallow-tailed, *Elanoides forficatus* (9)	Kite, Swallow-tailed, *Elanoides forficatus* (9).
Kite, Black-shouldered, *Elanus caeruleus* (7)	[*see* Kite, White-tailed].
	Kite, White-tailed, *Elanus leucurus* (6).
Kittiwake, Black-legged, *Larus tridactyla* (12)	Kittiwake, Black-legged, *Rissa trydactyla* (12).
Kittiwake, Red-legged, *Larus brevirostris* (12)	Kittiwake, Red-legged, *Rissa brevirostris* (12).
[*see* Skylark, Eurasian]	Lark, Sky, *Alauda arvensis* (9).
Lizard-Cuckoo, Puerto Rican, *Saurothera vieilloti* (10)	Lizard-Cuckoo, Puerto Rican, *Coccyzus vieilloti* (10).

Removed (alphabetically)	Added (alphabetically)
	Loon, Pacific, *Gavia pacifica* (6).
Magpie, Black-billed (=Eurasian), *Pica pica* (7)	[*see* Magpie, Black-billed, *Pica hudsonia*].
	Magpie, Black-billed, *Pica hudsonia* (6).
	Mango, Green-breasted, *Anthracothorax prevostii* (3).
	Martin, Brown-chested, *Progne tapera* (3).
	Martin, Southern, *Progne elegans* (2).
	Millerbird, *Acrocephalus familiaris* (4).
	Mockingbird, Bahama, *Mimus gundlachii* (2).
	Mockingbird, Blue, *Melanotis caerulescens* (3).
	Murrelet, Long-billed, *Brachyramphus perdix* (6).
Murrelet, Xantus', *Synthliboramphus hypoleucus* (9)	Murrelet, Xantus's, *Synthliboramphus hypoleucus* (9).
Night-Heron, Japanese, *Nycticorax goisagi* (10)	Night-Heron, Japanese, *Gorsachius goisagi* (10).
Night-Heron, Malay, *Nycticorax melanolophus* (11)	Night-Heron, Malayan, *Gorsachius melanolophus* (11).
Night-Heron, Yellow-crowned, *Nycticorax violaceus* (10)	Night-Heron, Yellow-crowned, *Nyctanassa violacea* (10).
	Nightingale-Thrush, Black-headed, *Catharus mexicanus* (3).
	Nightingale-Thrush, Orange-billed, *Catharus aurantiirostris* (3).
Nightjar, Jungle, *Caprimulgus indicus* (9)	Nightjar, Gray, *Caprimulgus indicus* (9).
Noddy, Lesser, *Anous tenuirostris* (7)	Nukupuu, *Hemignathus lucidus* (4).
Oldsquaw, *Clangula hyemalis* (9)	[*see* Duck, Long-tailed].
	Olomao, *Myadestes lanaiensis* (6).
[*see* Thrush, Hawaiian]	Omao, *Myadestes obscurus* (11).
Oriole, Northern, *Icterus galbula* (9)	Oriole, Baltimore, *Icterus galbula* (9).
	Oriole, Bullock's, *Icterus bullockii* (6).
Oriole, Black-cowled, *Icterus dominicensis* (9)	Oriole, Greater Antillean, *Icterus dominicensis* (9).
	Ou, *Psittirostra psittacea* (4).
Ovenbird, *Seiurus aurocapillus* (10)	Ovenbird, *Seiurus aurocapilla* (10).
[*see* Barn-Owl, Common]	Owl, Barn, *Tyto alba* (9).
	Owl, Mottled, *Ciccaba virgata* (3).
[*see* Hawk-Owl, Northern]	Owl, Northern Hawk, *Surnia ulula* (9).
Owl, Snowy, *Nyctea scandiaca* (10)	Owl, Snowy, *Bubo scandiacus* (10).
	Owl, Stygian, *Asio stygius* (3).
	Oystercatcher, Eurasian, *Haematopus ostralegus* (5).
	Palila, *Loxioides bailleui* (4).
[*see* Swift, Antillean Palm]	Palm-Swift, Antillean, *Tachornis phoenicobia* (9).
	Parrotbill, Maui, *Pseudonestor xanthophrys* (4).
	Petrel, Bermuda, *Pterodroma cahow* (3).
	Petrel, Black-winged, *Pterodroma nigripennis* (2).
Petrel, Dark-rumped, *Pterodroma phaeopygia* (7)	[*see* Petrel, Hawaiian].
	Petrel, Gould's, *Pterodroma leucoptera* (5).
	Petrel, Great-winged, *Pterodroma macroptera* (3).
	Petrel, Hawaiian, *Pterodroma sandwichensis* (6).
	Petrel, Jouanin's, *Bulweria fallax* (2).
Petrel, White-necked, *Pterodroma externa* (9)	Petrel, Juan Fernandez, *Pterodroma externa* (9).
	Petrel, Phoenix, *Pterodroma alba* (5).
	Petrel, Stejneger's, *Pterodroma longirostris* (3).
	Petrel, Tahiti, *Pterodroma rostrata* (5).
	Petrel, White-necked, *Pterodroma cervicalis* (6).
	Pewee, Cuban, *Contopus caribaeus* (3).
	Pewee, Hispaniolan, *Contopus hispaniolensis* (2).
Phalarope, Red, *Phalaropus fulicaria* (10)	Red Phalarope, *Phalaropus fulicarius* (10).
Pigeon, Band-tailed, *Columba fasciata* (10)	Pigeon, Band-tailed, *Patagioenas fasciata* (10).
Pigeon, Plain, *Columba inornata* (10)	Pigeon, Plain, *Patagioenas inornata* (10).
Pigeon, Red-billed, *Columba flavirostris* (10)	Pigeon, Red-billed, *Patagioenas flavirostris* (10).
Pigeon, Scaly-naped, *Columba squamosa* (10)	Pigeon, Scaly-naped, *Patagioenas squamosa* (10).
Pigeon, White-crowned, *Columba leucocephala* (10)	Pigeon, White-crowned, *Patagioenas leucocephala* (10).
Pipit, Water, *Anthus spinoletta* (7)	[*see* Pipit, American].
	Pipit, American, *Anthus rubescens* (6).
[*see* Tree-Pipit, Olive]	Pipit, Olive-backed, *Anthus hodgsoni* (9).
	Pipit, Tree, *Anthus trivialis* (2).
	Plover, Collared, *Charadrius collaris* (3).
Plover, Great Sand, *Charadrius leschenaultii* (9)	[*see* Sand-Plover, Greater].
Plover, Mongolian, *Charadrius mongolus* (9)	[*see* Sand-Plover, Lesser].
	Pond-Heron, Chinese, *Ardeola bacchus* (3).
	Poo-uli, *Melamprosops phaeosoma* (4).
[*see* Thrush, Small Kauai]	Puaiohi, *Myadestes palmeri* (11).
[*see* Trogon, Eared]	Quetzel, Eared, *Euptilotis neoxenus* (9).
	Rail, Buff-banded, *Gallirallus philippensis* (5).
	Rail, Guam, *Gallirallus owstoni* (5).
	Rail, Spotted, *Pardirallus maculatus* (2).
Redstart, Slaty-throated, *Myioborus miniatus* (13)	Redstart, Slate-throated, *Myioborus miniatus* (13).
Reed-Bunting, Common, *Emberiza schoeniclus* (9)	[*see* Bunting, Reed].
Reed-Bunting, Pallas', *Emberiza pallasi* (9)	[*see* Bunting, Pallas's].
	Reed-Warbler, Nightingale, *Acrocephalus luscinia* (5).
[*see* Heron, Pacific Reef]	Reef-Egret, Pacific, *Egretta sacra* (9).

Removed (alphabetically)	Added (alphabetically)
	Reef-Heron, Western, *Egretta gularis* (3).
	Robin, Siberian Blue, *Luscinia cyane* (3).
	Robin, White-throated, *Turdus assimilis* (3).
	Rosy-Finch, Black, *Leucosticte atrata* (6).
	Rosy-Finch, Brown-capped, *Leucosticte australis* (6).
	Rosy-Finch, Gray-crowned, *Leucosticte tephrocotis* (6).
	Sandpiper, Green, *Tringa ochropus* (3).
Sandpiper, Spoonbill, *Eurynorhynchus pygmeus* (9)	Sandpiper, Spoon-billed, *Eurynorhynchus pygmeus* (9).
Sandpiper, Spotted, *Actitis macularia* (10)	Sandpiper, Spotted, *Actitis macularius* (10).
[*see* Plover, Great Sand]	Sand-Plover, Greater, *Charadrius leschenaultii* (9).
[*see* Plover, Mongolian]	Sand-Plover, Lesser, *Charadrius mongolus* (9).
	Sapsucker, Red-naped, *Sphyrapicus nuchalis* (6).
	Scops-Owl, Oriental, *Otus sunia* (2).
Screech-Owl, Eastern, *Otus asio* (10)	Screech-Owl, Eastern, *Megascops asio* (10).
Screech-Owl, Puerto Rican, *Otus nudipes* (10)	Screech-Owl, Puerto Rican, *Megascops nudipes* (10).
Screech-Owl, Western, *Otus kennicottii* (10)	Screech-Owl, Western, *Megascops kennicottii* (10).
Screech-Owl, Whiskered, *Otus trichopsis* (10)	Screech-Owl, Whiskered, *Megascops trichopsis* (10).
[*see* Jay, Scrub]	Scrub-Jay, Florida, *Aphelocoma coerulescens* (9).
	Scrub-Jay, Island, *Aphelocoma insularis* (6).
	Scrub-Jay, Western, *Aphelocoma californica* (6).
	Shearwater, Cape Verde, *Calonectris edwardsii* (3).
	Shearwater, Streaked, *Calonectris leucomelas* (2).
	Shrike, Brown, *Lanius cristatus* (2).
	Silky-flycatcher, Gray, *Ptilogonys cinereus* (3).
	Siskin, Eurasian, *Carduelis spinus* (3).
Skimmer, Black, *Rhynchops niger* (12)	Skimmer, Black, *Rynchops niger* (12).
Skua, Great, *Catharacta skua* (10)	Skua, Great, *Stercorarius skua* (10).
Skua, South Polar, *Catharacta maccormicki* (10)	Skua, South Polar, *Stercorarius maccormicki* (10).
Skylark, Eurasian, *Alauda arvensis* (9)	[*see* Lark, Sky].
	Snipe, Wilson's, *Gallinago delicata* (6).
Sparrow, Five-striped, *Amphispiza quinquestriata* (10)	Sparrow, Five-striped, *Aimophila quinquestriata* (10).
Sparrow, Harris', *Zonotrichia querula* (9)	Sparrow, Harris's, *Zonotrichia querula* (9).
	Sparrow, Nelson's Sharp-tailed, *Ammodramus nelsoni* (6).
Sparrow, Sharp-tailed, *Ammodramus caudacutus* (9)	Sparrow, Saltmarsh Sharp-tailed, *Ammodramus caudacutus* (9).
[*see* Hawk, Asiatic Sparrow]	Sparrowhawk, Japanese, *Accipiter gularis* (9).
	Spindalis, Puerto Rican, *Spindalis portoricensis* (6).
[*see* Tanager, Stripe-headed]	Spindalis, Western, *Spindalis zena* (9).
Spoonbill, Roseate, *Ajaia ajaja* (10)	Spoonbill, Roseate, *Platalea ajaja* (10).
Starling, Violet-backed, *Sturnus philippensis* (9)	Starling, Chestnut-cheeked, *Sturnus philippensis* (9).
Starling, Ashy, *Sturnus cineraceus* (9)	Starling, White-cheeked, *Sturnus cineraceus* (9).
	Stilt, Black-winged, *Himantopus himantopus* (3).
Stint, Rufous-necked, *Calidris ruficollis* (9)	Stint, Red-necked, *Calidris ruficollis* (9).
	Stonechat, *Saxicola torquatus* (3).
	Storm-Petrel, Black-bellied, *Fregetta tropica* (3).
	Storm-Petrel, Matsudaira's, *Oceanodroma matsudairae* (5).
	Storm-Petrel, Polynesian, *Nesofregata fuliginosa* (5).
	Storm-Petrel, Ringed, *Oceanodroma hornbyi* (3).
Storm-Petrel, Sooty, *Oceanodroma tristrami* (9)	Storm-Petrel, Tristram's, *Oceanodroma tristrami* (9).
	Storm-Petrel, White-bellied, *Fregetta grallaria* (5).
Swallow, Cave, *Hirundo fulva* (10)	Swallow, Cave, *Petrochelidon fulva* (10).
Swallow, Cliff, *Hirundo pyrrhonota* (10)	Swallow, Cliff, *Petrochelidon pyrrhonota* (10).
	Swallow, Mangrove, *Tachycineta albilinea* (3).
	Swamphen, Purple, *Porphyrio porphyrio* (5).
	Swift, Alpine, *Apus melba* (3).
Swift, Antillean Palm, *Tachornis phoenicobia* (9)	[*see* Palm-Swift, Antillean].
	Swift, Short-tailed, *Chaetura brachyura* (2).
	Swiftlet, Mariana, *Aerodramus bartschi* (5).
	Swiftlet, White-rumped, *Aerodramus spodiopygius* (5).
	Tanager, Flame-colored, *Piranga bidentata* (3).
Tanager, Stripe-headed, *Spindalis zena* (9)	[*see* Spindalis, Western].
Tattler, Gray-tailed, *Heteroscelus brevipes* (10)	Tattler, Gray-tailed, *Tringa brevipes* (10).
Tattler, Wandering, *Heteroscelus incanus* (10)	Tattler, Wandering, *Tringa incana* (10).
Teal, Falcated, *Anas falcata* (9)	[*see* Duck, Falcated].
Tern, Aleutian, *Sterna aleutica* (10)	Tern, Aleutian, *Onychoprion aleuticus* (10).
Tern, Bridled, *Sterna anaethetus* (10)	Tern, Bridled, *Onychoprion anaethetus* (10).
Tern, Caspian, *Sterna caspia* (10)	Tern, Caspian, *Hydroprogne caspia* (10).
Tern, Elegant, *Sterna elegans* (10)	Tern, Elegant, *Thalasseus elegans* (10).
Tern, Gray-backed, *Sterna lunata* (10)	Tern, Gray-backed, *Onychoprion lunatus* (10).
	Tern, Great Crested, *Thalasseus bergii* (3).
Tern, Gull-billed, *Sterna nilotica* (10)	Tern, Gull-billed, *Gelochelidon nilotica* (10).
	Tern, Large-billed, *Phaetusa simplex* (2).
Tern, Least, *Sterna antillarum* (10)	Tern, Least, *Sternula antillarum* (10).
Tern, Little, *Sterna albifrons* (10)	Tern, Little, *Sternula albifrons* (10).
Tern, Royal, *Sterna maxima* (10)	Tern, Royal, *Thalasseus maximus* (10).

Removed (alphabetically)	Added (alphabetically)
Tern, Sandwich, *Sterna sandvicensis* (10)	Tern, Sandwich, *Thalasseus sandvicensis* (10).
Tern, Sooty, *Sterna fuscata* (10)	Tern, Sooty, *Onychoprion fuscatus* (10).
	Tern, Whiskered, *Chlidonias hybrida* (3).
Thrasher, Crissal, *Toxostoma dorsale* (10)	Thrasher, Crissal, *Toxostoma crissale* (10).
	Thrush, Bicknell's, *Catharus bicknelli* (6).
Thrush, Eye-browed, *Turdus obscurus* (9)	Thrush, Eyebrowed, *Turdus obscurus* (9).
Thrush, Hawaiian, *Phaeornis obscurus* (11)	[*see* Omao].
Thrush, Small Kauai, *Phaeornis palmeri* (11)	[*see* Puaiohi].
Thrush, Wood, *Hylocichla minima* (12)	Thrush, Wood, *Hylocichla mustelina* (12).
Tit, Siberian, *Parus cinctus* (11)	[*see* Chickadee, Gray-headed].
	Titmouse, Black-crested, *Baeolophus atricristatus* (6).
Titmouse, Bridled, *Parus wollweberi* (10)	Titmouse, Bridled, *Baeolophus wollweberi* (10).
	Titmouse, Juniper, *Baeolophus ridgwayi* (6).
Titmouse, Plain, *Parus inornatus* (11)	Titmouse, Oak, *Baeolophus inornatus* (11).
Titmouse, Tufted, *Parus bicolor* (10)	Titmouse, Tufted, *Baeolophus bicolor* (10).
	Tityra, Masked, *Tityra semifasciata* (3).
	Towhee, California, *Pipilo crissalis* (6).
Towhee, Brown, *Pipilo fuscus* (9)	Towhee, Canyon, *Pipilo fuscus* (9).
Towhee, Rufous-sided, *Pipilo erythrophthalmus* (9)	Towhee, Eastern, *Pipilo erythrophthalmus* (9).
	Towhee, Spotted, *Pipilo maculatus* (6).
Tree-Pipit, Olive, *Anthus hodgsoni* (9)	[*see* Pipit, Olive-backed].
Trogon, Eared, *Euptilotis neoxenus* (9)	[*see* Quetzel, Eared].
	Turtle-Dove, Oriental, *Streptopelia orientalis* (3).
Vireo, Solitary, *Vireo solitarius* (9)	Vireo, Blue-headed, *Vireo solitarius* (9).
	Vireo, Cassin's, *Vireo cassinii* (6).
	Vireo, Plumbeous, *Vireo plumbeus* (6).
	Vireo, Thick-billed, *Vireo crassirostris* (2).
	Vireo, Yellow-green, *Vireo flavoviridis* (6).
	Vireo, Yucatan, *Vireo magister* (3).
Wagtail, Black-backed, *Motacilla lugens* (8)	Wagtail, Citrine, *Motacilla citreola* (3).
Wagtail, Yellow, *Motacilla flava* (7)	[*see* Wagtail, Eastern Yellow].
	Wagtail, Eastern Yellow, *Motacilla tschutschensis* (6).
	Warbler, Crescent-chested, *Parula superciliosa* (3).
	Warbler, Dusky, *Phylloscopus fuscatus* (2).
Warbler, Elfin Woods, *Dendroica angelae* (9)	Warbler, Elfin-woods, *Dendroica angelae* (9).
	Warbler, Fan-tailed, *Euthlypis lachrymosa* (2).
	Warbler, Lanceolated, *Locustella lanceolata* (3).
	Warbler, Wood, *Phylloscopus sibilatrix* (2).
	Warbler, Yellow-browed, *Phylloscopus inornatus* (3).
Warbler, Worm-eating, *Helmitheros vermivora* (10)	Warbler, Worm-eating, *Helmitheros vermivorum* (10).
	Whitethroat, Lesser, *Sylvia curruca* (3).
Willet, *Catoptrophorus semipalmatus* (10)	Willet, *Tringa semipalmata* (10).
	Woodpecker, American Three-toed, *Picoides dorsalis* (6).
	Woodpecker, Arizona, *Picoides arizonae* (6).
	Woodpecker, Great Spotted, *Dendrocopos major* (3).
Woodpecker, Lewis', *Melanerpes lewis* (9)	Woodpecker, Lewis's, *Melanerpes lewis* (9).
Woodpecker, Strickland's, *Picoides stricklandi* (7)	[*see* Woodpecker, Arizona].
Woodpecker, Three-toed, *Picoides tridactylis* (7)	[*see* Woodpecker, American Three-toed].

How Do the Changes Implemented Here Differ From Those Discussed in the Proposed Rule?

(1) Three species are added to category 2:

Tern, Large-billed, *Phaetusa simplex;*
Warbler, Dusky, *Phylloscopus fuscatus;* and
Warbler, Wood, *Phylloscopus sibilatrix.*

(2) Six species are added to category 3:

Falcon, Red-footed, *Falco vespertinus;*
Golden-Plover, European, *Pluvialis apricaria;*
Storm-Petrel, Ringed, *Oceanodroma hornbyi;*
Warbler, Lanceolated, *Locustella lanceolata;*
Warbler, Yellow-browed, *Phylloscopus inornatus;* and
Whitethroat, Lesser, *Sylvia curruca.*

(3) A new category 4 is created and 24 species are added to this category:

Akekee, *Loxops caeruleirostris;*
Akepa, *Loxops coccineus;*
Akialoa, Greater, *Hemignathus ellisianus;*
Akiapolaau, *Hemignathus munroi;*
Akikiki, *Oreomystis bairdi;*
Akohekohe, *Palmeria dole;*
Alauahio, Maui, *Paroreomyza montana;*
Alauahio, Oahu, *Paroreomyza maculate;*
Amakihi, Hawaii, *Hemignathus virens;*
Amakihi, Kauai, *Hemignathus kauaiensis;*
Amakihi, Oahu, *Hemignathus flavus;*
Anianiau, *Magumma parva;*
Apapane, *Himatione sanguinea;*
Creeper, Hawaii, *Oreomystis mana;*
Finch, Laysan, *Telespiza cantans;*
Finch, Nihoa, *Telespiza ultima;*
Iiwi, *Vestiaria coccinea;*
Kakawahie, *Paroreomyza flammea;*
Millerbird, *Acrocephalus familiaris;*
Nukupuu, *Hemignathus lucidus;*
Ou, *Psittirostra psittacea;*
Palila, *Loxioides bailleui;*
Parrotbill, Maui, *Pseudonestor xanthophrys;* and
Poo-uli, *Melamprosops phaeosoma.*

(4) One species is added to category 5:

Reed-Warbler, Nightingale, *Acrocephalus luscinia*

(5) One species is removed from category 6:

Goose, Cackling, *Branta hutchinsii.* Recognition as a separate species deferred and will remain as subspecies of *Branta canadensis,* Canada Goose.

(6) One species is added to category 6:

Bean-Goose, Tundra, *Anser serrirostris.*

(7) One species deleted from category 7 is reinstated:

Kingbird, Loggerhead, *Tyrannus caudifasciatus.*

(8) The common name of one species is changed (category 9):

Goose, Bean, *Anser fabalis,* becomes Bean-Goose, Taiga.

(9) The scientific name of four species is changed (category 3, category 10):

Gull, Yellow-legged, *Larus cachinnans* becomes *Larus michahellis;*

Kingfisher, Belted, *Ceryle alcyon* becomes *Megaceryle alcyon;*

Kingfisher, Ringed, *Ceryle torquatus* becomes *Megaceryle torquata;* and

Hummingbird, Antillean Crested, *Orthorhynchus cristatus* becomes *Orthorhyncus cristatus.*

(10) The scientific names of six species spelled erroneously in the proposed rule are corrected to conform to the AOU Check-list (1998) and supplements:

Bunting, Reed, *Emberiza schoeniculus* becomes *Emberiza schoeniclus;*

Flycatcher, Social, *Myiozetetes similes* becomes *Myiozetetes similes;*

Owl, Snowy, *Bubo scandiaca* becomes *Bubo scandiacus;*

Pewee, Cuban, *Contopus caribeaus* becomes *Contopus caribaeus;*

Tanager, Puerto Rican, *Neospingus speculiferus* becomes *Nesospingus speculiferus;* and

Warbler, Worm-eating, *Helmitheros vermivorus* becomes *Helmitheros vermivorum.*

(11) Other editorial changes:

Crake, Paint-billed (category 2)—Louisiana is deleted from, and Virginia added to, the known range;

Ground-Dove, White-throated (category 5)—American Samoa is deleted from, and Guam and the Northern Marianas are added to, the known range;

Gull, Kelp (category 3)—Indiana and Texas are added to the known range;

Murrelet, Long-billed—moved from category 3 to category 6;

Shrike, Brown (category 2)—California is added to the known range;

Storm-Petrel, Ringed (category 2)—Alaska is deleted from, and California added to, the known range; and

the family Cathartidae, and its included species, is moved from the Ciconiiformes to the beginning of the Falconiformes, as they were on the 1985 list.

How Is the List of Migratory Birds Organized?

The species are listed in two formats to suit the needs of different segments of the public: Alphabetically in 50 CFR 10.13(c)(1) and taxonomically in 50 CFR 10.13(c)(2). In the alphabetical listing, species are listed by common (English) group names, with the scientific name of each species following the English group name. This format, similar to that used in modern telephone directories, is most useful to members of the lay public. In the taxonomic listing, species are listed in phylogenetic sequence by scientific name, with the English name following the scientific name. To help clarify species relationships, we also list the higher-level taxonomic categories of Order, Family, and Subfamily. This format follows the sequence adopted by the AOU (1998, 2004) and is most useful to ornithologists and other scientists.

What Species Are Not Protected by the Migratory Bird Treaty Act?

The MBTA does not apply to:

(1) Nonnative species introduced into the United States or its territories by means of intentional or unintentional human assistance that belong to families or groups covered by the Canadian, Mexican, or Russian Conventions, in accordance with the MBTRA. *See* 70 FR 12710 (March 15, 2005) for a partial list of nonnative human-introduced bird species in this category. Note, though, that native species that are introduced into parts of the United States where they are not native are still protected under the MBTA regardless of where they occur in the U.S. or its territories.

(2) Nonnative human-introduced species that belong to families or groups not covered by the Canadian, Mexican, or Russian Conventions, including Tinamidae (tinamous), Cracidae (chachalacas), Megapodiidae (megapodes), Phasianidae (grouse, ptarmigan, and turkeys), Turnicidae (buttonquails), Odontophoridae (New World quail), Pteroclididae (sandgrouse), Psittacidae (parrots), Dicruridae (drongos), Rhamphastidae (toucans), Musophagidae (turacos), Bucerotidae (hornbills), Bucorvidae (ground-hornbills), Pycnonotidae (bulbuls), Pittidae (pittas), Irenidae (fairy-bluebirds), Timaliidae (babblers), Zosteropidae (white-eyes), Sturnidae (starlings; except as listed in the Japanese Convention), Passeridae (Old World sparrows), Ploceidae (weavers), Estrildidae (estrildid finches), and numerous other families not currently represented in the United States or its territories.

(3) Native species that belong to families or groups represented in the United States, but which are not expressly mentioned by the Canadian, Mexican, or Russian Conventions, including the Megapodiidae (megapodes), Phasianidae (grouse, ptarmigan, and turkeys), Odontophoridae (New World quail), Burhinidae (thick-knees), Glareolidae (pratincoles), Psittacidae (parrots), Todidae (todies), Meliphagidae (honeyeaters), Monarchidae (monarchs), Timaliidae (wrentit), and Coerebidae (bananaquit). It should be noted that this rule supersedes the 70 FR 12710 notice to the extent that they are inconsistent. Specifically, the Mexican Convention lists the family Sylviidae (which includes and subfamily Sylviinae) and the family Fringillidae (which includes the subfamily Depanidinae). Thus, all members of these two subfamilies are now included on this list.

Partial lists of the species included in categories 2 and 3 are available at *http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/MBTAProtectedNonprotected.html.*

Responses to Public Comments

On August 24, 2006, we published in the **Federal Register** (71 FR 50194) a proposed rule to revise the list of migratory birds at 50 CFR 10.13. We solicited public comments on the proposed rule for 60 days, ending on October 23, 2006. The comment period was reopened on December 14, 2006 (71 FR 75188), extending the comment period to December 29, 2006. Any comments submitted from October 24, 2006, to the extension date were considered in this final rule.

We received 69 comment letters in response to the proposed rule; 32 letters were from 21 identified agencies, organizations, or private firms (includes 10 separate letters from one firm, and two from an organization). The following text discusses the substantive comments received and provides our responses to those comments.

Comment. *The American Samoa Department of Marine and Wildlife Resources, and the Office of the Governor of American Samoa objected to the inclusion of 14 species native to American Samoa. They argued a "complete absence of a scientific basis for inclusion in a treaty based on the concept of "shared migratory' species" and "lack of demonstrated biological need for protection." They also felt that the Service "did not consider the extent to which the stringent requirement of the new federal regulation will affect the daily activities of our people," and emphasized that "All species proposed for listing are fully protected under Chapter 8, Title 24, of the American Samoa Administrative Code."*

Response: We recognize and appreciate the positive steps taken by

the government of American Samoa to protect its native wildlife resources. The Service looks forward to continuing a close working relationship with the Department of Marine and Wildlife Resources, and pledges to consult with that agency before undertaking any action on any species covered by this rule that might affect the people of American Samoa.

Our determination that these species merit protection under the MBTA is based strictly on legal, not biological, considerations. Unlike the Endangered Species Act, the MBTA requires no "demonstrated biological need for protection." Furthermore, the MBTA and implementing regulations provide considerable flexibility for managing bird populations, including establishment of hunting seasons (where deemed appropriate), the control of nuisance bird populations, and the issuance of permits allowing appropriate use by humans.

Applying the protection of the MBTA to these 14 species will not affect the people of American Samoa to any greater or lesser degree than the protection of more than 900 other species of migratory birds affects the residents of the other 13 territories, 50 States, and the District of Columbia.

We find this action to be consistent with the protection of bird species native to other U.S. territories *(i.e.,* Hawaii prior to Statehood, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands) that belong to families covered by the Canadian and Mexican Conventions. Under those Conventions, any species that belongs to a covered family is protected anywhere and everywhere that it might occur in the U.S. and its territories, regardless of its biological or migratory status.

We note that each of the 14 species added to the list from American Samoa belong to one of seven families expressly covered by the Canadian or Mexican Conventions: Anatidae (ducks), Procellariidae (petrels), Hydrobatidae (storm-petrels), Rallidae (rails), Columbidae (pigeons), Apodidae (swifts), Alcedinidae (kingfishers). Examples of related species from the Hawaiian Islands that have historically been protected under the MBTA include Hawaiian Duck, Hawaiian Petrel, Tristram's Storm-Petrel, and Hawaiian Coot.

Finally, we note that several other species of birds native to American Samoa, notably petrels, shearwaters, tropicbirds, boobies, frigatebirds, shorebirds, and terns and noddies, have long been protected under the MBTA without presenting undue regulatory burdens on the government and residents of American Samoa.

Comment. *The Atlantic Flyway Council, Florida Fish and Wildlife Conservation Commission, South Florida Water Management District, Everglades National Park, and The Nature Conservancy all raised concerns about adding the Purple Swamphen on grounds that Federal protection would* "*compromise efforts to remove*" *this species from south Florida, where it has become established in recent years and is now viewed as an* "*undesirable exotic.*"

Response: We are aware that adding the Purple Swamphen to the list of MBTA-protected species (because of its occurrence as a native species in American Samoa) will have the undesirable consequence of affording similar protection to the introduced population now established in south Florida. We agree that this species "has the capacity to become a serious invasive problem."

Fortunately, the MBTA provides mechanisms that allow for the prudent management of species that are causing, or are about to cause, economic or ecological damage. In the case of the Purple Swamphen in south Florida, we believe that a depredation order targeting this species in selected geographic areas will address the concerns raised by the above agencies and organizations. Depredation orders allow specified species of birds to be taken at specified times and places and under specified conditions without need of a Federal permit; they are designed expressly for the types of control actions envisioned in this instance. The Service recognizes the urgency of the problem, and today has finalized a rule allowing control of Purple Swamphens anywhere in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands that they are found.

Comment. *The Atlantic Flyway Council, Florida Fish and Wildlife Conservation Commission, South Carolina Department of Natural Resources, Texas Parks and Wildlife, Wisconsin Department of Natural Resources, Everglades National Park, The Nature Conservancy, a member of the Brevard County (Florida) Board of County Commissioners, and three residents of Palm City, Florida, expressed concerns about adding the Muscovy Duck because of various kinds of damages that the birds have been documented to inflict on private properties.*

Response: The Service has concluded that the Muscovy Duck warrants protection under the MBTA because of the recent northward expansion of wild birds into extreme south Texas, where breeding has been confirmed. The unfortunate consequence of this is that all Muscovy Ducks in the U.S., regardless of their origin and status, will also receive the protection of the MBTA.

The Muscovy Duck has a long history of having been intentionally introduced to localities throughout the U.S. Small flocks of domestic or semi-domestic birds are found on farm ponds, in municipal parks, or in zoological parks in captive, semi-captive, and semi-wild conditions. Where present, these birds are largely or entirely dependent on human assistance for their survival, especially in the form of food handouts.

In some parts of the southern U.S. (in Florida, especially), birds have escaped or been released, and have subsequently formed feral populations in close association with humans. In Florida, for example, feral populations have been confirmed breeding and have apparently been self-sustaining for more than 10 years, with breeding now documented in all 67 of Florida's counties.

Muscovy Ducks can foul backyards, patios, swimming pools, bathing beaches, golf courses, and docks with their droppings. Their aggressive behavior can prevent landowners from using their own properties, or citizens from using public recreation facilities. To alleviate this problem, today we have revised 50 CFR part 21 to prohibit sale of muscovy ducks for hunting, and to authorize a depredation order allowing their removal without a permit in locations in which the species does not occur naturally in the contiguous United States, Alaska, and Hawaii, and in U.S. territories and possessions.

Comment. *The American Bird Conservancy and a private individual expressed their concern that the Hawaiian honeycreepers were excluded from the list. They countered the Service's justification for excluding this group by arguing that,* "*The fact that the Drepanidinae is not expressly mentioned in the treaties is irrelevant because the taxonomic status of the group has been changed and it now falls under a family that is included under the MBTA, the Fringillidae.*"

Response: Species included in the subfamily Drepanidinae (which includes the Hawaiian honeycreepers) are added to the list under the family Fringillidae. This addition is consistent with the latest edition of the AOU Checklist of North American Birds on matters of taxonomy and also meets the criteria for qualifying as an MBTA-protected species requiring that a species belongs to a family or group of species named in one of the MBTA's

underlying Conventions. In addition, Millerbird (*Acrocephalus familiaris*) and Nightingale Reed-Warbler (*Acrocephalus luscinia*) have been added to the list under the Sylviidae family (subfamily Sylviinae), another family specifically named in the Mexican Convention of 1936.

Comment. *International Zoological Imports and their legal counsel questioned the inclusion of Eurasian Bullfinch and Hawfinch on the list, citing, for example, beliefs that (a) "their geographic ranges lie entirely outside the United States and its territories," (b) they are "nonnative," and (c) they "have only an accidental/casual presence in the United States, and accidental/casual birds are not covered by the MBTA."*

Response: There is ample scientific documentation of the natural occurrence of these species in western Alaska. Given the paucity of observers in western Alaska to record their presence, it seems likely that both species occur there annually, albeit in small numbers. Whether these species are regular migrants in the U.S. or merely vagrants is irrelevant. Vagrancy is a natural process inherent to many species of migratory birds and can lead to the development of regular migratory patterns or the establishment of new populations (such as those of the Cattle Egret and the Lesser Black-backed Gull). It was a previous unwritten FWS policy, not the language of the MBTA, that excluded some species of casual or accidental occurrence from inclusion in previous versions of 50 CFR 10.13. This policy mirrored earlier versions of the AOU Check-list, which flagged species of casual or accidental occurrence and did not treat them as regular members of the North American avifauna, a practice discontinued with the 5th (1957) edition of the Check-list. Moreover, the policy was never applied uniformly: A few accidental/casual species, such as the, Corn Crake and the Eurasian Lapwing, have long been listed in 50 CFR 10.13, though many others have not. We also note the precedent set by the Japanese and Russian Conventions, which specifically list numerous species of casual or accidental occurrence in the U.S., such as the Chinese Egret and the European Hoopoe.

In summary, neither the MBTA nor the Conventions explicitly exclude any species of migratory bird because it is casual or accidental in the U.S. More to the point, Eurasian Bullfinch and Hawfinch are both specifically listed in the Japanese and Russian Conventions.

Comment. *Opposition to the addition of Common Chaffinch and Eurasian Siskin was received from two importers or suppliers of cage birds (International Pet and Supply, International Zoological Imports), five cage bird organizations (American Federation of Aviculture, Michiana Bird Society, National Cage Bird Show, National Finch and Softbill Society, Society of Parrot Breeders and Exhibitors), and 27 private citizens. In support of their argument, opponents claimed that (a) these species are non-native to the U.S.; (b) individuals are present in the wild only as a result of intentional releases or accidental escapes from captivity, and that sightings occur especially near where birds are sold; (c) thousands of breeders are raising these birds in captivity; (d) they have been imported and sold since 1998; and (e) adding them to 50 CFR 10.13 will harm pet bird owners, bird enthusiasts, and breeders, and have a negative financial impact on the pet bird trade.*

Response: The Common Chaffinch is considered to be "casual in northeastern North American" south to Maine and Massachusetts, "where presumably natural vagrants" (AOU 1998), with "about a dozen reports, some accepted by local bird record committees, reported between late September and late May, from e. Canada, New England, and New Jersey" (American Birding Association 2002). It also appears on the official checklists of Maine (Maine Bird Records Committee 2005) and Massachusetts (Massachusetts Avian Records Committee 2006) as natural vagrants.

There is one definitive specimen record (plus a sight report) of the Eurasian Siskin in Alaska, where considered accidental (AOU 1998). This species is also included on the official list of Maine birds (Maine Bird Records Committee 2005), apparently on the basis of a bird captured in 1962 that showed no signs of having been in captivity (Borrer 1963).

We cannot confirm the opponents' statements that "thousands of breeders are raising these birds in captivity." One dealer reported importing, purchasing, and selling "large quantities" of these species "for the past 15 years;" while another claimed to have imported more than 4,000 Common Chaffinches and 10,000 Eurasian Siskins in the past decade. But these claims are contradicted by one commenter who noted that "these birds are bred by very few U.S. hobbyists and others interested in captive breeding. For instance, current available information reveals that in 2003 NFSS [National Finch and Softbill Society] annual census reported only two out of eight-hundred NFSS members registered working with the Common Chaffinch and the same two members registered working with the Eurasian Siskin."

It is true that there is a long history of importing and selling these species in the U.S. For example, over a six-year period (1969–1974), 190 Common Chaffinches and 272 Eurasian Siskins were imported into the U.S. (as summarized by McLaren et al. 1989). If figures supplied by dealers are accurate (*see* preceding paragraph), then imports have increased substantially in recent years.

It is also true that there have been many intentional releases or accidental escapes of captive individuals of these and other European finches into the wild, as is acknowledge by the AOU (1998) and American Birding Association (ABA) (2002). The most notable and recent example was a series of reports from throughout the Great Lakes and New England in spring 2004 of innumerable individuals of numerous European species—including Common Chaffinch and Eurasian Siskin—that had apparently escaped from an import facility near Chicago, Illinois (Dinsmore and Silcock 2004). One major importer reported the intentional release or accidental escape of 12,700 (15 percent) of 82,800 individuals of 19 species from one facility during the past decade; this included 1,131 Common Chaffinches and 1,946 European Siskins.

In summary, while there is documented evidence of the intentional release or accidental escape of caged Common Chaffinches and Eurasian Siskins, we also find credible evidence to support our contention that both species have occurred in the U.S. as natural vagrants unhindered by human intervention. As with the Eurasian Bullfinch and Hawfinch discussed above, the Common Chaffinch and Eurasian Siskin warrant protection under the MBTA, regardless of their status as casual or accidental vagrants.

Comment. *One commenter cautioned against listing cage-birds bought in Mexico, smuggled across the border, and released in Texas "just to please those wanting to either raise funds for a refuge, or add to their bird life-list."* Five species were specifically mentioned in this regard: Masked Tityra, Blue Mockingbird, Orange-billed Nightingale-Thrush, Black-headed Nightingale-Thrush, and Blue Bunting.

Response: We are keenly aware of the problems posed by the illegal smuggling of birds into the U.S. from Mexico. Both the AOU (1998) and the Texas Ornithological Society (TOS) (Lockwood *et al.* 2003) go to great lengths to investigate the origins of rare birds reported in Texas near the

Mexican border and to invalidate any records for which there is evidence of human intervention, such as illegal trafficking or smuggling. We are not aware of any evidence to suggest that the activities alluded to by the commenter have actually taken place. The U.S. birding community is relatively small, close-knit, and self-policed, with the vast majority of birders adhering to a voluntary "code of ethics". If anyone was conducting illegal activities to pad their life-lists or to help raise funds for a refuge, it would most likely become widely known and condemned. Each of the species mentioned by the commentator has been accepted by the AOU and TOS as valid, wild migrants in the U.S. As such, we deem them eligible for inclusion in 50 CFR 10.13.

Comment. *The Wisconsin Department of Natural Resources indicated that recognition and protection of the Cackling Goose as distinct from the Canada Goose would create management problems, as it is probably unrealistic to expect hunters to be able to recognize and distinguish between these similar species on the wing. It was requested that the Service consider professional discussions that have occurred over the last two years.*

Response: The Service recognizes the management concerns referred to by the commenter, as well as the current lack of uniform agreement among waterfowl specialists. The Service has reviewed many of the professional views concerning the AOU decision to split the Canada Goose into two species. The AOU Committee on Classification and Nomenclature indicated that additional taxonomic changes may occur as a result of further research on Canada Goose taxonomy (AOU 2004). We will consider new information when it is available. As discussed in the rule, at this time, we will continue to include the Cackling Goose within the listing for the Canada Goose rather than as a separate species.

Comment. *The American Bird Conservancy (ABC) complained that we continue to deny Federal protection to several species that are native to the U.S., or occur in the U.S. as natural vagrants.* They specifically mention seven species in this regard: Oriental Pratincole, Green Parakeet, Puerto Rican Parrot, Red-crowned Parrot, Puerto Rican Tody, Wrentit, and Bananaquit.

Response: These species do not qualify for protection under the MBTA because they (1) belong to families (Glareolidae, Todidae, Coerebidae, Psittacidae, Timaliidae, Coerebidae) not covered by either the Canadian or Mexican Conventions, and (2) are not specifically listed in either the Japanese or Russian Conventions. While this treatment may not be logical, as suggested by ABC, it is required by the language of the Conventions underlying the MBTA.

Comment. *The Pacific Flyway Council expressed confusion over the status of the family Timaliidae (including babblers and Wrentit), noting that we had listed it (71 FR 50205) both as an example of a nonnative human-introduced family not protected by the MBTA and also as an example of a native family not specifically mentioned in treaties with Canada, Mexico, or Russia.*

Response: The Timaliidae properly belongs in category 2 as an example of nonnative human-introduced species (the babblers, introduced to Hawaii) not protected by the MBTA. The Timaliidae also properly belongs in category 3 as an example of a native family and species (the Wrentit) not specifically mentioned in Conventions with Canada or Mexico. This section of the final rule has been re-written for greater clarity.

Comment. *The Pacific Flyway Council recommended that we define "human introduction," noting that "the issue of human-related introductions of species is potentially controversial, and defining the term in the document would clarify the Service's intent and eliminate the need to search for the definition elsewhere."*

Response: We agree with the desirability of being as specific as possible as to what we mean by "human introduction" or "human-assisted introduction." Accordingly, we have added clarifying language to the end of the section entitled "What Criteria Are Used to Identify Individual Species Protected by the MBTA?"

Comment. *One commenter noted that numerous species intentionally introduced to the Hawaiian Islands from the continental U.S. are now protected under the MBTA, even though they are nonnative (examples: Cattle Egret, Mourning Dove, Barn Owl, Northern Cardinal, House Finch). In many instances, these species are competitors for food, carriers of disease, and predators of native wildlife.*

Response: In contrast to the Endangered Species Act, the MBTA has no provision for excluding a species from protection in designated parts of its range. A species protected by the MBTA is protected anywhere and everywhere that it might occur in the U.S. or its territories, even in localities where they are nonnative and introduced by humans. That being said, we also note that the MBTA provides mechanisms for dealing with situations in which protected species are causing economic damage, creating threats to human health and safety, or may be having a deleterious impact on native wildlife, particularly through issuance of depredation permits or authorization of depredation orders.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has reviewed it under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule does not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. A small number of caged bird dealers will be affected by this rule. However, we have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action does not have a significant economic impact on a substantial number of small entities. This

determination is based on the fact that we are simply updating the list of migratory bird species protected under the Conventions. Consequently, we certify that because this rule does not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It does not have a significant impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The updating of the list of migratory birds does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule does not "significantly or uniquely" affect small governments. A small government agency plan is not required. b. This rule does not produce a Federal mandate of $100 million or greater in any year; *i.e.,* it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule does not contain a provision for taking of private property. A takings implication assessment is not required.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It does not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from the updating of the list of migratory bird species.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. This regulations change has no direct impact on information collection.

National Environmental Policy Act (NEPA)

Given that the revision of 50 CFR 10.13 is strictly administrative in nature and does not constitute a Federal action in the context of NEPA it is categorically excluded from further NEPA requirements, as provided by Department of the Interior Manual 516 DM 2, Appendix 1.10.

Endangered Species Act (ESA)

Ninety-six of the species on the List of Migratory Birds are also designated as endangered or threatened in all or some portion of their U.S. range under provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531, *et seq.; see* 50 CFR 17.11). No legal complications arise from the dual listing since the two lists are developed under separate authorities and for different purposes. Because the rule is strictly administrative in nature, it does not require ESA consultation.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 addressing regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the listing of protected species in the United States, it is not a significant regulatory action under Executive Order 12866, and does not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Regarding Government-to-Government relationships with Tribes (59 FR 22951) and Executive Order 13175, these revisions to existing regulations are purely administrative in nature. They will have no effect on Federally recognized Tribes or Tribal trust resources.

References Cited

A complete list of all references cited is available upon request (*see* **ADDRESSES** above).

List of Subjects in 50 CFR Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

Regulation Promulgation

■ For the reasons discussed in the preamble, we amend title 50, chapter I, subchapter B, part 10 of the Code of Federal Regulations, as follows:

PART 10—[AMENDED]

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 18 U.S.C. 42; 16 U.S.C. 703–712; 16 U.S.C. 668a–d; 19 U.S.C. 1202; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1384, 1401–1407; 16 U.S.C. 742a–742j–l; 16 U.S.C. 3371–3378.-q4

■ 2. Revise § 10.13 to read as follows:

§ 10.13 List of Migratory Birds.

(a) *Legal authority for this list.* The Migratory Bird Treaty Act (MBTA) in 16 U.S.C. 703–711, the Fish and Wildlife Improvement Act of 1978, 16 U.S.C. 712, and 16 U.S.C. 742a–j. The MBTA implements Conventions between the United States and four neighboring countries for the protection of migratory birds, as follows:

(1) *Canada:* Convention for the Protection of Migratory Birds, August 16, 1916, United States-Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628, as amended;

(2) *Mexico:* Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-United Mexican States (=Mexico), 50 Stat. 1311, T.S. No. 912, as amended;

(3) *Japan:* Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States-Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990; and

(4) *Russia:* Convention for the Conservation of Migratory Birds and Their Environment, United States-Union of Soviet Socialist Republics (=Russia), November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073, 16 U.S.C. 703, 712.

(b) *Purpose of this list.* The purpose is to inform the public of the species protected by regulations designed to enforce the terms of the MBTA. These regulations, found in parts 10, 20, and 21 of this chapter, cover most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds.

(c) *What species are protected as migratory birds?* Species protected as migratory birds are listed in two formats to suit the varying needs of the user: Alphabetically in paragraph (c)(1) of this section and taxonomically in

paragraph (c)(2) of this section. Taxonomy and nomenclature generally follow the 7th edition of the American Ornithologists' Union's *Check-list of North American birds* (1998, as amended through 2007). For species not treated by the AOU *Check-list,* we generally follow Monroe and Sibley's *A World Checklist of Birds* (1993).

(1) *Alphabetical listing.* Species are listed alphabetically by common (English) group names, with the scientific name of each species following the common name. It is possible that alphabetical listing by common group names may create confusion in those few instances in which the common (English) name of a species has changed. The species formerly known as the Falcated Teal, for example, is now known as the Falcated Duck. To prevent confusion, the alphabetical list has two entries for Falcated Duck: "DUCK, Falcated" and "[TEAL, Falcated (*see* DUCK, Falcated)]." Other potential ambiguities are treated in the same way.

ACCENTOR, Siberian, *Prunella montanella*
AKEKEE, *Loxops caeruleirostris*
AKEPA, *Loxops coccineus*
AKIALOA, Greater, *Hemignathus ellisianus*
AKIAPOLAAU, *Hemignathus munroi*
AKIKIKI, *Oreomystis bairdi*
AKOHEKOHE, *Palmeria dolei*
ALAUAHIO, Maui, *Paroreomyza montana*
  Oahu, *Paroreomyza maculata*
ALBATROSS, Black-browed, *Thalassarche melanophris*
  Black-footed, *Phoebastria nigripes*
  Laysan, *Phoebastria immutabilis*
  Light-mantled, *Phoebetria palpebrata*
  Short-tailed, *Phoebastria albatrus*
  Shy, *Thalassarche cauta*
  Wandering, *Diomedea exulans*
  Yellow-nosed, *Thalassarche chlororhynchos*
ANHINGA, *Anhinga anhinga*
ANI, Groove-billed, *Crotophaga sulcirostris*
  Smooth-billed, *Crotophaga ani*
AMAKIHI, Hawaii, *Hemignathus virens*
  Kauai, *Hemignathus kauaiensis*
  Oahu, *Hemignathus flavus*
ANIANIAU, *Magumma parva*
APAPANE, *Himatione sanguinea*
AUKLET, Cassin's, *Ptychoramphus aleuticus*
  Crested, *Aethia cristatella*
  Least, *Aethia pusilla*
  Parakeet, *Aethia psittacula*
  Rhinoceros, *Cerorhinca monocerata*
  Whiskered, *Aethia pygmaea*
AVOCET, American, *Recurvirostra americana*
[BARN-OWL, Common (*see* OWL, Barn)]
BEAN-GOOSE, Taiga, *Anser fabalis*
  Tundra, *Anser serrirostris*
BEARDLESS-TYRANNULET, Northern, *Camptostoma imberbe*
BECARD, Rose-throated, *Pachyramphus aglaiae*
BITTERN, American, *Botaurus lentiginosus*
  Black, *Ixobrychus flavicollis*
  [Chinese (*see* Yellow)]
  Least, *Ixobrychus exilis*
  Schrenck's, *Ixobrychus eurhythmus*
  Yellow, *Ixobrychus sinensis*
BLACK-HAWK, Common, *Buteogallus anthracinus*
BLACKBIRD, Brewer's, *Euphagus cyanocephalus*
  Red-winged, *Agelaius phoeniceus*
  Rusty, *Euphagus carolinus*
  Tawny-shouldered, *Agelaius humeralis*
  Tricolored, *Agelaius tricolor*
  Yellow-headed, *Xanthocephalus xanthocephalus*
  Yellow-shouldered, *Agelaius xanthomus*
BLUEBIRD, Eastern, *Sialia sialis*
  Mountain, *Sialia currucoides*
  Western, *Sialia mexicana*
BLUETAIL, Red-flanked, *Tarsiger cyanurus*
BLUETHROAT, *Luscinia svecica*
BOBOLINK, *Dolichonyx oryzivorus*
BOOBY, Blue-footed, *Sula nebouxii*
  Brown, *Sula leucogaster*
  Masked, *Sula dactylatra*
  Red-footed, *Sula sula*
BRAMBLING, *Fringilla montifringilla*
BRANT, *Branta bernicla*
BUFFLEHEAD, *Bucephala albeola*
BULLFINCH, Eurasian, *Pyrrhula pyrrhula*
  Puerto Rican, *Loxigilla portoricensis*
BUNTING, Blue, *Cyanocompsa parellina*
  Gray, *Emberiza variabilis*
  Indigo, *Passerina cyanea*
  Little, *Emberiza pusilla*
  Lark, *Calamospiza melanocorys*
  Lazuli, *Passerina amoena*
  McKay's, *Plectrophenax hyperboreus*
  Painted, *Passerina ciris*
  Pallas's, *Emberiza pallasi*
  Pine, *Emberiza leucocephalos*
  Reed, *Emberiza schoeniclus*
  Rustic, *Emberiza rustica*
  Snow, *Plectrophenax nivalis*
  Varied, *Passerina versicolor*
  Yellow-breasted, *Emberiza aureola*
  Yellow-throated, *Emberiza elegans*
BUSHTIT, *Psaltriparus minimus*
CANVASBACK, *Aythya valisineria*
CARACARA, Crested, *Caracara cheriway*
CARDINAL, Northern, *Cardinalis cardinalis*
CARIB, Green-throated, *Eulampis holosericeus*
  Purple-throated, *Eulampis jugularis*
CATBIRD, Black, *Melanoptila glabrirostris*
  Gray, *Dumetella carolinensis*
CHAFFINCH, Common, *Fringilla coelebs*
CHAT, Yellow-breasted, *Icteria virens*
CHICKADEE, Black-capped, *Poecile atricapillus*
  Boreal, *Poecile hudsonica*
  Carolina, *Poecile carolinensis*
  Chestnut-backed, *Poecile rufescens*
  Gray-headed, *Poecile cincta*
  Mexican, *Poecile sclateri*
  Mountain, *Poecile gambeli*
CHUCK-WILL'S-WIDOW, *Caprimulgus carolinensis*
CONDOR, California, *Gymnogyps californianus*
COOT, American, *Fulica americana*
  Caribbean, *Fulica caribaea*
  Eurasian, *Fulica atra*
  Hawaiian, *Fulica alai*
CORMORANT, Brandt's, *Phalacrocorax penicillatus*
  Double-crested, *Phalacrocorax auritus*
  Great, *Phalacrocorax carbo*
  Little Pied, *Phalacrocorax melanoleucos*
  Neotropic, *Phalacrocorax brasilianus*
  [Olivaceous (*see* Neotropic)]
  Pelagic, *Phalacrocorax pelagicus*
  Red-faced, *Phalacrocorax urile*
COWBIRD, Bronzed, *Molothrus aeneus*
  Brown-headed, *Molothrus ater*
  Shiny, *Molothrus bonariensis*
CRAKE, Corn, *Crex crex*
  Paint-billed, *Neocrex erythrops*
  Spotless, *Porzana tabuensis*
  Yellow-breasted, *Porzana flaviventer*
CRANE, Common, *Grus grus*
  Sandhill, *Grus canadensis*
  Whooping, *Grus americana*
CREEPER, Brown, *Certhia americana*
  Hawaii, *Oreomystis mana*
CROSSBILL, Red, *Loxia curvirostra*
  White-winged, *Loxia leucoptera*
CROW, American, *Corvus brachyrhynchos*
  Fish, *Corvus ossifragus*
  Hawaiian, *Corvus hawaiiensis*
  Mariana, *Corvus kubaryi*
  [Mexican (*see* Tamaulipas)]
  Northwestern, *Corvus caurinus*
  Tamaulipas, *Corvus imparatus*
  White-necked, *Corvus leucognaphalus*
CUCKOO, Black-billed, *Coccyzus erythropthalmus*
  Common, *Cuculus canorus*
  Mangrove, *Coccyzus minor*
  Oriental, *Cuculus optatus*
  Yellow-billed, *Coccyzus americanus*
CURLEW, Bristle-thighed, *Numenius tahitiensis*
  Eskimo, *Numenius borealis*
  Eurasian, *Numenius arquata*
  Far Eastern, *Numenius madagascariensis*
  [Least (*see* Little)]

Little, *Numenius minutus*
Long-billed, *Numenius americanus*
DICKCISSEL, *Spiza americana*
DIPPER, American, *Cinclus mexicanus*
DOTTEREL, Eurasian, *Charadrius morinellus*
DOVE, Inca, *Columbina inca*
Mourning, *Zenaida macroura*
White-tipped, *Leptotila verreauxi*
White-winged, *Zenaida asiatica*
Zenaida, *Zenaida aurita*
DOVEKIE, *Alle alle*
DOWITCHER, Long-billed, *Limnodromus scolopaceus*
Short-billed, *Limnodromus griseus*
DUCK, American Black, *Anas rubripes*
Falcated, *Anas falcata*
Harlequin, *Histrionicus histrionicus*
Hawaiian, *Anas wyvilliana*
Laysan, *Anas laysanensis*
Long-tailed, *Clangula hyemalis*
Masked, *Nomonyx dominicus*
Mottled, *Anas fulvigula*
Muscovy, *Cairina moschata*
Pacific Black, *Anas superciliosa*
Ring-necked, *Aythya collaris*
Ruddy, *Oxyura jamaicensis*
Spot-billed, *Anas poecilorhyncha*
Tufted, *Aythya fuligula*
Wood, *Aix sponsa*
DUNLIN, *Calidris alpina*
EAGLE, Bald, *Haliaeetus leucocephalus*
Golden, *Aquila chrysaetos*
White-tailed, *Haliaeetus albicilla*
EGRET, Cattle, *Bubulcus ibis*
Chinese, *Egretta eulophotes*
Great, *Ardea alba*
Intermediate, *Mesophoyx intermedia*
Little, *Egretta garzetta*
[Plumed (*see* Intermediate)]
Reddish, *Egretta rufescens*
Snowy, *Egretta thula*
EIDER, Common, *Somateria mollissima*
King, *Somateria spectabilis*
Spectacled, *Somateria fischeri*
Steller's, *Polysticta stelleri*
ELAENIA, Caribbean, *Elaenia martinica*
Greenish, *Myiopagis viridicata*
EMERALD, Puerto Rican, *Chlorostilbon maugaeus*
EUPHONIA, Antillean, *Euphonia musica*
FALCON, Aplomado, *Falco femoralis*
Peregrine, *Falco peregrinus*
Prairie, *Falco mexicanus*
Red-Footed, *Falco vespertinus*
FIELDFARE, *Turdus pilaris*
FINCH, Cassin's, *Carpodacus cassinii*
House, *Carpodacus mexicanus*
Laysan, *Telespiza cantans*
Nihoa, *Telespiza ultima*
Purple, *Carpodacus purpureus*
[Rosy (*see* ROSY–FINCH)]
FLAMINGO, Greater, *Phoenicopterus ruber*
FLICKER, Gilded, *Colaptes chrysoides*
Northern, *Colaptes auratus*
FLYCATCHER, Acadian, *Empidonax virescens*
Alder, *Empidonax alnorum*
Ash-throated, *Myiarchus cinerascens*
Brown-crested, *Myiarchus tyrannulus*
Buff-breasted, *Empidonax fulvifrons*
Cordilleran, *Empidonax occidentalis*
Dusky, *Empidonax oberholseri*
Dusky-capped, *Myiarchus tuberculifer*
Fork-tailed, *Tyrannus savana*
Gray, *Empidonax wrightii*
[Gray-spotted (*see* Gray-streaked)]
Gray-streaked, *Muscicapa griseisticta*
Great Crested, *Myiarchus crinitus*
Hammond's, *Empidonax hammondii*
La Sagra's, *Myiarchus sagrae*
Least, *Empidonax minimus*
Narcissus, *Ficedula narcissina*
Nutting's, *Myiarchus nuttingi*
Olive-sided, *Contopus cooperi*
Pacific-slope, *Empidonax difficilis*
Piratic, *Legatus leucophalus*
Puerto Rican, *Myiarchus antillarum*
Scissor-tailed, *Tyrannus forficatus*
Social, *Myiozetetes similis*
Sulphur-bellied, *Myiodynastes luteiventris*
Tufted, *Mitrephanes phaeocercus*
Variegated, *Empidonomus varius*
Vermilion, *Pyrocephalus rubinus*
[Western (*see* Cordilleran and Pacific-slope)]
Willow, *Empidonax traillii*
Yellow-bellied, *Empidonax flaviventris*
FOREST-FALCON, Collared, *Micrastur semitorquatus*
FRIGATEBIRD, Great, *Fregata minor*
Lesser, *Fregata ariel*
Magnificent, *Fregata magnificens*
FROG-HAWK, Gray, *Accipiter soloensis*
FRUIT-DOVE, Crimson-crowned, *Ptilinopus porphyraceus*
Many-colored, *Ptilinopus perousii*
Mariana, *Ptilinopus roseicapilla*
FULMAR, Northern, *Fulmarus glacialis*
GADWALL, *Anas strepera*
GALLINULE, Azure, *Porphyrio flavirostris*
Purple, *Porphyrio martinica*
GANNET, Northern, *Morus bassanus*
GARGANEY, *Anas querquedula*
GNATCATCHER, Black-capped, *Polioptila nigriceps*
Black-tailed, *Polioptila melanura*
Blue-gray, *Polioptila caerulea*
California, *Polioptila californica*
GODWIT, Bar-tailed, *Limosa lapponica*
Black-tailed, *Limosa limosa*
Hudsonian, *Limosa haemastica*
Marbled, *Limosa fedoa*
GOLDEN-PLOVER, American, *Pluvialis dominica*
European, *Pluvialis apricaria*
[Lesser (*see* American)]
Pacific, *Pluvialis fulva*
GOLDENEYE, Barrow's, *Bucephala islandica*
Common, *Bucephala clangula*
GOLDFINCH, American, *Carduelis tristis*
Lawrence's, *Carduelis lawrencei*
Lesser, *Carduelis psaltria*
GOOSE, Barnacle, *Branta leucopsis*
[Bean, (*see* BEAN-GOOSE, Taiga)]
Canada, *Branta canadensis* (including Cackling Goose, *Branta hutchinsii*)
Emperor, *Chen canagica*
Greater White-fronted, *Anser albifrons*
Hawaiian, *Branta sandvicensis*
Lesser White-fronted, *Anser erythropus*
Ross's, *Chen rossii*
Snow, *Chen caerulescens*
GOSHAWK, Northern, *Accipiter gentilis*
GRACKLE, Boat-tailed, *Quiscalus major*
Common, *Quiscalus quiscula*
Great-tailed, *Quiscalus mexicanus*
Greater Antillean, *Quiscalus niger*
GRASSHOPPER-WARBLER, Middendorff's, *Locustella ochotensis*
GRASSQUIT, Black-faced, *Tiaris bicolor*
Yellow-faced, *Tiaris olivaceus*
GREBE, Clark's, *Aechmophorus clarkii*
Eared, *Podiceps nigricollis*
Horned, *Podiceps auritus*
Least, *Tachybaptus dominicus*
Pied-billed, *Podilymbus podiceps*
Red-necked, *Podiceps grisegena*
Western, *Aechmophorus occidentalis*
GREENFINCH, Oriental, *Carduelis sinica*
GREENSHANK, Common, *Tringa nebularia*
Nordmann's, *Tringa guttifer*
GROSBEAK, Black-headed, *Pheucticus melanocephalus*
Blue, *Passerina caerulea*
Crimson-collared, *Rhodothraupis celaeno*
Evening, *Coccothraustes vespertinus*
Pine, *Pinicola enucleator*
Rose-breasted, *Pheucticus ludovicianus*
Yellow, *Pheucticus chrysopeplus*
GROUND-DOVE, Common, *Columbina passerina*
Friendly, *Gallicolumba stairi*
Ruddy, *Columbina talpacoti*
White-throated, *Gallicolumba xanthonura*
GUILLEMOT, Black, *Cepphus grylle*
Pigeon, *Cepphus columba*
GULL, Belcher's, *Larus belcheri*
Black-headed, *Larus ridibundus*
Black-tailed, *Larus crassirostris*
Bonaparte's, *Larus philadelphia*
California, *Larus californicus*
[Common Black-headed (*see* Black-headed)]
Franklin's, *Larus pipixcan*
Glaucous, *Larus hyperboreus*
Glaucous-winged, *Larus glaucescens*
Gray-hooded, *Larus cirrocephalus*
Great Black-backed, *Larus marinus*
Heermann's, *Larus heermanni*
Herring, *Larus argentatus*
Iceland, *Larus glaucoides*
Ivory, *Pagophila eburnea*

Kelp, *Larus dominicanus*
Laughing, *Larus atricilla*
Lesser Black-backed, *Larus fuscus*
Little, *Larus minutus*
Mew, *Larus canus*
Ring-billed, *Larus delawarensis*
Ross's, *Rhodostethia rosea*
Sabine's, *Xema sabini*
Slaty-backed, *Larus schistisagus*
Thayer's, *Larus thayeri*
Western, *Larus occidentalis*
Yellow-footed, *Larus livens*
Yellow-legged, *Larus michahellis*
GYRFALCON, *Falco rusticolus*
HARRIER, Northern, *Circus cyaneus*
HAWFINCH, *Coccothraustes coccothraustes*
HAWK, [Asiatic Sparrow (*see* SPARROWHAWK, Japanese)]
Broad-winged, *Buteo platypterus*
Cooper's, *Accipiter cooperii*
Crane, *Geranospiza caerulescens*
Ferruginous, *Buteo regalis*
Gray, *Buteo nitidus*
Harris's, *Parabuteo unicinctus*
Hawaiian, *Buteo solitarius*
Red-shouldered, *Buteo lineatus*
Red-tailed, *Buteo jamaicensis*
Roadside, *Buteo magnirostris*
Rough-legged, *Buteo lagopus*
Sharp-shinned, *Accipiter striatus*
Short-tailed, *Buteo brachyurus*
Swainson's, *Buteo swainsoni*
White-tailed, *Buteo albicaudatus*
Zone-tailed, *Buteo albonotatus*
HAWK-CUCKOO, Hodgson's, *Cuculus fugax*
[HAWK-OWL, Northern (*see* OWL, Northern Hawk)]
HERON, Gray, *Ardea cinerea*
Great Blue, *Ardea herodias*
Green, *Butorides virescens*
[Green-backed (*see* Green)]
Little Blue, *Egretta caerulea*
[Pacific Reef (*see* REEF-EGRET, Pacific)]
Tricolored, *Egretta tricolor*
HOBBY, Eurasian, *Falco subbuteo*
HOOPOE, Eurasian, *Upupa epops*
HOUSE-MARTIN, Common, *Delichon urbicum*
HUMMINGBIRD, Allen's, *Selasphorus sasin*
Anna's, *Calypte anna*
Antillean Crested, *Orthorhyncus cristatus*
Berylline, *Amazilia beryllina*
Black-chinned, *Archilochus alexandri*
Blue-throated, *Lampornis clemenciae*
Broad-billed, *Cynanthus latirostris*
Broad-tailed, *Selasphorus platycercus*
Buff-bellied, *Amazilia yucatanensis*
Bumblebee, *Atthis heloisa*
Calliope, *Stellula calliope*
Cinnamon, *Amazilia rutila*
Costa's, *Calypte costae*
Lucifer, *Calothorax lucifer*
Magnificent, *Eugenes fulgens*
Ruby-throated, *Archilochus colubris*
Rufous, *Selasphorus rufus*
Violet-crowned, *Amazilia violiceps*
White-eared, *Hylocharis leucotis*
Xantus's, *Hylocharis xantusii*
IBIS, Glossy, *Plegadis falcinellus*
Scarlet, *Eudocimus ruber*
White, *Eudocimus albus*
White-faced, *Plegadis chihi*
IIWI, *Vestiaria coccinea*
IMPERIAL-PIGEON, Pacific, *Ducula pacifica*
JABIRU, *Jabiru mycteria*
JACANA, Northern, *Jacana spinosa*
JAEGER, Long-tailed, *Stercorarius longicaudus*
Parasitic, *Stercorarius parasiticus*
Pomarine, *Stercorarius pomarinus*
JAY, Blue, *Cyanocitta cristata*
Brown, *Cyanocorax morio*
Gray, *Perisoreus canadensis*
[Gray-breasted (*see* Mexican)]
Green, *Cyanocorax yncas*
Mexican, *Aphelocoma ultramarina*
Pinyon, *Gymnorhinus cyanocephalus*
[Scrub (*see* SCRUB-JAY)]
Steller's, *Cyanocitta stelleri*
JUNCO, Dark-eyed, *Junco hyemalis*
Yellow-eyed, *Junco phaeonotus*
KAKAWAHIE, *Paroreomyza flammea*
KAMAO, *Myadestes myadestinus*
KESTREL, American, *Falco sparverius*
Eurasian, *Falco tinnunculus*
KILLDEER, *Charadrius vociferus*
KINGBIRD, Cassin's, *Tyrannus vociferans*
Couch's, *Tyrannus couchii*
Eastern, *Tyrannus tyrannus*
Gray, *Tyrannus dominicensis*
Loggerhead, *Tyrannus caudifasciatus*
Thick-billed, *Tyrannus crassirostris*
Tropical, *Tyrannus melancholicus*
Western, *Tyrannus verticalis*
KINGFISHER, Belted, *Megaceryle alcyon*
Collared, *Todirhamphus chloris*
Green, *Chloroceryle americana*
Micronesian, *Todirhamphus cinnamominus*
Ringed, *Megaceryle torquata*
KINGLET, Golden-crowned, *Regulus satrapa*
Ruby-crowned, *Regulus calendula*
KISKADEE, Great, *Pitangus sulphuratus*
KITE, [American Swallow-tailed (*see* Swallow-tailed)]
Black, *Milvus migrans*
[Black-shouldered (*see* White-tailed)]
Hook-billed, *Chondrohierax uncinatus*
Mississippi, *Ictinia mississippiensis*
Snail, *Rostrhamus sociabilis*
Swallow-tailed, *Elanoides forficatus*
White-tailed, *Elanus leucurus*
KITTIWAKE, Black-legged, *Rissa tridactyla*
Red-legged, *Rissa brevirostris*
KNOT, Great, *Calidris tenuirostris*
Red, *Calidris canutus*
LAPWING, Northern, *Vanellus vanellus*
LARK, Horned, *Eremophila alpestris*
Sky, *Alauda arvensis*
LIMPKIN, *Aramus guarauna*
LIZARD-CUCKOO, Puerto Rican, *Coccyzus vieilloti*
LONGSPUR, Chestnut-collared, *Calcarius ornatus*
Lapland, *Calcarius lapponicus*
McCown's, *Calcarius mccownii*
Smith's, *Calcarius pictus*
LOON, Arctic, *Gavia arctica*
Common, *Gavia immer*
Pacific, *Gavia pacifica*
Red-throated, *Gavia stellata*
Yellow-billed, *Gavia adamsii*
MAGPIE, Black-billed, *Pica hudsonia*
Yellow-billed, *Pica nuttalli*
MALLARD, *Anas platyrhynchos*
MANGO, Antillean, *Anthracothorax dominicus*
Green, *Anthracothorax viridis*
Green-breasted, *Anthracothorax prevostii*
MARTIN, Brown-chested, *Progne tapera*
Caribbean, *Progne dominicensis*
Cuban, *Progne cryptoleuca*
Gray-breasted, *Progne chalybea*
Purple, *Progne subis*
Southern, *Progne elegans*
MEADOWLARK, Eastern, *Sturnella magna*
Western, *Sturnella neglecta*
MERGANSER, Common, *Mergus merganser*
Hooded, *Lophodytes cucullatus*
Red-breasted, *Mergus serrator*
MERLIN, *Falco columbarius*
MILLERBIRD, *Acrocephalus familiaris*
MOCKINGBIRD, Bahama, *Mimus gundlachii*
Blue, *Melanotis caerulescens*
Northern, *Mimus polyglottos*
MOORHEN, Common, *Gallinula chloropus*
MURRE, Common, *Uria aalge*
Thick-billed, *Uria lomvia*
MURRELET, Ancient, *Synthliboramphus antiquus*
Craveri's, *Synthliboramphus craveri*
Kittlitz's, *Brachyramphus brevirostris*
Long-billed, *Brachyramphus perdix*
Marbled, *Brachyramphus marmoratus*
Xantus's, *Synthliboramphus hypoleucus*
NEEDLETAIL, White-throated, *Hirundapus caudacutus*
NIGHT-HERON, Black-crowned, *Nycticorax nycticorax*
Japanese, *Gorsachius goisagi*
[Malay (*see* Malayan)]
Malayan, *Gorsachius melanolophus*
Yellow-crowned, *Nyctanassa violacea*
NIGHTHAWK, Antillean, *Chordeiles gundlachii*
Common, *Chordeiles minor*
Lesser, *Chordeiles acutipennis*
NIGHTINGALE-THRUSH, Black-headed, *Catharus mexicanus*
Orange-billed, *Catharus*

aurantiirostris
NIGHTJAR, Buff-collared, *Caprimulgus ridgwayi*
Gray, *Caprimulgus indicus*
[Jungle (*see* Gray)]
Puerto Rican, *Caprimulgus noctitherus*
NODDY, Black, *Anous minutus*
Blue-gray, *Procelsterna cerulea*
Brown, *Anous stolidus*
[Lesser (*see* Black)]
NUKUPUU, *Hemignathus lucidus*
NUTCRACKER, Clark's, *Nucifraga columbiana*
NUTHATCH, Brown-headed, *Sitta pusilla*
Pygmy, *Sitta pygmaea*
Red-breasted, *Sitta canadensis*
White-breasted, *Sitta carolinensis*
[OLDSQUAW (*see* DUCK, Long-tailed)]
OLOMAO, *Myadestes lanaiensis*
OMAO, *Myadestes obscurus*
ORIOLE, Altamira, *Icterus gularis*
Audubon's, *Icterus graduacauda*
Baltimore, *Icterus galbula*
[Black-cowled (*see* Greater Antillean)]
Black-vented, *Icterus wagleri*
Bullock's, *Icterus bullockii*
Greater Antillean, *Icterus dominicensis*
Hooded, *Icterus cucullatus*
[Northern (*see* Baltimore and Bullock's)]
Orchard, *Icterus spurius*
Scott's, *Icterus parisorum*
Streak-backed, *Icterus pustulatus*
OSPREY, *Pandion haliaetus*
OU, *Psittirostra psittacea*
OVENBIRD, *Seiurus aurocapilla*
OWL, Barn, *Tyto alba*
Barred, *Strix varia*
Boreal, *Aegolius funereus*
Burrowing, *Athene cunicularia*
Elf, *Micrathene whitneyi*
Flammulated, *Otus flammeolus*
Great Gray, *Strix nebulosa*
Great Horned, *Bubo virginianus*
Long-eared, *Asio otus*
Mottled, *Ciccaba virgata*
Northern Hawk, *Surnia ulula*
Northern Saw-whet, *Aegolius acadicus*
Short-eared, *Asio flammeus*
Snowy, *Bubo scandiacus*
Spotted, *Strix occidentalis*
Stygian, *Asio stygius*
OYSTERCATCHER, American, *Haematopus palliatus*
Black, *Haematopus bachmani*
Eurasian, *Haematopus ostralegus*
PALILA, *Loxioides bailleui*
PALM-SWIFT, Antillean, *Tachornis phoenicobia*
PARROTBILL, Maui, *Pseudonestor xanthophrys*
PARULA, Northern, *Parula americana*
Tropical, *Parula pitiayumi*
PAURAQUE, Common, *Nyctidromus albicollis*
PELICAN, American White, *Pelecanus erythrorhynchos*
Brown, *Pelecanus occidentalis*
PETREL, Bermuda, *Pterodroma cahow*
Black-capped, *Pterodroma hasitata*
Black-winged, *Pterodroma nigripennis*
Bonin, *Pterodroma hypoleuca*
Bulwer's, *Bulweria bulwerii*
Cook's, *Pterodroma cookii*
[Dark-rumped (*see* Hawaiian)]
Gould's, *Pterodroma leucoptera*
Great-winged, *Pterodroma macroptera*
Hawaiian, *Pterodroma sandwichensis*
Herald, *Pterodroma arminjoniana*
Jouanin's, *Bulweria fallax*
Juan Fernandez, *Pterodroma externa*
Kermadec, *Pterodroma neglecta*
Mottled, *Pterodroma inexpectata*
Murphy's, *Pterodroma ultima*
Phoenix, *Pterodroma alba*
Stejneger's, *Pterodroma longirostris*
Tahiti, *Pterodroma rostrata*
White-necked, *Pterodroma cervicalis*
[White-necked, *Pterodroma externa* (*see* Petrel, Juan Fernandez)]
PEWEE, Cuban, *Contopus caribaeus*
Greater, *Contopus pertinax*
Hispaniolan, *Contopus hispaniolensis*
Lesser Antillean, *Contopus latirostris*
PHAINOPEPLA, *Phainopepla nitens*
PHALAROPE, Red, *Phalaropus fulicarius*
Red-necked, *Phalaropus lobatus*
Wilson's, *Phalaropus tricolor*
PHOEBE, Black, *Sayornis nigricans*
Eastern, *Sayornis phoebe*
Say's, *Sayornis saya*
PIGEON, Band-tailed, *Patagioenas fasciata*
Plain, *Patagioenas inornata*
Red-billed, *Patagioenas flavirostris*
Scaly-naped, *Patagioenas squamosa*
White-crowned, *Patagioenas leucocephala*
PINTAIL, Northern, *Anas acuta*
White-cheeked, *Anas bahamensis*
PIPIT, American, *Anthus rubescens*
Olive-backed, *Anthus hodgsoni*
Pechora, *Anthus gustavi*
Red-throated, *Anthus cervinus*
Sprague's, *Anthus spragueii*
Tree, *Anthus trivialis*
[Water (*see* American)]
PLOVER, Black-bellied, *Pluvialis squatarola*
Collared, *Charadrius collaris*
Common Ringed, *Charadrius hiaticula*
[Great Sand (*see* Sand-Plover, Greater)]
Little Ringed, *Charadrius dubius*
[Mongolian (*see* Sand-Plover, Lesser)]
Mountain, *Charadrius montanus*
Piping, *Charadrius melodus*
Semipalmated, *Charadrius semipalmatus*
Snowy, *Charadrius alexandrinus*
Wilson's, *Charadrius wilsonia*
POCHARD, Baer's, *Aythya baeri*
Common, *Aythya ferina*
POND-HERON, Chinese, *Ardeola bacchus*
POORWILL, Common, *Phalaenoptilus nuttallii*
POO-ULI, *Melamprosops phaeosoma*
PUAIOHI, *Myadestes palmeri*
PUFFIN, Atlantic, *Fratercula arctica*
Horned, *Fratercula corniculata*
Tufted, *Fratercula cirrhata*
PYGMY-OWL, Ferruginous, *Glaucidium brasilianum*
Northern, *Glaucidium gnoma*
PYRRHULOXIA, *Cardinalis sinuatus*
QUAIL-DOVE, Bridled, *Geotrygon mystacea*
Key West, *Geotrygon chrysia*
Ruddy, *Geotrygon montana*
QUETZEL, Eared, *Euptilotis neoxenus*
RAIL, Black, *Laterallus jamaicensis*
Buff-banded, *Gallirallus philippensis*
Clapper, *Rallus longirostris*
Guam, *Gallirallus owstoni*
King, *Rallus elegans*
Spotted, *Pardirallus maculatus*
Virginia, *Rallus limicola*
Yellow, *Coturnicops noveboracensis*
RAVEN, Chihuahuan, *Corvus cryptoleucus*
Common, *Corvus corax*
RAZORBILL, *Alca torda*
REDHEAD, *Aythya americana*
REDPOLL, Common, *Carduelis flammea*
Hoary, *Carduelis hornemanni*
REDSHANK, Spotted, *Tringa erythropus*
REDSTART, American, *Setophaga ruticilla*
Painted, *Myioborus pictus*
Slate-throated, *Myioborus miniatus*
[REED-BUNTING, Common (*see* BUNTING, Reed)]
[Pallas' (*see* BUNTING, Pallas's)]
REED-WARBLER, Nightingale, *Acrocephalus luscinia*
REEF-EGRET, Pacific, *Egretta sacra*
REEF-HERON, Western, *Egretta gularis*
ROADRUNNER, Greater, *Geococcyx californianus*
ROBIN, American, *Turdus migratorius*
Clay-colored, *Turdus grayi*
Rufous-backed, *Turdus rufopalliatus*
Siberian Blue, *Luscinia cyane*
White-throated, *Turdus assimilis*
ROSEFINCH, Common, *Carpodacus erythrinus*
ROSY-FINCH, Black, *Leucosticte atrata*
Brown-capped, *Leucosticte australis*
Gray-crowned, *Leucosticte tephrocotis*
RUBYTHROAT, Siberian, *Luscinia calliope*
RUFF, *Philomachus pugnax*
SANDERLING, *Calidris alba*
SANDPIPER, Baird's, *Calidris bairdii*
Broad-billed, *Limicola falcinellus*
Buff-breasted, *Tryngites subruficollis*
Common, *Actitis hypoleucos*
Curlew, *Calidris ferruginea*
Green, *Tringa ochropus*

Least, *Calidris minutilla*
Marsh, *Tringa stagnatilis*
Pectoral, *Calidris melanotos*
Purple, *Calidris maritima*
Rock, *Calidris ptilocnemis*
Semipalmated, *Calidris pusilla*
Sharp-tailed, *Calidris acuminata*
Solitary, *Tringa solitaria*
[Spoonbill (*see* Spoon-billed)]
Spoon-billed, *Eurynorhynchus pygmeus*
Spotted, *Actitis macularius*
Stilt, *Calidris himantopus*
Terek, *Xenus cinereus*
Upland, *Bartramia longicauda*
Western, *Calidris mauri*
White-rumped, *Calidris fuscicollis*
Wood, *Tringa glareola*
SAND-PLOVER, Greater, *Charadrius leschenaultii*
Lesser, *Charadrius mongolus*
SAPSUCKER, Red-breasted, *Sphyrapicus ruber*
Red-naped, *Sphyrapicus nuchalis*
Williamson's, *Sphyrapicus thyroideus*
Yellow-bellied, *Sphyrapicus varius*
SCAUP, Greater, *Aythya marila*
Lesser, *Aythya affinis*
SCOPS-OWL, Oriental, *Otus sunia*
SCOTER, Black, *Melanitta nigra*
Surf, *Melanitta perspicillata*
White-winged, *Melanitta fusca*
SCREECH-OWL, Eastern, *Megascops asio*
Puerto Rican, *Megascops nudipes*
Western, *Megascops kennicottii*
Whiskered, *Megascops trichopsis*
SCRUB-JAY, Florida, *Aphelocoma coerulescens*
Island, *Aphelocoma insularis*
Western, *Aphelocoma californica*
SEA-EAGLE, Steller's, *Haliaeetus pelagicus*
SEEDEATER, White-collared, *Sporophila torqueola*
SHEARWATER, Audubon's, *Puffinus lherminieri*
Black-vented, *Puffinus opisthomelas*
Buller's, *Puffinus bulleri*
Cape Verde, *Calonectris edwardsii*
Christmas, *Puffinus nativitatis*
Cory's, *Calonectris diomedea*
Flesh-footed, *Puffinus carneipes*
Greater, *Puffinus gravis*
Little, *Puffinus assimilis*
Manx, *Puffinus puffinus*
Pink-footed, *Puffinus creatopus*
Short-tailed, *Puffinus tenuirostris*
Sooty, *Puffinus griseus*
Streaked, *Calonectris leucomelas*
Townsend's, *Puffinus auricularis*
Wedge-tailed, *Puffinus pacificus*
SHOVELER, Northern, *Anas clypeata*
SHRIKE, Brown, *Lanius cristatus*
Loggerhead, *Lanius ludovicianus*
Northern, *Lanius excubitor*
SILKY-FLYCATCHER, Gray, *Ptilogonys cinereus*
SISKIN, Eurasian, *Carduelis spinus*
Pine, *Carduelis pinus*
SKIMMER, Black, *Rynchops niger*
SKUA, Great, *Stercorarius skua*
South Polar, *Stercorarius maccormicki*
[SKYLARK, Eurasian (*see* LARK, Sky)]
SMEW, *Mergellus albellus*
SNIPE, Common, *Gallinago gallinago* (rare in western Alaska; also *see* SNIPE, Wilson's)
Jack, *Lymnocryptes minimus*
Pin-tailed, *Gallinago stenura*
Swinhoe's, *Gallinago megala*
Wilson's, *Gallinago delicata* (the "common" snipe hunted in most of the U.S.)
SOLITAIRE, Townsend's, *Myadestes townsendi*
SORA, *Porzana carolina*
SPARROW, American Tree, *Spizella arborea*
Bachman's, *Aimophila aestivalis*
Baird's, *Ammodramus bairdii*
Black-chinned, *Spizella atrogularis*
Black-throated, *Amphispiza bilineata*
Botteri's, *Aimophila botterii*
Brewer's, *Spizella breweri*
Cassin's, *Aimophila cassinii*
Chipping, *Spizella passerina*
Clay-colored, *Spizella pallida*
Field, *Spizella pusilla*
Five-striped, *Aimophila quinquestriata*
Fox, *Passerella iliaca*
Golden-crowned, *Zonotrichia atricapilla*
Grasshopper, *Ammodramus savannarum*
Harris's, *Zonotrichia querula*
Henslow's, *Ammodramus henslowii*
Lark, *Chondestes grammacus*
Le Conte's, *Ammodramus leconteii*
Lincoln's, *Melospiza lincolnii*
Nelson's Sharp-tailed, *Ammodramus nelsoni*
Olive, *Arremonops rufivirgatus*
Rufous-crowned, *Aimophila ruficeps*
Rufous-winged, *Aimophila carpalis*
Sage, *Amphispiza belli*
Saltmarsh Sharp-tailed, *Ammodramus caudacutus*
Savannah, *Passerculus sandwichensis*
Seaside, *Ammodramus maritimus*
[Sharp-tailed (*see* Nelson's Sharp-tailed and Saltmarsh Sharp-tailed)]
Song, *Melospiza melodia*
Swamp, *Melospiza georgiana*
Vesper, *Pooecetes gramineus*
White-crowned, *Zonotrichia leucophrys*
White-throated, *Zonotrichia albicollis*
Worthen's, *Spizella wortheni*
SPARROWHAWK, Japanese, *Accipiter gularis*
SPINDALIS, Puerto Rican, *Spindalis portoricensis*
Western, *Spindalis zena*
SPOONBILL, Roseate, *Platalea ajaja*
STARLING, [Ashy (*see* White-cheeked)]
Chestnut-cheeked, *Sturnus philippensis*
[Violet-backed (*see* Chestnut-cheeked)]
White-cheeked, *Sturnus cineraceus*
STARTHROAT, Plain-capped, *Heliomaster constantii*
STILT, Black-necked, *Himantopus mexicanus*
Black-winged, *Himantopus himantopus*
STINT, Little, *Calidris minuta*
Long-toed, *Calidris subminuta*
Red-necked, *Calidris ruficollis*
[Rufous-necked (*see* Red-necked)]
Temminck's, *Calidris temminckii*
STONECHAT, *Saxicola torquatus*
STORK, Wood, *Mycteria americana*
STORM-PETREL, Ashy, *Oceanodroma homochroa*
Band-rumped, *Oceanodroma castro*
Black, *Oceanodroma melania*
Black-bellied, *Fregetta tropica*
Fork-tailed, *Oceanodroma furcata*
Leach's, *Oceanodroma leucorhoa*
Least, *Oceanodroma microsoma*
Matsudaira's, *Oceanodroma matsudairae*
Polynesian, *Nesofregata fuliginosa*
Ringed, *Oceanodroma hornbyi*
[Sooty (*see* Tristram's)]
Tristram's, *Oceanodroma tristrami*
Wedge-rumped, *Oceanodroma tethys*
White-faced, *Pelagodroma marina*
White-bellied, *Fregetta grallaria*
Wilson's, *Oceanites oceanicus*
SURFBIRD, *Aphriza virgata*
SWALLOW, Bahama, *Tachycineta cyaneoviridis*
Bank, *Riparia riparia*
Barn, *Hirundo rustica*
Cave, *Petrochelidon fulva*
Cliff, *Petrochelidon pyrrhonota*
Mangrove, *Tachycineta albilinea*
Northern Rough-winged, *Stelgidopteryx serripennis*
Tree, *Tachycineta bicolor*
Violet-green, *Tachycineta thalassina*
SWAMPHEN, Purple, *Porphyrio porphyrio*
SWAN, Trumpeter, *Cygnus buccinator*
Tundra, *Cygnus columbianus*
Whooper, *Cygnus cygnus*
SWIFT, Alpine, *Apus melba*
[Antillean Palm (*see* PALM-SWIFT, Antillean)]
Black, *Cypseloides niger*
Chimney, *Chaetura pelagica*
Common, *Apus apus*
Fork-tailed, *Apus pacificus*
Short-tailed, *Chaetura brachyura*
Vaux's, *Chaetura vauxi*
White-collared, *Streptoprocne zonaris*
White-throated, *Aeronautes saxatalis*
SWIFTLET, Mariana, *Aerodramus bartschi*
White-rumped, *Aerodramus spodiopygius*
TANAGER, Flame-colored, *Piranga bidentata*

Hepatic, *Piranga flava*
Puerto Rican, *Nesospingus speculiferus*
Scarlet, *Piranga olivacea*
[Stripe-headed (*see* SPINDALIS, Puerto Rican and Western)]
Summer, *Piranga rubra*
Western, *Piranga ludoviciana*
TATTLER, Gray-tailed, *Tringa brevipes*
Wandering, *Tringa incana*
TEAL, Baikal, *Anas formosa*
Blue-winged, *Anas discors*
Cinnamon, *Anas cyanoptera*
[Falcated (*see* DUCK, Falcated)]
Green-winged, *Anas crecca*
TERN, Aleutian, *Onychoprion aleuticus*
Arctic, *Sterna paradisaea*
Black, *Chlidonias niger*
Black-naped, *Sterna sumatrana*
Bridled, *Onychoprion anaethetus*
Caspian, *Hydroprogne caspia*
Common, *Sterna hirundo*
Elegant, *Thalasseus elegans*
Forster's, *Sterna forsteri*
Gray-backed, *Onychoprion lunatus*
Great Crested, *Thalasseus bergii*
Gull-billed, *Gelochelidon nilotica*
Large-billed, *Phaetusa simplex*
Least, *Sternula antillarum*
Little, *Sternula albifrons*
Roseate, *Sterna dougallii*
Royal, *Thalleseus maximus*
Sandwich, *Thalleseus sandvicensis*
Sooty, *Onychoprion fuscatus*
Whiskered, *Chlidonias hybrida*
White, *Gygis alba*
White-winged, *Chlidonias leucopterus*
THRASHER, Bendire's, *Toxostoma bendirei*
Brown, *Toxostoma rufum*
California, *Toxostoma redivivum*
Crissal, *Toxostoma crissale*
Curve-billed, *Toxostoma curvirostre*
Le Conte's, *Toxostoma lecontei*
Long-billed, *Toxostoma longirostre*
Pearly-eyed, *Margarops fuscatus*
Sage, *Oreoscoptes montanus*
THRUSH, Aztec, *Ridgwayia pinicola*
Bicknell's, *Catharus bicknelli*
Blue Rock, *Monticola solitarius*
Dusky, *Turdus naumanni*
Eyebrowed, *Turdus obscurus*
Gray-cheeked, *Catharus minimus*
[Hawaiian (*see* KAMAO, OLOMAO, and OMAO)]
Hermit, *Catharus guttatus*
Red-legged, *Turdus plumbeus*
[Small Kauai (*see* PUAIOHI)]
Swainson's, *Catharus ustulatus*
Varied, *Ixoreus naevius*
Wood, *Hylocichla mustelina*
[TIT, Siberian (*see* CHICKADEE, Gray-headed)]
TITMOUSE, Black-crested, *Baeolophus atricristatus*
Bridled, *Baeolophus wollweberi*
Juniper, *Baeolophus ridgwayi*
Oak, *Baeolophus inornatus*
[Plain (*see* Juniper and Oak)]
Tufted, *Baeolophus bicolor*
TITYRA, Masked, *Tityra semifasciata*
TOWHEE, Abert's, *Pipilo aberti*
[Brown (*see* California and Canyon)]
California, *Pipilo crissalis*
Canyon, *Pipilo fuscus*
Eastern, *Pipilo erythrophthalmus*
Green-tailed, *Pipilo chlorurus*
[Rufous-sided (*see* Eastern and Spotted)]
Spotted, *Pipilo maculatus*
[TREE-PIPIT, Olive (*see* PIPIT, Olive-backed)]
TROGON, [Eared (*see* QUETZEL, Eared)]
Elegant, *Trogon elegans*
TROPICBIRD, Red-billed, *Phaethon aethereus*
Red-tailed, *Phaethon rubricauda*
White-tailed, *Phaethon lepturus*
TURNSTONE, Black, *Arenaria melanocephala*
Ruddy, *Arenaria interpres*
TURTLE-DOVE, Oriental, *Streptopelia orientalis*
VEERY, *Catharus fuscescens*
VERDIN, *Auriparus flaviceps*
VIOLET-EAR, Green, *Colibri thalassinus*
VIREO, Bell's, *Vireo bellii*
Black-capped, *Vireo atricapillus*
Black-whiskered, *Vireo altiloquus*
Blue-headed, *Vireo solitarius*
Cassin's, *Vireo cassinii*
Gray, *Vireo vicinior*
Hutton's, *Vireo huttoni*
Philadelphia, *Vireo philadelphicus*
Plumbeous, *Vireo plumbeus*
Puerto Rican, *Vireo latimeri*
Red-eyed, *Vireo olivaceus*
[Solitary (*see* Blue-headed, Cassin's, and Plumbeous)]
Thick-billed, *Vireo crassirostris*
Warbling, *Vireo gilvus*
White-eyed, *Vireo griseus*
Yellow-green, *Vireo flavoviridis*
Yellow-throated, *Vireo flavifrons*
Yucatan, *Vireo magister*
VULTURE, Black, *Coragyps atratus*
Turkey, *Cathartes aura*
WAGTAIL, [Black-backed (*see* White)]
Citrine, *Motacilla citreola*
Eastern Yellow, *Motacilla tschutschensis*
Gray, *Motacilla cinerea*
White, *Motacilla alba*
[Yellow (*see* Eastern Yellow)]
WARBLER, Adelaide's, *Dendroica adelaidae*
Arctic, *Phylloscopus borealis*
Bachman's, *Vermivora bachmanii*
Bay-breasted, *Dendroica castanea*
Black-and-white, *Mniotilta varia*
Black-throated Blue, *Dendroica caerulescens*
Black-throated Gray, *Dendroica nigrescens*
Black-throated Green, *Dendroica virens*
Blackburnian, *Dendroica fusca*
Blackpoll, *Dendroica striata*
Blue-winged, *Vermivora pinus*
Canada, *Wilsonia canadensis*
Cape May, *Dendroica tigrina*
Cerulean, *Dendroica cerulea*
Chestnut-sided, *Dendroica pensylvanica*
Colima, *Vermivora crissalis*
Connecticut, *Oporornis agilis*
Crescent-chested, *Parula superciliosa*
Dusky, *Phylloscopus fuscatus*
Elfin-woods, *Dendroica angelae*
Fan-tailed, *Euthlypis lachrymosa*
Golden-cheeked, *Dendroica chrysoparia*
Golden-crowned, *Basileuterus culicivorus*
Golden-winged, *Vermivora chrysoptera*
Grace's, *Dendroica graciae*
Hermit, *Dendroica occidentalis*
Hooded, *Wilsonia citrina*
Kentucky, *Oporornis formosus*
Kirtland's, *Dendroica kirtlandii*
Lanceolated, *Locustella lanceoloata*
Lucy's, *Vermivora luciae*
MacGillivray's, *Oporornis tolmiei*
Magnolia, *Dendroica magnolia*
Mourning, *Oporornis philadelphia*
Nashville, *Vermivora ruficapilla*
Olive, *Peucedramus taeniatus*
Orange-crowned, *Vermivora celata*
Palm, *Dendroica palmarum*
Pine, *Dendroica pinus*
Prairie, *Dendroica discolor*
Prothonotary, *Protonotaria citrea*
Red-faced, *Cardellina rubrifrons*
Rufous-capped, *Basileuterus rufifrons*
Swainson's, *Limnothlypis swainsonii*
Tennessee, *Vermivora peregrina*
Townsend's, *Dendroica townsendi*
Virginia's, *Vermivora virginiae*
Willow, *Phylloscopus trochilus*
Wilson's, *Wilsonia pusilla*
Wood, *Phylloscopus siilatrix*
Worm-eating, *Helmitheros vermivorum*
Yellow, *Dendroica petechia*
Yellow-browed, *Phylloscopus inornatus*
Yellow-rumped, *Dendroica coronata*
Yellow-throated, *Dendroica dominica*
WATERTHRUSH, Louisiana, *Seiurus motacilla*
Northern, *Seiurus noveboracensis*
WAXWING, Bohemian, *Bombycilla garrulus*
Cedar, *Bombycilla cedrorum*
WHEATEAR, Northern, *Oenanthe oenanthe*
WHIMBREL, *Numenius phaeopus*
WHIP-POOR-WILL, *Caprimulgus vociferus*
WHISTLING-DUCK, Black-bellied, *Dendrocygna autumnalis*
Fulvous, *Dendrocygna bicolor*
West Indian, *Dendrocygna arborea*
WHITETHROAT, Lesser, *Sylvia curruca*

WIGEON, American, *Anas americana*
Eurasian, *Anas penelope*
WILLET, *Tringa semipalmata*
WOOD-PEWEE, Eastern, *Contopus virens*
Western, *Contopus sordidulus*
WOODCOCK, American, *Scolopax minor*
Eurasian, *Scolopax rusticola*
WOODPECKER, Acorn, *Melanerpes formicivorus*
American Three-toed, *Picoides dorsalis*
Arizona, *Picoides arizonae*
Black-backed, *Picoides arcticus*
Downy, *Picoides pubescens*
Gila, *Melanerpes uropygialis*
Golden-fronted, *Melanerpes aurifrons*
Great Spotted, *Dendrocopos major*
Hairy, *Picoides villosus*
Ivory-billed, *Campephilus principalis*
Ladder-backed, *Picoides scalaris*
Lewis's, *Melanerpes lewis*
Nuttall's, *Picoides nuttallii*
Pileated, *Dryocopus pileatus*
Puerto Rican, *Melanerpes portoricensis*
Red-bellied, *Melanerpes carolinus*
Red-cockaded, *Picoides borealis*
Red-headed, *Melanerpes erythrocephalus*
[Strickland's (*see* Arizona)]
[Three-toed (*see* American Three-toed)]
White-headed, *Picoides albolarvatus*
WOODSTAR, Bahama, *Calliphlox evelynae*
WREN, Bewick's, *Thryomanes bewickii*
Cactus, *Campylorhynchus brunneicapillus*
Canyon, *Catherpes mexicanus*
Carolina, *Thryothorus ludovicianus*
House, *Troglodytes aedon*
Marsh, *Cistothorus palustris*
Rock, *Salpinctes obsoletus*
Sedge, *Cistothorus platensis*
Winter, *Troglodytes troglodytes*
WRYNECK, Eurasian, *Jynx torquilla*
YELLOWLEGS, Greater, *Tringa melanoleuca*
Lesser, *Tringa flavipes*
YELLOWTHROAT, Common, *Geothlypis trichas*
Gray-crowned, *Geothlypis poliocephala*

(2) *Taxonomic listing.* Species are listed in phylogenetic sequence by scientific name, with the common (English) name following the scientific name. To help clarify species relationships, we also list the higher-level taxonomic categories of Order, Family, and Subfamily.

Order ANSERIFORMES
Family ANATIDAE
Subfamily DENDROCYGNINAE
Dendrocygna autumnalis, Black-bellied Whistling-Duck
Dendrocygna arborea, West Indian Whistling-Duck
Dendrocygna bicolor, Fulvous Whistling-Duck
Subfamily ANSERINAE
Anser fabalis, Taiga Bean-Goose
Anser serrirostris, Tundra Bean-Goose
Anser albifrons, Greater White-fronted Goose
Anser erythropus, Lesser White-fronted Goose
Chen canagica, Emperor Goose
Chen caerulescens, Snow Goose
Chen rossii, Ross's Goose
Branta bernicla, Brant
Branta leucopsis, Barnacle Goose
Branta canadensis, Canada Goose (including *Branta hutchinsii,* Cackling Goose)
Branta sandvicensis, Hawaiian Goose
Cygnus buccinator, Trumpeter Swan
Cygnus columbianus, Tundra Swan
Cygnus cygnus, Whooper Swan
Subfamily ANATINAE
Cairina moschata, Muscovy Duck
Aix sponsa, Wood Duck
Anas strepera, Gadwall
Anas falcata, Falcated Duck
Anas penelope, Eurasian Wigeon
Anas americana, American Wigeon
Anas rubripes, American Black Duck
Anas platyrhynchos, Mallard
Anas fulvigula, Mottled Duck
Anas wyvilliana, Hawaiian Duck
Anas laysanensis, Laysan Duck
Anas poecilorhyncha, Spot-billed Duck
Anas superciliosa, Pacific Black Duck
Anas discors, Blue-winged Teal
Anas cyanoptera, Cinnamon Teal
Anas clypeata, Northern Shoveler
Anas bahamensis, White-cheeked Pintail
Anas acuta, Northern Pintail
Anas querquedula, Garganey
Anas formosa, Baikal Teal
Anas crecca, Green-winged Teal
Aythya valisineria, Canvasback
Aythya americana, Redhead
Aythya ferina, Common Pochard
Aythya baeri, Baer's Pochard
Aythya collaris, Ring-necked Duck
Aythya fuligula, Tufted Duck
Aythya marila, Greater Scaup
Aythya affinis, Lesser Scaup
Polysticta stelleri, Steller's Eider
Somateria fischeri, Spectacled Eider
Somateria spectabilis, King Eider
Somateria mollissima, Common Eider
Histrionicus histrionicus, Harlequin Duck
Melanitta perspicillata, Surf Scoter
Melanitta fusca, White-winged Scoter
Melanitta nigra, Black Scoter
Clangula hyemalis, Long-tailed Duck
Bucephala albeola, Bufflehead
Bucephala clangula, Common Goldeneye
Bucephala islandica, Barrow's Goldeneye
Mergellus albellus, Smew
Lophodytes cucullatus, Hooded Merganser
Mergus merganser, Common Merganser
Mergus serrator, Red-breasted Merganser
Nomonyx dominicus, Masked Duck
Oxyura jamaicensis, Ruddy Duck
Order GAVIIFORMES
Family GAVIIDAE
Gavia stellata, Red-throated Loon
Gavia arctica, Arctic Loon
Gavia pacifica, Pacific Loon
Gavia immer, Common Loon
Gavia adamsii, Yellow-billed Loon
Order PODICIPEDIFORMES
Family PODICIPEDIDAE
Tachybaptus dominicus, Least Grebe
Podilymbus podiceps, Pied-billed Grebe
Podiceps auritus, Horned Grebe
Podiceps grisegena, Red-necked Grebe
Podiceps nigricollis, Eared Grebe
Aechmophorus occidentalis, Western Grebe
Aechmophorus clarkii, Clark's Grebe
Order PROCELLARIIFORMES
Family DIOMEDEIDAE
Thalassarche chlororhynchos, Yellow-nosed Albatross
Thalassarche cauta, Shy Albatross
Thalassarche melanophris, Black-browed Albatross
Phoebetria palpebrata, Light-mantled Albatross
Diomedea exulans, Wandering Albatross
Phoebastria immutabilis, Laysan Albatross
Phoebastria nigripes, Black-footed Albatross
Phoebastria albatrus, Short-tailed Albatross
Family PROCELLARIIDAE
Fulmarus glacialis, Northern Fulmar
Pterodroma macroptera, Great-winged Petrel
Pterodroma neglecta, Kermadec Petrel
Pterodroma arminjoniana, Herald Petrel
Pterodroma ultima, Murphy's Petrel
Pterodroma inexpectata, Mottled Petrel
Pterodroma cahow, Bermuda Petrel
Pterodroma hasitata, Black-capped Petrel
Pterodroma externa, Juan Fernandez Petrel
Pterodroma sandwichensis, Hawaiian Petrel
Pterodroma cervicalis, White-necked Petrel
Pterodroma hypoleuca, Bonin Petrel
Pterodroma nigripennis, Black-winged Petrel
Pterodroma cookii, Cook's Petrel
Pterodroma longirostris, Stejneger's

Petrel
Pterodroma alba, Phoenix Petrel
Pterodroma leucoptera, Gould's Petrel
Pterodroma rostrata, Tahiti Petrel
Bulweria bulwerii, Bulwer's Petrel
Bulweria fallax, Jouanin's Petrel
Calonectris leucomelas, Streaked Shearwater
Calonectris diomedea, Cory's Shearwater
Calonectris edwardsii, Cape Verde Shearwater
Puffinus creatopus, Pink-footed Shearwater
Puffinus carneipes, Flesh-footed Shearwater
Puffinus gravis, Greater Shearwater
Puffinus pacificus, Wedge-tailed Shearwater
Puffinus bulleri, Buller's Shearwater
Puffinus griseus, Sooty Shearwater
Puffinus tenuirostris, Short-tailed Shearwater
Puffinus nativitatis, Christmas Shearwater
Puffinus puffinus, Manx Shearwater
Puffinus auricularis, Townsend's Shearwater
Puffinus opisthomelas, Black-vented Shearwater
Puffinus lherminieri, Audubon's Shearwater
Puffinus assimilis, Little Shearwater
Family HYDROBATIDAE
Oceanites oceanicus, Wilson's Storm-Petrel
Pelagodroma marina, White-faced Storm-Petrel
Fregetta tropica, Black-bellied Storm-Petrel
Fregetta grallaria, White-bellied Storm-Petrel
Nesofregetta fuiginosa, Polynesian Storm-Petrel
Oceanodroma furcata, Fork-tailed Storm-Petrel
Oceanodroma hornbyi, Ringed Storm-Petrel
Oceanodroma leucorhoa, Leach's Storm-Petrel
Oceanodroma homochroa, Ashy Storm-Petrel
Oceanodroma castro, Band-rumped Storm-Petrel
Oceanodroma tethys, Wedge-rumped Storm-Petrel
Oceanodroma matsudairae, Matsudaira's Storm-Petrel
Oceanodroma melania, Black Storm-Petrel
Oceanodroma tristrami, Tristram's Storm-Petrel
Oceanodroma microsoma, Least Storm-Petrel
Order PELECANIFORMES
Family PHAETHONTIDAE
Phaethon lepturus, White-tailed Tropicbird
Phaethon aethereus, Red-billed Tropicbird
Phaethon rubricauda, Red-tailed Tropicbird
Family SULIDAE
Sula dactylatra, Masked Booby
Sula nebouxii, Blue-footed Booby
Sula leucogaster, Brown Booby
Sula sula, Red-footed Booby
Morus bassanus, Northern Gannet
Family PELECANIDAE
Pelecanus erythrorhynchos, American White Pelican
Pelecanus occidentalis, Brown Pelican
Family PHALACROCORACIDAE
Phalacrocorax melanoleucos, Little Pied Cormorant
Phalacrocorax penicillatus, Brandt's Cormorant
Phalacrocorax brasilianus, Neotropic Cormorant
Phalacrocorax auritus, Double-crested Cormorant
Phalacrocorax carbo, Great Cormorant
Phalacrocorax urile, Red-faced Cormorant
Phalacrocorax pelagicus, Pelagic Cormorant
Family ANHINGIDAE
Anhinga anhinga, Anhinga
Family FREGATIDAE
Fregata magnificens, Magnificent Frigatebird
Fregata minor, Great Frigatebird
Fregata ariel, Lesser Frigatebird
Order CICONIIFORMES
Family ARDEIDAE
Botaurus lentiginosus, American Bittern
Ixobrychus sinensis, Yellow Bittern
Ixobrychus exilis, Least Bittern
Ixobrychus eurhythmus, Schrenck's Bittern
Ixobrychus flavicollis, Black Bittern
Ardea herodias, Great Blue Heron
Ardea cinerea, Gray Heron
Ardea alba, Great Egret
Mesophoyx intermedia, Intermediate Egret
Egretta eulophotes, Chinese Egret
Egretta garzetta, Little Egret
Egretta sacra, Pacific Reef-Egret
Egretta gularis, Western Reef-Heron
Egretta thula, Snowy Egret
Egretta caerulea, Little Blue Heron
Egretta tricolor, Tricolored Heron
Egretta rufescens, Reddish Egret
Bubulcus ibis, Cattle Egret
Ardeola bacchus, Chinese Pond-Heron
Butorides virescens, Green Heron
Nycticorax nycticorax, Black-crowned Night-Heron
Nyctanassa violacea, Yellow-crowned Night-Heron
Gorsachius goisagi, Japanese Night-Heron
Gorsachius melanolophus, Malayan Night-Heron
Family THRESKIORNITHIDAE
Subfamily THRESKIORNITHINAE
Eudocimus albus, White Ibis
Eudocimus ruber, Scarlet Ibis
Plegadis falcinellus, Glossy Ibis
Plegadis chihi, White-faced Ibis
Subfamily PLATALEINAE
Platalea ajaja, Roseate Spoonbill
Family CICONIIDAE
Jabiru mycteria, Jabiru
Mycteria americana, Wood Stork
Order PHOENICOPTERIFORMES
Family PHOENICOPTERIDAE
Phoenicopterus ruber, Greater Flamingo
Order FALCONIFORMES
Family CATHARTIDAE
Coragyps atratus, Black Vulture
Cathartes aura, Turkey Vulture
Gymnogyps californianus, California Condor
Family ACCIPITRIDAE
Subfamily PANDIONINAE
Pandion haliaetus, Osprey
Subfamily ACCIPITRINAE
Chondrohierax uncinatus, Hook-billed Kite
Elanoides forficatus, Swallow-tailed Kite
Elanus leucurus, White-tailed Kite
Rostrhamus sociabilis, Snail Kite
Ictinia mississippiensis, Mississippi Kite
Milvus migrans, Black Kite
Haliaeetus leucocephalus, Bald Eagle
Haliaeetus albicilla, White-tailed Eagle
Haliaeetus pelagicus, Steller's Sea-Eagle
Circus cyaneus, Northern Harrier
Accipiter soloensis, Gray Frog-Hawk
Accipiter gularis, Japanese Sparrowhawk
Accipiter striatus, Sharp-shinned Hawk
Accipiter cooperii, Cooper's Hawk
Accipiter gentilis, Northern Goshawk
Geranospiza caerulescens, Crane Hawk
Buteogallus anthracinus, Common Black-Hawk
Parabuteo unicinctus, Harris's Hawk
Buteo magnirostris, Roadside Hawk
Buteo lineatus, Red-shouldered Hawk
Buteo platypterus, Broad-winged Hawk
Buteo nitidus, Gray Hawk
Buteo brachyurus, Short-tailed Hawk
Buteo swainsoni, Swainson's Hawk
Buteo albicaudatus, White-tailed Hawk
Buteo albonotatus, Zone-tailed Hawk
Buteo solitarius, Hawaiian Hawk
Buteo jamaicensis, Red-tailed Hawk
Buteo regalis, Ferruginous Hawk
Buteo lagopus, Rough-legged Hawk
Aquila chrysaetos, Golden Eagle
Family FALCONIDAE
Subfamily MICRASTURINAE

Micrastur semitorquatus, Collared Forest-Falcon
Subfamily CARACARINAE
Caracara cheriway, Crested Caracara
Subfamily FALCONINAE
Falco tinnunculus, Eurasian Kestrel
Falco sparverius, American Kestrel
Falco vespertinus, Red-footed Falcon
Falco columbarius, Merlin
Falco subbuteo, Eurasian Hobby
Falco femoralis, Aplomado Falcon
Falco rusticolus, Gyrfalcon
Falco peregrinus, Peregrine Falcon
Falco mexicanus, Prairie Falcon
Order GRUIFORMES
Family RALLIDAE
Coturnicops noveboracensis, Yellow Rail
Laterallus jamaicensis, Black Rail
Gallirallus philippensis, Buff-banded Rail
Gallirallus owstoni, Guam Rail
Crex crex, Corn Crake
Rallus longirostris, Clapper Rail
Rallus elegans, King Rail
Rallus limicola, Virginia Rail
Porzana carolina, Sora
Porzana tabuensis, Spotless Crake
Porzana flaviventer, Yellow-breasted Crake
Neocrex erythrops, Paint-billed Crake
Pardirallus maculatus, Spotted Rail
Porphyrio martinica, Purple Gallinule
Porphyrio porphyrio, Purple Swamphen
Porphyrio flavirostris, Azure Gallinule
Gallinula chloropus, Common Moorhen
Fulica atra, Eurasian Coot
Fulica alai, Hawaiian Coot
Fulica americana, American Coot
Fulica caribaea, Caribbean Coot
Family ARAMIDAE
Aramus guarauna, Limpkin
Family GRUIDAE
Grus canadensis, Sandhill Crane
Grus grus, Common Crane
Grus americana, Whooping Crane
Order CHARADRIIFORMES
Family CHARADRIIDAE
Subfamily VANELLINAE
Vanellus vanellus, Northern Lapwing
Subfamily CHARADRIINAE
Pluvialis squatarola, Black-bellied Plover
Pluvialis apricaria, European Golden-Plover
Pluvialis dominica, American Golden-Plover
Pluvialis fulva, Pacific Golden-Plover
Charadrius mongolus, Lesser Sand-Plover
Charadrius leschenaultii, Greater Sand-Plover
Charadrius collaris, Collared Plover
Charadrius alexandrinus, Snowy Plover
Charadrius wilsonia, Wilson's Plover
Charadrius hiaticula, Common Ringed Plover
Charadrius semipalmatus, Semipalmated Plover
Charadrius melodus, Piping Plover
Charadrius dubius, Little Ringed Plover
Charadrius vociferus, Killdeer
Charadrius montanus, Mountain Plover
Charadrius morinellus, Eurasian Dotterel
Family HAEMATOPODIDAE
Haematopus ostralegus, Eurasian Oystercatcher
Haematopus palliatus, American Oystercatcher
Haematopus bachmani, Black Oystercatcher
Family RECURVIROSTRIDAE
Himantopus himantopus, Black-winged Stilt
Himantopus mexicanus, Black-necked Stilt
Recurvirostra americana, American Avocet
Family JACANIDAE
Jacana spinosa, Northern Jacana
Family SCOLOPACIDAE
Subfamily SCOLOPACINAE
Xenus cinereus, Terek Sandpiper
Actitis hypoleucos, Common Sandpiper
Actitis macularius, Spotted Sandpiper
Tringa ochropus, Green Sandpiper
Tringa solitaria, Solitary Sandpiper
Tringa brevipes, Gray-tailed Tattler
Tringa incana, Wandering Tattler
Tringa erythropus, Spotted Redshank
Tringa melanoleuca, Greater Yellowlegs
Tringa nebularia, Common Greenshank
Tringa guttifer, Nordmann's Greenshank
Tringa semipalmata, Willet
Tringa flavipes, Lesser Yellowlegs
Tringa stagnatilis, Marsh Sandpiper
Tringa glareola, Wood Sandpiper
Bartramia longicauda, Upland Sandpiper
Numenius minutus, Little Curlew
Numenius borealis, Eskimo Curlew
Numenius phaeopus, Whimbrel
Numenius tahitiensis, Bristle-thighed Curlew
Numenius madagascariensis, Far Eastern Curlew
Numenius arquata, Eurasian Curlew
Numenius americanus, Long-billed Curlew
Limosa limosa, Black-tailed Godwit
Limosa haemastica, Hudsonian Godwit
Limosa lapponica, Bar-tailed Godwit
Limosa fedoa, Marbled Godwit
Arenaria interpres, Ruddy Turnstone
Arenaria melanocephala, Black Turnstone
Aphriza virgata, Surfbird
Calidris tenuirostris, Great Knot
Calidris canutus, Red Knot
Calidris alba, Sanderling
Calidris pusilla, Semipalmated Sandpiper
Calidris mauri, Western Sandpiper
Calidris ruficollis, Red-necked Stint
Calidris minuta, Little Stint
Calidris temminckii, Temminck's Stint
Calidris subminuta, Long-toed Stint
Calidris minutilla, Least Sandpiper
Calidris fuscicollis, White-rumped Sandpiper
Calidris bairdii, Baird's Sandpiper
Calidris melanotos, Pectoral Sandpiper
Calidris acuminata, Sharp-tailed Sandpiper
Calidris maritima, Purple Sandpiper
Calidris ptilocnemis, Rock Sandpiper
Calidris alpina, Dunlin
Calidris ferruginea, Curlew Sandpiper
Calidris himantopus, Stilt Sandpiper
Eurynorhynchus pygmeus, Spoon-billed Sandpiper
Limicola falcinellus, Broad-billed Sandpiper
Tryngites subruficollis, Buff-breasted Sandpiper
Philomachus pugnax, Ruff
Limnodromus griseus, Short-billed Dowitcher
Limnodromus scolopaceus, Long-billed Dowitcher
Lymnocryptes minimus, Jack Snipe
Gallinago delicata, Wilson's Snipe (the "common" snipe hunted in most of the U.S.)
Gallinago gallinago, Common Snipe (rare in western Alaska; also *see Gallinago delicata*)
Gallinago stenura, Pin-tailed Snipe
Gallinago megala, Swinhoe's Snipe
Scolopax rusticola, Eurasian Woodcock
Scolopax minor, American Woodcock
Subfamily PHALAROPODINAE
Phalaropus tricolor, Wilson's Phalarope
Phalaropus lobatus, Red-necked Phalarope
Phalaropus fulicarius, Red Phalarope
Family LARIDAE
Subfamily LARINAE
Larus atricilla, Laughing Gull
Larus pipixcan, Franklin's Gull
Larus minutus, Little Gull
Larus ridibundus, Black-headed Gull
Larus philadelphia, Bonaparte's Gull
Larus heermanni, Heermann's Gull
Larus cirrocephalus, Gray-hooded Gull
Larus belcheri, Belcher's Gull
Larus crassirostris, Black-tailed Gull
Larus canus, Mew Gull
Larus delawarensis, Ring-billed Gull
Larus californicus, California Gull
Larus argentatus, Herring Gull

Larus michahellis, Yellow-legged Gull
Larus thayeri, Thayer's Gull
Larus glaucoides, Iceland Gull
Larus fuscus, Lesser Black-backed Gull
Larus schistisagus, Slaty-backed Gull
Larus livens, Yellow-footed Gull
Larus occidentalis, Western Gull
Larus glaucescens, Glaucous-winged Gull
Larus hyperboreus, Glaucous Gull
Larus marinus, Great Black-backed Gull
Larus dominicanus, Kelp Gull
Xema sabini, Sabine's Gull
Rissa tridactyla, Black-legged Kittiwake
Rissa brevirostris, Red-legged Kittiwake
Rhodostethia rosea, Ross's Gull
Pagophila eburnea, Ivory Gull
Subfamily STERNINAE
Anous stolidus, Brown Noddy
Anous minutus, Black Noddy
Procelsterna cerulea, Blue-gray Noddy
Gygis alba, White Tern
Onychoprion fuscatus, Sooty Tern
Onychoprion lunatus, Gray-backed Tern
Onychoprion anaethetus, Bridled Tern
Onychoprion aleuticus, Aleutian Tern
Sternula albifrons, Little Tern
Sternula antillarum, Least Tern
Phaetusa simplex, Large-billed Tern
Gelochelidon nilotica, Gull-billed Tern
Hydroprogne caspia, Caspian Tern
Chlidonias niger, Black Tern
Chlidonias leucopterus, White-winged Tern
Chlidonias hybridus, Whiskered Tern
Sterna dougallii, Roseate Tern
Sterna hirundo, Common Tern
Sterna paradisaea, Arctic Tern
Sterna forsteri, Forster's Tern
Sterna sumatrana, Black-naped Tern
Thalasseus maximus, Royal Tern
Thalasseus bergii, Great Crested Tern
Thalasseus sandvicensis, Sandwich Tern
Thalasseus elegans, Elegant Tern
Subfamily RYNCHOPINAE
Rynchops niger, Black Skimmer
Family STERCORARIIDAE
Stercorarius skua, Great Skua
Stercorarius maccormicki, South Polar Skua
Stercorarius pomarinus, Pomarine Jaeger
Stercorarius parasiticus, Parasitic Jaeger
Stercorarius longicaudus, Long-tailed Jaeger
Family ALCIDAE
Alle alle, Dovekie
Uria aalge, Common Murre
Uria lomvia, Thick-billed Murre
Alca torda, Razorbill
Cepphus grylle, Black Guillemot
Cepphus columba, Pigeon Guillemot
Brachyramphus perdix, Long-billed Murrelet
Brachyramphus marmoratus, Marbled Murrelet
Brachyramphus brevirostris, Kittlitz's Murrelet
Synthliboramphus hypoleucus, Xantus's Murrelet
Synthliboramphus craveri, Craveri's Murrelet
Synthliboramphus antiquus, Ancient Murrelet
Ptychoramphus aleuticus, Cassin's Auklet
Aethia psittacula, Parakeet Auklet
Aethia pusilla, Least Auklet
Aethia pygmaea, Whiskered Auklet
Aethia cristatella, Crested Auklet
Cerorhinca monocerata, Rhinoceros Auklet
Fratercula arctica, Atlantic Puffin
Fratercula corniculata, Horned Puffin
Fratercula cirrhata, Tufted Puffin
Order COLUMBIFORMES
Family COLUMBIDAE
Patagioenas squamosa, Scaly-naped Pigeon
Patagioenas leucocephala, White-crowned Pigeon
Patagioenas flavirostris, Red-billed Pigeon
Patagioenas inornata, Plain Pigeon
Patagioenas fasciata, Band-tailed Pigeon
Streptopelia orientalis, Oriental Turtle-Dove
Zenaida asiatica, White-winged Dove
Zenaida aurita, Zenaida Dove
Zenaida macroura, Mourning Dove
Columbina inca, Inca Dove
Columbina passerina, Common Ground-Dove
Columbina talpacoti, Ruddy Ground-Dove
Leptotila verreauxi, White-tipped Dove
Geotrygon chrysia, Key West Quail-Dove
Geotrygon mystacea, Bridled Quail-Dove
Geotrygon montana, Ruddy Quail-Dove
Gallicolumba xanthonura, White-throated Ground-Dove
Gallicolumba stairi, Friendly Ground-Dove
Ptilinopus perousii, Many-colored Fruit-Dove
Ptilinopus roseicapilla, Mariana Fruit-Dove
Ptilinopus porphyraceus, Crimson-crowned Fruit-Dove
Ducula pacifica, Pacific Imperial-Pigeon
Order CUCULIFORMES
Family CUCULIDAE
Subfamily CUCULINAE
Cuculus canorus, Common Cuckoo
Cuculus optatus, Oriental Cuckoo
Cuculus fugax, Hodgson's Hawk-Cuckoo
Coccyzus americanus, Yellow-billed Cuckoo
Coccyzus minor, Mangrove Cuckoo
Coccyzus erythropthalmus, Black-billed Cuckoo
Coccyzus vieilloti, Puerto Rican Lizard-Cuckoo
Subfamily NEOMORPHINAE
Geococcyx californianus, Greater Roadrunner
Subfamily CROTOPHAGINAE
Crotophaga ani, Smooth-billed Ani
Crotophaga sulcirostris, Groove-billed Ani
Order STRIGIFORMES
Family TYTONIDAE
Tyto alba, Barn Owl
Family STRIGIDAE
Otus flammeolus, Flammulated Owl
Otus sunia, Oriental Scops-Owl
Megascops kennicottii, Western Screech-Owl
Megascops asio, Eastern Screech-Owl
Megascops trichopsis, Whiskered Screech-Owl
Megascops nudipes, Puerto Rican Screech-Owl
Bubo virginianus, Great Horned Owl
Bubo scandiacus, Snowy Owl
Surnia ulula, Northern Hawk Owl
Glaucidium gnoma, Northern Pygmy-Owl
Glaucidium brasilianum, Ferruginous Pygmy-Owl
Micrathene whitneyi, Elf Owl
Athene cunicularia, Burrowing Owl
Ciccaba virgata, Mottled Owl
Strix occidentalis, Spotted Owl
Strix varia, Barred Owl
Strix nebulosa, Great Gray Owl
Asio otus, Long-eared Owl
Asio stygius, Stygian Owl
Asio flammeus, Short-eared Owl
Aegolius funereus, Boreal Owl
Aegolius acadicus, Northern Saw-whet Owl
Order CAPRIMULGIFORMES
Family CAPRIMULGIDAE
Subfamily CHORDEILINAE
Chordeiles acutipennis, Lesser Nighthawk
Chordeiles minor, Common Nighthawk
Chordeiles gundlachii, Antillean Nighthawk
Subfamily CAPRIMULGINAE
Nyctidromus albicollis, Common Pauraque
Phalaenoptilus nuttallii, Common Poorwill
Caprimulgus carolinensis, Chuck-will's-widow
Caprimulgus ridgwayi, Buff-collared Nightjar

Caprimulgus vociferus, Whip-poor-will
Caprimulgus noctitherus, Puerto Rican Nightjar
Caprimulgus indicus, Gray Nightjar
Order APODIFORMES
Family APODIDAE
Subfamily CYPSELOIDINAE
Cypseloides niger, Black Swift
Streptoprocne zonaris, White-collared Swift
Subfamily CHAETURINAE
Chaetura pelagica, Chimney Swift
Chaetura vauxi, Vaux's Swift
Chaetura brachyura, Short-tailed Swift
Hirundapus caudacutus, White-throated Needletail
Aerodramus spodiopygius, White-rumped Swiftlet
Aerodramus bartschi, Mariana Swiftlet
Subfamily APODINAE
Apus apus, Common Swift
Apus pacificus, Fork-tailed Swift
Apus melba, Alpine Swift
Aeronautes saxatalis, White-throated Swift
Tachornis phoenicobia, Antillean Palm-Swift
Family TROCHILIDAE
Subfamily TROCHILINAE
Colibri thalassinus, Green Violet-ear
Anthracothorax prevostii, Green-breasted Mango
Anthracothorax dominicus, Antillean Mango
Anthracothorax viridis, Green Mango
Eulampis jugularis, Purple-throated Carib
Eulampis holosericeus, Green-throated Carib
Orthorhyncus cristatus, Antillean Crested Hummingbird
Chlorostilbon maugaeus, Puerto Rican Emerald
Cynanthus latirostris, Broad-billed Hummingbird
Hylocharis leucotis, White-eared Hummingbird
Hylocharis xantusii, Xantus's Hummingbird
Amazilia beryllina, Berylline Hummingbird
Amazilia yucatanensis, Buff-bellied Hummingbird
Amazilia rutila, Cinnamon Hummingbird
Amazilia violiceps, Violet-crowned Hummingbird
Lampornis clemenciae, Blue-throated Hummingbird
Eugenes fulgens, Magnificent Hummingbird
Heliomaster constantii, Plain-capped Starthroat
Calliphlox evelynae, Bahama Woodstar
Calothorax lucifer, Lucifer Hummingbird
Archilochus colubris, Ruby-throated Hummingbird
Archilochus alexandri, Black-chinned Hummingbird
Calypte anna, Anna's Hummingbird
Calypte costae, Costa's Hummingbird
Stellula calliope, Calliope Hummingbird
Atthis heloisa, Bumblebee Hummingbird
Selasphorus platycercus, Broad-tailed Hummingbird
Selasphorus rufus, Rufous Hummingbird
Selasphorus sasin, Allen's Hummingbird
Order TROGONIFORMES
Family TROGONIDAE
Subfamily TROGONINAE
Trogon elegans, Elegant Trogon
Euptilotis neoxenus, Eared Quetzel
Order UPUPIFORMES
Family UPUPIDAE
Upupa epops, Eurasian Hoopoe
Order CORACIIFORMES
Family ALCEDINIDAE
Subfamily HALCYONINAE
Todirhamphus cinnamominus, Micronesian Kingfisher
Todirhamphus chloris, Collared Kingfisher
Subfamily CERYLINAE
Megaceryle torquata, Ringed Kingfisher
Megaceryle alcyon, Belted Kingfisher
Chloroceryle americana, Green Kingfisher
Order PICIFORMES
Family PICIDAE
Subfamily JYNGINAE
Jynx torquilla, Eurasian Wryneck
Subfamily PICINAE
Melanerpes lewis, Lewis's Woodpecker
Melanerpes portoricensis, Puerto Rican Woodpecker
Melanerpes erythrocephalus, Red-headed Woodpecker
Melanerpes formicivorus, Acorn Woodpecker
Melanerpes uropygialis, Gila Woodpecker
Melanerpes aurifrons, Golden-fronted Woodpecker
Melanerpes carolinus, Red-bellied Woodpecker
Sphyrapicus thyroideus, Williamson's Sapsucker
Sphyrapicus varius, Yellow-bellied Sapsucker
Sphyrapicus nuchalis, Red-naped Sapsucker
Sphyrapicus ruber, Red-breasted Sapsucker
Dendrocopos major, Great Spotted Woodpecker
Picoides scalaris, Ladder-backed Woodpecker
Picoides nuttallii, Nuttall's Woodpecker
Picoides pubescens, Downy Woodpecker
Picoides villosus, Hairy Woodpecker
Picoides arizonae, Arizona Woodpecker
Picoides borealis, Red-cockaded Woodpecker
Picoides albolarvatus, White-headed Woodpecker
Picoides dorsalis, American Three-toed Woodpecker
Picoides arcticus, Black-backed Woodpecker
Colaptes auratus, Northern Flicker
Colaptes chrysoides, Gilded Flicker
Dryocopus pileatus, Pileated Woodpecker
Campephilus principalis, Ivory-billed Woodpecker
Order PASSERIFORMES
Family TYRANNIDAE
Subfamily ELAENIINAE
Camptostoma imberbe, Northern Beardless-Tyrannulet
Myiopagis viridicata, Greenish Elaenia
Elaenia martinica, Caribbean Elaenia
Subfamily FLUVICOLINAE
Mitrephanes phaeocercus, Tufted Flycatcher
Contopus cooperi, Olive-sided Flycatcher
Contopus pertinax, Greater Pewee
Contopus sordidulus, Western Wood-Pewee
Contopus virens, Eastern Wood-Pewee
Contopus caribaeus, Cuban Pewee
Contopus hispaniolensis, Hispaniolan Pewee
Contopus latirostris, Lesser Antillean Pewee
Empidonax flaviventris, Yellow-bellied Flycatcher
Empidonax virescens, Acadian Flycatcher
Empidonax alnorum, Alder Flycatcher
Empidonax traillii, Willow Flycatcher
Empidonax minimus, Least Flycatcher
Empidonax hammondii, Hammond's Flycatcher
Empidonax wrightii, Gray Flycatcher
Empidonax oberholseri, Dusky Flycatcher
Empidonax difficilis, Pacific-slope Flycatcher
Empidonax occidentalis, Cordilleran Flycatcher
Empidonax fulvifrons, Buff-breasted Flycatcher
Sayornis nigricans, Black Phoebe
Sayornis phoebe, Eastern Phoebe
Sayornis saya, Say's Phoebe
Pyrocephalus rubinus, Vermilion Flycatcher
Subfamily TYRANNINAE

Myiarchus tuberculifer, Dusky-capped Flycatcher
Myiarchus cinerascens, Ash-throated Flycatcher
Myiarchus nuttingi, Nutting's Flycatcher
Myiarchus crinitus, Great Crested Flycatcher
Myiarchus tyrannulus, Brown-crested Flycatcher
Myiarchus sagrae, La Sagra's Flycatcher
Myiarchus antillarum, Puerto Rican Flycatcher
Pitangus sulphuratus, Great Kiskadee
Myiozetetes similis, Social Flycatcher
Myiodynastes luteiventris, Sulphur-bellied Flycatcher
Legatus leucophalus, Piratic Flycatcher
Empidonomus varius, Variegated Flycatcher
Tyrannus melancholicus, Tropical Kingbird
Tyrannus couchii, Couch's Kingbird
Tyrannus vociferans, Cassin's Kingbird
Tyrannus crassirostris, Thick-billed Kingbird
Tyrannus verticalis, Western Kingbird
Tyrannus tyrannus, Eastern Kingbird
Tyrannus dominicensis, Gray Kingbird
Tyrannus caudifasciatus, Loggerhead Kingbird
Tyrannus forficatus, Scissor-tailed Flycatcher
Tyrannus savana, Fork-tailed Flycatcher
Pachyramphus aglaiae, Rose-throated Becard
Tityra semifasciata, Masked Tityra
Family LANIIDAE
Lanius cristatus, Brown Shrike
Lanius ludovicianus, Loggerhead Shrike
Lanius excubitor, Northern Shrike
Family VIREONIDAE
Vireo griseus, White-eyed Vireo
Vireo crassirostris, Thick-billed Vireo
Vireo latimeri, Puerto Rican Vireo
Vireo bellii, Bell's Vireo
Vireo atricapillus, Black-capped Vireo
Vireo vicinior, Gray Vireo
Vireo flavifrons, Yellow-throated Vireo
Vireo plumbeus, Plumbeous Vireo
Vireo cassinii, Cassin's Vireo
Vireo solitarius, Blue-headed Vireo
Vireo huttoni, Hutton's Vireo
Vireo gilvus, Warbling Vireo
Vireo philadelphicus, Philadelphia Vireo
Vireo olivaceus, Red-eyed Vireo
Vireo flavoviridis, Yellow-green Vireo
Vireo altiloquus, Black-whiskered Vireo
Vireo magister, Yucatan Vireo
Family CORVIDAE
Perisoreus canadensis, Gray Jay
Cyanocitta stelleri, Steller's Jay
Cyanocitta cristata, Blue Jay
Cyanocorax yncas, Green Jay
Cyanocorax morio, Brown Jay
Aphelocoma coerulescens, Florida Scrub-Jay
Aphelocoma insularis, Island Scrub-Jay
Aphelocoma californica, Western Scrub-Jay
Aphelocoma ultramarina, Mexican Jay
Gymnorhinus cyanocephalus, Pinyon Jay
Nucifraga columbiana, Clark's Nutcracker
Pica hudsonia, Black-billed Magpie
Pica nuttalli, Yellow-billed Magpie
Corvus kubaryi, Mariana Crow
Corvus brachyrhynchos, American Crow
Corvus caurinus, Northwestern Crow
Corvus leucognaphalus, White-necked Crow
Corvus imparatus, Tamaulipas Crow
Corvus ossifragus, Fish Crow
Corvus hawaiiensis, Hawaiian Crow
Corvus cryptoleucus, Chihuahuan Raven
Corvus corax, Common Raven
Family ALAUDIDAE
Alauda arvensis, Sky Lark
Eremophila alpestris, Horned Lark
Family HIRUNDINIDAE
Subfamily HIRUNDININAE
Progne subis, Purple Martin
Progne cryptoleuca, Cuban Martin
Progne dominicensis, Caribbean Martin
Progne chalybea, Gray-breasted Martin
Progne elegans, Southern Martin
Progne tapera, Brown-chested Martin
Tachycineta bicolor, Tree Swallow
Tachycineta albilinea, Mangrove Swallow
Tachycineta thalassina, Violet-green Swallow
Tachycineta cyaneoviridis, Bahama Swallow
Stelgidopteryx serripennis, Northern Rough-winged Swallow
Riparia riparia, Bank Swallow
Petrochelidon pyrrhonota, Cliff Swallow
Petrochelidon fulva, Cave Swallow
Hirundo rustica, Barn Swallow
Delichon urbicum, Common House-Martin
Family PARIDAE
Poecile carolinensis, Carolina Chickadee
Poecile atricapillus, Black-capped Chickadee
Poecile gambeli, Mountain Chickadee
Poecile sclateri, Mexican Chickadee
Poecile rufescens, Chestnut-backed Chickadee
Poecile hudsonica, Boreal Chickadee
Poecile cincta, Gray-headed Chickadee
Baeolophus wollweberi, Bridled Titmouse
Baeolophus inornatus, Oak Titmouse
Baeolophus ridgwayi, Juniper Titmouse
Baeolophus bicolor, Tufted Titmouse
Baeolophus atricristatus, Black-crested Titmouse
Family REMIZIDAE
Auriparus flaviceps, Verdin
Family AEGITHALIDAE
Psaltriparus minimus, Bushtit
Family SITTIDAE
Subfamily SITTINAE
Sitta canadensis, Red-breasted Nuthatch
Sitta carolinensis, White-breasted Nuthatch
Sitta pygmaea, Pygmy Nuthatch
Sitta pusilla, Brown-headed Nuthatch
Family CERTHIIDAE
Subfamily CERTHIINAE
Certhia americana, Brown Creeper
Family TROGLODYTIDAE
Campylorhynchus brunneicapillus, Cactus Wren
Salpinctes obsoletus, Rock Wren
Catherpes mexicanus, Canyon Wren
Thryothorus ludovicianus, Carolina Wren
Thryomanes bewickii, Bewick's Wren
Troglodytes aedon, House Wren
Troglodytes troglodytes, Winter Wren
Cistothorus platensis, Sedge Wren
Cistothorus palustris, Marsh Wren
Family CINCLIDAE
Cinclus mexicanus, American Dipper
Family REGULIDAE
Regulus satrapa, Golden-crowned Kinglet
Regulus calendula, Ruby-crowned Kinglet
Family SYLVIIDAE
Subfamily SYLVIINAE
Locustella ochotensis, Middendorff's Grasshopper-Warbler
Locustella lanceolata, Lanceolated Warbler
Acrocephalus luscinia, Nightingale Reed-Warbler
Acrocephalus familiaris, Millerbird
Phylloscopus trochilus, Willow Warbler
Phylloscopus sibilatrix, Wood Warbler
Phylloscopus fuscatus, Dusky Warbler
Phylloscopus inornatus, Yellow-browed Warbler
Phylloscopus borealis, Arctic Warbler
Sylvia curruca, Lesser Whitethroat
Subfamily POLIOPTILINAE
Polioptila caerulea, Blue-gray Gnatcatcher
Polioptila californica, California Gnatcatcher
Polioptila melanura, Black-tailed

Gnatcatcher
Polioptila nigriceps, Black-capped Gnatcatcher
Family MUSCICAPIDAE
Ficedula narcissina, Narcissus Flycatcher
Muscicapa griseisticta, Gray-streaked Flycatcher
Family TURDIDAE
Luscinia calliope, Siberian Rubythroat
Luscinia svecica, Bluethroat
Luscinia cyane, Siberian Blue Robin
Monticola solitarius, Blue Rock Thrush
Tarsiger cyanurus, Red-flanked Bluetail
Oenanthe oenanthe, Northern Wheatear
Saxicola torquatus, Stonechat
Sialia sialis, Eastern Bluebird
Sialia mexicana, Western Bluebird
Sialia currucoides, Mountain Bluebird
Myadestes townsendi, Townsend's Solitaire
Myadestes myadestinus, Kamao
Myadestes lanaiensis, Olomao
Myadestes obscurus, Omao
Myadestes palmeri, Puaiohi
Catharus aurantiirostris, Orange-billed Nightingale-Thrush
Catharus mexicanus, Black-headed Nightingale-Thrush
Catharus fuscescens, Veery
Catharus minimus, Gray-cheeked Thrush
Catharus bicknelli, Bicknell's Thrush
Catharus ustulatus, Swainson's Thrush
Catharus guttatus, Hermit Thrush
Hylocichla mustelina, Wood Thrush
Turdus obscurus, Eyebrowed Thrush
Turdus naumanni, Dusky Thrush
Turdus pilaris, Fieldfare
Turdus grayi, Clay-colored Robin
Turdus assimilis, White-throated Robin
Turdus rufopalliatus, Rufous-backed Robin
Turdus migratorius, American Robin
Turdus plumbeus, Red-legged Thrush
Ixoreus naevius, Varied Thrush
Ridgwayia pinicola, Aztec Thrush
Family MIMIDAE
Dumetella carolinensis, Gray Catbird
Melanoptila glabrirostris, Black Catbird
Mimus polyglottos, Northern Mockingbird
Mimus gundlachii, Bahama Mockingbird
Oreoscoptes montanus, Sage Thrasher
Toxostoma rufum, Brown Thrasher
Toxostoma longirostre, Long-billed Thrasher
Toxostoma bendirei, Bendire's Thrasher
Toxostoma curvirostre, Curve-billed Thrasher
Toxostoma redivivum, California Thrasher
Toxostoma crissale, Crissal Thrasher
Toxostoma lecontei, Le Conte's Thrasher
Melanotis caerulescens, Blue Mockingbird
Margarops fuscatus, Pearly-eyed Thrasher
Family STURNIDAE
Sturnus philippensis, Chestnut-cheeked Starling
Sturnus cineraceus, White-cheeked Starling
Family PRUNELLIDAE
Prunella montanella, Siberian Accentor
Family MOTACILLIDAE
Motacilla tschutschensis, Eastern Yellow Wagtail
Motacilla citreola, Citrine Wagtail
Motacilla cinerea, Gray Wagtail
Motacilla alba, White Wagtail
Anthus trivialis, Tree Pipit
Anthus hodgsoni, Olive-backed Pipit
Anthus gustavi, Pechora Pipit
Anthus cervinus, Red-throated Pipit
Anthus rubescens, American Pipit
Anthus spragueii, Sprague's Pipit
Family BOMBYCILLIDAE
Bombycilla garrulus, Bohemian Waxwing
Bombycilla cedrorum, Cedar Waxwing
Family PTILOGONATIDAE
Ptilogonys cinereus, Gray Silky-flycatcher
Phainopepla nitens, Phainopepla
Family PEUCEDRAMIDAE
Peucedramus taeniatus, Olive Warbler
Family PARULIDAE
Vermivora bachmanii, Bachman's Warbler
Vermivora pinus, Blue-winged Warbler
Vermivora chrysoptera, Golden-winged Warbler
Vermivora peregrina, Tennessee Warbler
Vermivora celata, Orange-crowned Warbler
Vermivora ruficapilla, Nashville Warbler
Vermivora virginiae, Virginia's Warbler
Vermivora crissalis, Colima Warbler
Vermivora luciae, Lucy's Warbler
Parula superciliosa, Crescent-chested Warbler
Parula americana, Northern Parula
Parula pitiayumi, Tropical Parula
Dendroica petechia, Yellow Warbler
Dendroica pensylvanica, Chestnut-sided Warbler
Dendroica magnolia, Magnolia Warbler
Dendroica tigrina, Cape May Warbler
Dendroica caerulescens, Black-throated Blue Warbler
Dendroica coronata, Yellow-rumped Warbler
Dendroica nigrescens, Black-throated Gray Warbler
Dendroica chrysoparia, Golden-cheeked Warbler
Dendroica virens, Black-throated Green Warbler
Dendroica townsendi, Townsend's Warbler
Dendroica occidentalis, Hermit Warbler
Dendroica fusca, Blackburnian Warbler
Dendroica dominica, Yellow-throated Warbler
Dendroica graciae, Grace's Warbler
Dendroica adelaidae, Adelaide's Warbler
Dendroica pinus, Pine Warbler
Dendroica kirtlandii, Kirtland's Warbler
Dendroica discolor, Prairie Warbler
Dendroica palmarum, Palm Warbler
Dendroica castanea, Bay-breasted Warbler
Dendroica striata, Blackpoll Warbler
Dendroica cerulea, Cerulean Warbler
Dendroica angelae, Elfin-woods Warbler
Mniotilta varia, Black-and-white Warbler
Setophaga ruticilla, American Redstart
Protonotaria citrea, Prothonotary Warbler
Helmitheros vermivorum, Worm-eating Warbler
Limnothlypis swainsonii, Swainson's Warbler
Seiurus aurocapilla, Ovenbird
Seiurus noveboracensis, Northern Waterthrush
Seiurus motacilla, Louisiana Waterthrush
Oporornis formosus, Kentucky Warbler
Oporornis agilis, Connecticut Warbler
Oporornis philadelphia, Mourning Warbler
Oporornis tolmiei, MacGillivray's Warbler
Geothlypis trichas, Common Yellowthroat
Geothlypis poliocephala, Gray-crowned Yellowthroat
Wilsonia citrina, Hooded Warbler
Wilsonia pusilla, Wilson's Warbler
Wilsonia canadensis, Canada Warbler
Cardellina rubrifrons, Red-faced Warbler
Myioborus pictus, Painted Redstart
Myioborus miniatus, Slate-throated Redstart
Euthlypis lachrymosa, Fan-tailed Warbler
Basileuterus culicivorus, Golden-crowned Warbler

Basileuterus rufifrons, Rufous-capped Warbler
Icteria virens, Yellow-breasted Chat
Family THRAUPIDAE
Nesospingus speculiferus, Puerto Rican Tanager
Piranga flava, Hepatic Tanager
Piranga rubra, Summer Tanager
Piranga olivacea, Scarlet Tanager
Piranga ludoviciana, Western Tanager
Piranga bidentata, Flame-colored Tanager
Spindalis zena, Western Spindalis
Spindalis portoricensis, Puerto Rican Spindalis
Euphonia musica, Antillean Euphonia
Family EMBERIZIDAE
Sporophila torqueola, White-collared Seedeater
Tiaris olivacea, Yellow-faced Grassquit
Tiaris bicolor, Black-faced Grassquit
Loxigilla portoricensis, Puerto Rican Bullfinch
Arremonops rufivirgatus, Olive Sparrow
Pipilo chlorurus, Green-tailed Towhee
Pipilo maculatus, Spotted Towhee
Pipilo erythrophthalmus, Eastern Towhee
Pipilo fuscus, Canyon Towhee
Pipilo crissalis, California Towhee
Pipilo aberti, Abert's Towhee
Aimophila carpalis, Rufous-winged Sparrow
Aimophila cassinii, Cassin's Sparrow
Aimophila aestivalis, Bachman's Sparrow
Aimophila botterii, Botteri's Sparrow
Aimophila ruficeps, Rufous-crowned Sparrow
Aimophila quinquestriata, Five-striped Sparrow
Spizella arborea, American Tree Sparrow
Spizella passerina, Chipping Sparrow
Spizella pallida, Clay-colored Sparrow
Spizella breweri, Brewer's Sparrow
Spizella pusilla, Field Sparrow
Spizella wortheni, Worthen's Sparrow
Spizella atrogularis, Black-chinned Sparrow
Pooecetes gramineus, Vesper Sparrow
Chondestes grammacus, Lark Sparrow
Amphispiza bilineata, Black-throated Sparrow
Amphispiza belli, Sage Sparrow
Calamospiza melanocorys, Lark Bunting
Passerculus sandwichensis, Savannah Sparrow
Ammodramus savannarum, Grasshopper Sparrow
Ammodramus bairdii, Baird's Sparrow
Ammodramus henslowii, Henslow's Sparrow
Ammodramus leconteii, Le Conte's Sparrow
Ammodramus nelsoni, Nelson's Sharp-tailed Sparrow
Ammodramus caudacutus, Saltmarsh Sharp-tailed Sparrow
Ammodramus maritimus, Seaside Sparrow
Passerella iliaca, Fox Sparrow
Melospiza melodia, Song Sparrow
Melospiza lincolnii, Lincoln's Sparrow
Melospiza georgiana, Swamp Sparrow
Zonotrichia albicollis, White-throated Sparrow
Zonotrichia querula, Harris's Sparrow
Zonotrichia leucophrys, White-crowned Sparrow
Zonotrichia atricapilla, Golden-crowned Sparrow
Junco hyemalis, Dark-eyed Junco
Junco phaeonotus, Yellow-eyed Junco
Calcarius mccownii, McCown's Longspur
Calcarius lapponicus, Lapland Longspur
Calcarius pictus, Smith's Longspur
Calcarius ornatus, Chestnut-collared Longspur
Emberiza leucocephalos, Pine Bunting
Emberiza pusilla, Little Bunting
Emberiza rustica, Rustic Bunting
Emberiza elegans, Yellow-throated Bunting
Emberiza aureola, Yellow-breasted Bunting
Emberiza variabilis, Gray Bunting
Emberiza pallasi, Pallas's Bunting
Emberiza schoeniclus, Reed Bunting
Plectrophenax nivalis, Snow Bunting
Plectrophenax hyperboreus, McKay's Bunting
Family CARDINALIDAE
Rhodothraupis celaeno, Crimson-collared Grosbeak
Cardinalis cardinalis, Northern Cardinal
Cardinalis sinuatus, Pyrrhuloxia
Pheucticus chrysopeplus, Yellow Grosbeak
Pheucticus ludovicianus, Rose-breasted Grosbeak
Pheucticus melanocephalus, Black-headed Grosbeak
Cyanocompsa parellina, Blue Bunting
Passerina caerulea, Blue Grosbeak
Passerina amoena, Lazuli Bunting
Passerina cyanea, Indigo Bunting
Passerina versicolor, Varied Bunting
Passerina ciris, Painted Bunting
Spiza americana, Dickcissel
Family ICTERIDAE
Dolichonyx oryzivorus, Bobolink
Agelaius phoeniceus, Red-winged Blackbird
Agelaius tricolor, Tricolored Blackbird
Agelaius humeralis, Tawny-shouldered Blackbird
Agelaius xanthomus, Yellow-shouldered Blackbird
Sturnella magna, Eastern Meadowlark
Sturnella neglecta, Western Meadowlark
Xanthocephalus xanthocephalus, Yellow-headed Blackbird
Euphagus carolinus, Rusty Blackbird
Euphagus cyanocephalus, Brewer's Blackbird
Quiscalus quiscula, Common Grackle
Quiscalus major, Boat-tailed Grackle
Quiscalus mexicanus, Great-tailed Grackle
Quiscalus niger, Greater Antillean Grackle
Molothrus bonariensis, Shiny Cowbird
Molothrus aeneus, Bronzed Cowbird
Molothrus ater, Brown-headed Cowbird
Icterus wagleri, Black-vented Oriole
Icterus dominicensis, Greater Antillean Oriole
Icterus spurius, Orchard Oriole
Icterus cucullatus, Hooded Oriole
Icterus pustulatus, Streak-backed Oriole
Icterus bullockii, Bullock's Oriole
Icterus gularis, Altamira Oriole
Icterus graduacauda, Audubon's Oriole
Icterus galbula, Baltimore Oriole
Icterus parisorum, Scott's Oriole
Family FRINGILLIDAE
Subfamily FRINGILLINAE
Fringilla coelebs, Common Chaffinch
Fringilla montifringilla, Brambling
Subfamily CARDUELINAE
Leucosticte tephrocotis, Gray-crowned Rosy-Finch
Leucosticte atrata, Black Rosy-Finch
Leucosticte australis, Brown-capped Rosy-Finch
Pinicola enucleator, Pine Grosbeak
Carpodacus erythrinus, Common Rosefinch
Carpodacus purpureus, Purple Finch
Carpodacus cassinii, Cassin's Finch
Carpodacus mexicanus, House Finch
Loxia curvirostra, Red Crossbill
Loxia leucoptera, White-winged Crossbill
Carduelis flammea, Common Redpoll
Carduelis hornemanni, Hoary Redpoll
Carduelis spinus, Eurasian Siskin
Carduelis pinus, Pine Siskin
Carduelis psaltria, Lesser Goldfinch
Carduelis lawrencei, Lawrence's Goldfinch
Carduelis tristis, American Goldfinch
Carduelis sinica, Oriental Greenfinch
Pyrrhula pyrrhula, Eurasian Bullfinch
Coccothraustes vespertinus, Evening Grosbeak
Coccothraustes coccothraustes, Hawfinch
Subfamily DREPANIDINAE
Telespiza cantans, Laysan Finch

Telespiza ultima, Nihoa Finch
Psittirostra psittacea, Ou
Loxioides bailleui, Palila
Pseudonestor xanthophrys, Maui Parrotbill
Hemignathus virens, Hawaii Amakihi
Hemignathus flavus, Oahu Amakihi
Hemignathus kauaiensis, Kauai Amakihi
Hemignathus ellisianus, Greater Akialoa
Hemignathus lucidus, Nukupuu
Hemignathus munroi, Akiapolaau
Magumma parva, Anianiau
Oreomystis bairdi, Akikiki
Oreomystis mana, Hawaii Creeper
Paroreomyza maculata, Oahu Alauahio
Paroreomyza flammea, Kakawahie
Paroreomyza montana, Maui Alauahio
Loxops caeruleirostris, Akekee
Loxops coccineus, Akepa
Vestiaria coccinea, Iiwi
Palmeria dolei, Akohekohe
Himatione sanguinea, Apapane
Melamprosops phaeosoma, Poo-uli

Dated: February 3, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–3294 Filed 2–26–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

Docket Number [FWS–R9–MB–2007–0018; 91200–1231–9BPP]

RIN 1018–AV33

Migratory Bird Permits; Control of Purple Swamphens

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, change the regulations governing control of depredating or introduced migratory birds. The purple swamphen (*Porphyrio porphyrio*) is not native to any State, and competes with native species. However, we have added it to the list of species protected under our Migratory Bird Treaty Act (MBTA) obligations because it occurs naturally in the U.S. Territories of American Samoa, Baker and Howland Islands, Guam, and the Commonwealth of the Northern Mariana Islands. We amend the regulations to allow removal of purple swamphens without a Federal permit in the following areas where the species is not native: the contiguous United States, Hawaii, Alaska, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. This rule also requires the use of nontoxic shot or bullets if firearms are used to control purple swamphens.

DATES: This rule will be effective on March 31, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by the MBTA (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia).

We implement the MBTA through regulations found in title 50 of the Code of Federal Regulations (CFR). In 50 CFR 10.13, we list all species of migratory birds protected by the MBTA that are subject to the regulations protecting migratory birds in title 50, subchapter B (Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants). In 50 CFR part 13 (General Permit Procedures) and part 21 (Migratory Bird Permits), regulations allow us to issue permits for certain activities otherwise prohibited in regard to migratory birds. In part 21, we issue permits for the taking, possession, transportation, sale, purchase, barter, importation, exportation, and banding and marking of migratory birds. We also provide certain exceptions to permit requirements for public, scientific, or educational institutions, and establish depredation and control orders that provide limited exceptions to the MBTA.

Purple Swamphen

The purple swamphen, a chicken-sized bird in the family Rallidae, is native to the Old World. In the United States and its territories, it is native only in American Samoa, Baker and Howland Islands, Guam, and the Northern Mariana Islands (Pratt et al. 1987). Because of the species' occurrence in these territories, it is protected under the MBTA Act (effective March 1, 2010.) Therefore, we included this species in the proposed rule (71 FR 50194, August 24, 2006) to revise the list of migratory birds found at 50 CFR 10.13. We proposed to add the species to the list because it is in a group of species that belong to families protected under treaties with Canada and Mexico.

The purple swamphen was introduced in southern Florida through escapes from aviculturalists and from the Miami Metro Zoo in the early 1990s (Anonymous 2007). In Florida, the purple swamphen competes with native species and may impact the plant life of wetlands (Anonymous 2007). The purple swamphen has an international reputation for eating eggs and chicks, including ducklings, of other ground or near-ground nesting species (Anonymous 2007). As far as we know, counties in the southern half of Florida are the only place in the contiguous United States, Hawaii, Alaska, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands where the purple swamphen is found.

This Control Order allows the removal of introduced purple swamphens in the contiguous United States, Alaska, Hawaii, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands from any location where they are found. This removal is in keeping with our other actions to reduce the spread of introduced species that compete with native species or harm habitats that they use. *(see http://www.fws.gov/invasives/).*

Comments on the Proposed Rule

We received two comments on the proposed rule published on August 22, 2008 (70 FR 49631–49634). One commenter stated that (1) purple swamphens are not migratory and (2) are invasive and should be removed. Though the species is a migratory bird species under the MBTA, it is invasive in the continental U.S. and other locations outside its native range. We agree with the commenter's assertion that the species should be removed where it has been introduced by humans.

A State agency requested that "the requirement to bury or incinerate carcasses be removed. The nature of control programs, *i.e.,* shooting purple swamphens in heavily vegetated habitat, precludes this as a practical disposal method." We changed this rule to accommodate this request.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination of significance under E.O. 12866.

a. This rule will not raise novel legal or policy issues. The provisions are in

compliance with other laws, policies, and regulations.

b. This rule does not have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis thus is not required. There will be no costs associated with this rule.

c. This rule will not create inconsistencies with other agencies' actions. The rule deals solely with governance of migratory bird permitting in the United States. No other Federal agency has any role in regulating activities with migratory birds.

d. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of control of purple swamphens.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule does not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule does not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and we have determined that this action does not have a significant economic impact on a substantial number of small entities because the changes we are proposing are intended to allow removal of an introduced species that competes with native species of wildlife. Purple swamphens are not found in business areas, and we foresee no effects of this rule on small businesses.

There will be no costs associated with this regulations change. Consequently, we certify that because this rule does not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804 (2)). It does not have a significant impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not "significantly or uniquely" affect small governments. A small government agency plan is not required. Actions under the proposed regulation will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It will not be a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule will not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It will not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from control of purple swamphens.

Civil Justice Reform

In accordance with Executive Order 12988, we have determined that the rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. There are no information collection requirements associated with this regulations change.

National Environmental Policy Act

We have analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* and part 516 of the U.S. Department of the Interior Manual (516 DM). The change we propose is to allow the removal of purple swamphens from locations in the United States and its territories in which the species may have been introduced. The environmental impacts of control of the purple swamphen have already been addressed. The State of Florida prepared a purple swamphen control plan and an environmental assessment of State control actions. We completed an Environmental Action Statement in which we concluded that the proposed regulations change allowing the removal of this introduced species will have no significant impact on the environment and, therefore, requires no additional assessment of potential environmental impacts.

Socioeconomic. We do not expect the action to have discernible socioeconomic impacts.

Migratory bird populations. This rule will not alter the take of native migratory birds from the wild. It will not harm native migratory bird populations.

Endangered and Threatened Species. The purple swamphen is not threatened or endangered, and the regulations change will not affect threatened or endangered species or habitats important to them.

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)). We have concluded that the regulations change will not affect listed species, and the Division of Migratory Bird Management has completed an Endangered Species consultation on this rule confirming this conclusion.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This rule will not interfere with the Tribes' ability to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 addressing regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects control of invasive purple swamphens at limited locations, it will not be a significant regulatory action under Executive Order 12866, nor will it significantly affect energy supplies, distribution, or use. This action will not be a significant energy action, and no Statement of Energy Effects is required.

References

Anonymous. 2007. Purple swamphen control plan. Unpublished document, Florida Fish and Wildlife Conservation Commission.

Pratt, H. D., P. L. Bruner, and D. G. Berrett. 1987. *The Birds of Hawaii and the Tropical Pacific.* Princeton University Press, Princeton, New Jersey.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

■ 1. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note following 16 U.S.C. 703.

■ 2. Add new § 21.53 to subpart D to read as follows:

§ 21.53 Control order for purple swamphens.

(a) *Control of purple swamphens.* Federal, State, Tribal, and local wildlife management agencies, and their tenants, employees, or agents may remove or destroy purple swamphens (*Porphyrio porphyrio*) or their nests or eggs at any time when they find them anywhere in the contiguous United States, Hawaii, Alaska, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands. Any authorized agency personnel may temporarily possess, transport, and dispose of purple swamphens, subject to the restrictions in paragraph (c) of this section. No permit is necessary to engage in these actions.

(b) *Disposal of purple swamphens.* If you are authorized to control purple swamphens, you may dispose of purple swamphens by the following methods: You may donate purple swamphens taken under this order to public museums or public institutions for scientific or educational purposes; you may dispose of the carcasses by burial or incineration; or, if the carcasses are not readily retrievable, you may leave them in place. No one may retain for personal use, offer for sale, or sell a purple swamphen removed under this section.

(c) *Other provisions.* (1) You may not remove or destroy purple swamphens or their nests or eggs if doing so is contrary to any State, territorial, tribal, or local laws or regulations.

(2) You may not remove or destroy purple swamphens or their nests or eggs if doing so will adversely affect other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act. In particular, the purple swamphen resembles the native purple gallinule (*Porphyrula martinica*). Authorized persons must take special care not to take purple gallinules or their nests or eggs when conducting purple swamphen control activities. Certain persons may take purple gallinules without a permit on rice-producing property in Louisiana according to the terms of a separate depredation order (*see* § 21.45).

(3) If you use firearms to control purple swamphens under this regulation, you may use only nontoxic shot or nontoxic bullets for the control.

(4) If, while operating under this regulation, an authorized person takes any other species protected under the Endangered Species Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act, that person must immediately report the take to the nearest Ecological Services office of the Fish and Wildlife Service. *See http://www.fws.gov/where/* to find the location of the nearest Ecological Services office.

(5) We may suspend or revoke the authority of any agency or individual to undertake purple swamphen control if we find that agency or individual has, without an applicable permit, taken actions that may take Federally listed threatened or endangered species or any bird species protected by the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act (*see* § 10.13 of subchapter A of this chapter for the list of protected migratory bird species), or otherwise violated Federal regulations.

Dated: February 3, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–3289 Filed 2–26–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket Number FWS–R9–MB–2007–0017; 91200–1231–9BPP]

RIN 1018–AV34

Migratory Bird Permits; Control of Muscovy Ducks, Revisions to the Waterfowl Permit Exceptions and Waterfowl Sale and Disposal Permits Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, change the regulations governing control of introduced migratory birds. The muscovy duck (*Cairina moschata*) occurs naturally only in southern Texas. It has been introduced in other locations, where it is considered an invasive species that sometimes creates problems through competition with native species, damage to property, and transmission of disease. We amend the regulations to prohibit sale, transfer, or propagation of muscovy ducks for hunting and any other purpose other than food production, and to allow their removal in locations in which the species does not occur naturally in the contiguous United States, Alaska, and Hawaii, and in U.S. territories and possessions. This requires revision of regulations governing permit exceptions for captive-bred migratory waterfowl other than mallard ducks, and waterfowl sale and disposal permits, and the addition of an order to allow control of muscovy

ducks, their nests, and eggs. We also have rewritten the affected regulations to make them easier to understand.

DATES: This rule will be effective on March 31, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. The delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia).

We implement the MBTA through Federal regulations found in title 50 of the Code of Federal Regulations (CFR). In 50 CFR 10.13, we list all species of migratory birds protected by the MBTA that are subject to the regulations protecting migratory birds in title 50, subchapter B (Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants). In 50 CFR part 13 (General Permit Procedures) and part 21 (Migratory Bird Permits), regulations allow us to issue permits for certain activities otherwise prohibited in regard to migratory birds. In part 21, we issue permits for the taking, possession, transportation, sale, purchase, barter, importation, exportation, and banding and marking of migratory birds. In that part, we also provide certain exceptions to permit requirements for public, scientific, or educational institutions and establish depredation and control orders that provide limited exceptions to the MBTA.

Muscovy Duck

The muscovy is a large duck native to South America, Central America, and Mexico. Due to a recent northward expansion of the range of the species, there is a small natural population in three counties in southern Texas in which natural breeding of wild birds has been confirmed. For that reason, we included this species in the final rule published today to revise the list of migratory birds found at 50 CFR 10.13.

The muscovy duck normally inhabits forested swamps and mangrove ponds, lakes and streams, and freshwater ponds near wooded areas. The species often roosts in trees at night. The hen usually lays her eggs in a tree hole or hollow. However, muscovy ducks will occasionally nest in abandoned nests of large birds such as ospreys or eagles, between palm tree fronds, and in wooden boxes or other man-made, elevated cavities. The species does not form stable pairs.

Muscovy ducks can breed near urban and suburban lakes and on farms, nesting in tree cavities or on the ground, under shrubs in yards, on condominium balconies, or under roof overhangs. Feral populations, particularly in Florida, are said to present problems. Feral muscovy ducks are wary and associate little with other species.

Muscovy ducks feed on the roots, stems, leaves, and seeds of aquatic and terrestrial plants, including agricultural crops. They also eat small fishes, reptiles, crustaceans, insects, millipedes, and termites.

Muscovy ducks live alone or in groups of 4 to 12, rarely in large flocks. They are mainly active in the morning and afternoon, feeding on the shores of brackish waters, or in the flood savannah and underbrush. They often sleep at night in permanent roosts in trees along the river bank. Heavy and low-flying, they are silent and timid. Muscovy ducks swim much less than other ducks, and the males fly poorly.

We received comments from States and individuals expressing concern over control of muscovy ducks in response to the 2006 proposal to add the species to the list of those protected under the MBTA (50 CFR 10.13). In general, States expressed concern over feral and free-ranging populations of muscovy ducks present as the result of human activity. For example, one State was concerned that protecting the species under the MBTA "would severely impede our efforts to manage the feral and free-ranging populations of domestic muscovy ducks." Individuals expressed concern over property damage and aggressiveness demonstrated by the ducks. The muscovy duck is an introduced species in many locations in the United States. We believe it is prudent to prohibit activities that would allow release of muscovy ducks in areas in which they are not native and may compete with native species.

We expect control of muscovy ducks to be undertaken primarily through the use of walk-in baited traps and through shooting. The use of baited traps will greatly limit the potential impacts to other species, especially passerines, which would be unlikely to enter properly placed traps. Shooting undertaken by State agency or U.S. Department of Agriculture Wildlife Services personnel would be very unlikely to harm other species.

We propose to revise 50 CFR 21.14 to prohibit sale and, in most cases, possession, of muscovy ducks; to revise § 21.25 to prohibit sale or transfer of captive-bred muscovy ducks for hunting; and to add § 21.54 to allow removal of introduced muscovy ducks from any location in the contiguous United States outside Hidalgo, Starr, and Zapata Counties in Texas, and in Alaska, Hawaii, and U.S. territories and possessions. This removal is in keeping with the Service's other actions to reduce the spread of introduced species that compete with native species or harm habitats that they use. It also is in keeping with the intent of the Migratory Bird Treaty Reform Act of 2004 (16 U.S.C. 703 (b)), which excluded non-native species from MBTA protection.

Comments on the Proposed Rule

We received ten sets of comments on the proposed rule published on August 22, 2008 (73 FR 49626–49631). The commenters raised the following issues.

Issue. One commenter suggested that Cameron County, Texas not be included in the natural range of the muscovy duck in Texas.

"I suggest leaving Cameron County, TX out of 'native range' since birds there act quite tame and occur in urban/suburban settings."

Reference Brush, T. 2005. Nesting Birds of a Tropical Frontier, the Lower Rio Grande Valley of Texas. Texas A&M University Press, College Station, Texas.

Response. We revised this regulation accordingly. The listing of counties now matches the information in the listing by the American Ornithologists' Union (1998. Check-list of North American Birds. 7th edition. American Ornithologists' Union, Washington, DC) and subsequent updates.

Issue. Escape to the wild and competition with native species.

"* * * these new proposed rules do not deal with domesticated farm populations. Regulation of feral populations may help to solve some problems, but efforts should be taken to regulate domesticated populations as well. On most farms, some animals escape from time to time. These escaped animals could easily set up a population and be responsible for the spread of Muscovy ducks. If the Fish and Wild Life Service's true goal is to control indigenous Muscovy ducks, it seems imperative that they should adopt provisions aimed at minimizing the potential for domesticated ducks to escape and then reproduce."

"I am happy to get rid of muscovy ducks because as anyone would probably heard, this species really mess up the lives of other bird species in Tampa Bay area. There is, in my opinion, way too many muscovy ducks hanging or hovering around aquatic ecosystem especially suburban pond or lake where many local species thrive. I personally saw muscovy ducks chasing white ibis and great egret from a lake not too far from my

house. Not only the muscovy ducks take over the "aquatic territory", they multiply too fast. I am seeing locals feeding the duck making the ducks staying put so they would get easy food which also help supply the offspring as well. I've lived in Tampa Bay area for almost 15 years and noticed that the muscovy ducks are definitely taking over the local species habitat and pushing the local species to find other place where it get tougher with development brewing. If we can manage the population by limiting eggs hatching and if possible, hunting, we can somewhat control the population. The muscovy ducks have been more of bad news than good news."

Response. Control of this species in areas in which it is invasive is the intent of this rulemaking.

Issue. Range expansion of this species to the north.

"These ducks are moving up because of global warming. Why when they seek the warmer weather up north are they being killed because of that natural movement?"

"If the birds are expanding their range—why would you want to stop this?"

"* * * nowhere in the proposed rule does the agency make an allowance for natural populations that spread into neighboring counties. The language should be changed to allow for natural population growth from native regions."

Response. We recognize that muscovy ducks have expanded their range slightly into very southern Texas. However, they are introduced in most locations in the U.S. in which they are found, and as such are an invasive species that competes with native species. Control of muscovy ducks within their natural range in southern Texas will not be allowed under the control order. Any control of muscovy ducks in the three counties in which they have a natural population will require a depredation permit, just as with any other species protected by the MBTA. It is doubtful that we would issue any such permits unless current population levels increase significantly, as we may not issue depredation permits that potentially threaten a wildlife population under 50 CFR 13.21. We will consider this species' status and range in future updates of the list of the migratory birds at 50 CFR 10.13, and may amend this regulation accordingly. In *Hidalgo, Starr, and Zapata* counties in Texas, muscovy ducks will be protected as any other migratory bird listed in 10.13.

Issue. Interbreeding with other species.

"The species has "begun to interbreed with northern ducks." How does this proposal intend on dealing with this issue?"

"* * * the proposed rule makes no mention of so-called "mules," a cross between Muscovy ducks and other duck species. Mules, while unable to reproduce, s[t]ill have the potential to hamper government control of Muscovy duck populations. This topic should be addressed."

Response. Any hybrid of a species listed at 50 CFR 10.13 is a Federally-regulated migratory bird species. As such, it may be managed under all relevant regulations. Hybrids of muscovy ducks in the wild may be controlled under this regulation.

Issue. Production of muscovy ducks for food.

"* * * muscovy ducks are produced in the millions in the United States generally for meat production * * *. No permits are needed to possess domesticated barnyard fowl. This species is bought and sold in the millions being the most commonly held species of waterfowl in the United States."

"I believe that problems associated with large feral populations of muscovy ducks are from domesticated varieties raised in captivity that have wandered, or allowed to free range, and not from 'wild' type muscovies imported from Latin America.

"The proposed regulation's goal of preventing additional human introduction of Muscovy ducks has great merit. It is far better to prevent populations from establishing than to subject more ducks to control later. However, the proposed regulation limits acquisition, possession, and propagation for some owners but not for others. Accidental releases from food production are not addressed and could continue to allow Muscovy populations to become established. No clear reason is evident for targeting only Muscovies not in food production to prevent additional introductions. Why are Muscovies in food production excepted when this source of accidental releases may be significant?

"The rule should be focused on controlling populations, both feral and domestic, instead of destroying established populations. By controlling populations, the Fish and Wildlife Service can largely achieve the same goals without many of the potential harmful side effects."

Response. This rule is intended to limit production and releases of muscovy ducks in locations in which the species is not native. However, it is unusual because we will continue to allow ongoing commercial endeavors with a species that was not protected under the MBTA. We are aware of the production of muscovy ducks for food, and this rule is intended to allow that production to continue. We will allow continued production of muscovy ducks for food because we do not want to create economic dislocation. We may review allowing possession for food production in the future if escapes and releases from this source are shown to be a problem. However, the regulations state that release of muscovy ducks to the wild is not to be allowed, regardless of the source of the birds.

Issue. Three commenters requested that use of OvoControlJ (nicarbazin) be allowed under the control order.

"The HSUS supports non-lethal tools to resolve conflicts such as when people feel Muscovy ducks are a nuisance. We strongly recommend that the final regulation explicitly allows use of contraceptive technology to control Muscovy ducks. Nicarbazin is registered by the Environmental Protection Agency for Muscovy ducks. It prevents egg and embryo development so that additional ducklings do not hatch. This tool allows communities to humanely reduce flocks without the controversy engendered by killing. Muscovy and other ducks are much loved by some members of the community even where they are considered a nuisance. Contraceptive technology must be available for communities that rightly reject killing neighborhood ducks."

Response. As with control of some other bird species, particularly Canada geese (*Branta Canadensis*), nicarbazin may be used if the applicator has a migratory bird permit to use it. However, we will work on the necessary Endangered Species consultation to allow use of nicarbazin under this control order in the future.

Issue. USDA Wildlife Services requested that within Cameron, Hidalgo, Starr, and Zapata counties in Texas, muscovy duck management be allowed consistent with rules and regulations for other migratory bird species, including take of birds and their nests and eggs.

Response. Control of Muscovy ducks in Hidalgo, Starr, and Zapata counties (we removed Cameron county from the provisions in § 21.54) would be subject to the regulations for authorizing depredation permits and our general permit regulations. We added language to § 21.54 to address this concern.

Issue. Capture and transfer of muscovy ducks, and muscovy ducks on private property.

"Live-capture and transfer to responsible private ownership is also a humane resolution for so-called nuisance ducks. While the opportunities for such transfer are limited, where there are potential new homes it is humane to the ducks and offers communities an uncontroversial solution. With the proposed restrictions on propagation and release, this resolution would also achieve the regulation's goal. The final regulations should allow this option for controlling Muscovy ducks."

"The HSUS is very concerned about the proposed regulation's impact on currently owned ducks who are not kept for food production. As proposed, the regulations seem to outlaw these ducks. It is not clear what USFWS expects will become of them but it seems it would be illegal for their owners to continue to keep them. This would be unreasonable and unnecessarily cruel for both the ducks and their owners. Many people keep ducks as pets. Waterfowl

fanciers maintain hobby flocks. Waterfowl rescuers have removed ducks from places people considered them nuisances; keeping some and finding new private owners for others. Forcing all these private owners to kill their birds or be in violation of this regulation would be outrageous. However, that appears to be the only way to construe the proposed regulation."

Response. We allow private ownership of MBTA-protected species in few circumstances. We intend to disallow private possession of muscovy ducks, except to raise them to be sold as food (which has been ongoing for years). However, we will allow possession of any live muscovy duck held on the date when this rule takes effect.

In most every location, the muscovy duck is an introduced, invasive species. We will allow control of muscovy ducks as best suits the needs of the States and wildlife management agencies, who requested this authorization. Though the control order allows States and other entities to remove muscovy ducks, we do not expect that they will do so when the ducks are on private property. However, people who propagate muscovy ducks or allow them to multiply and move off their property should realize that the muscovy ducks may be subject to the control efforts that the State or local wildlife agency deems necessary.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government,

(b) Whether the rule will create inconsistencies with other Federal agencies' actions,

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, and

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined the rule's potential effects on small entities as required by the Regulatory Flexibility Act. Commercial producers of muscovy ducks for sale to entities other than food-producers are few and widely scattered across the country. Therefore, we have determined that this action will not have a significant economic impact on a substantial number of small entities, because the changes we are proposing are intended primarily to reduce the spread of an invasive species little used in commercial endeavors.

There will very minimal costs, if any, associated with this regulations change. Consequently, we certify that because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It will not have a significant impact on a substantial number of small entities.

a. This rule will not have an annual effect on the economy of $100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not "significantly or uniquely" affect small governments. A small government agency plan is not required. Actions under the proposed regulation will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule will not have significant takings implications. This rule will not contain a provision for taking of private property. Therefore, a takings implication assessment is not required.

Federalism

This rule will not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from control of muscovy ducks.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). There are no new information collection requirements associated with this regulations change.

National Environmental Policy Act

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437(f), and part 516 of the U.S. Department of the Interior Manual (516 DM). The change we propose is to allow people and agencies to remove the muscovy duck a species from locations in the United States and United States territories in which the species may have been introduced. We completed an Environmental Assessment and a Finding of No Significant Impact in which we concluded that the regulations change allowing the removal of an introduced species does not require an environmental impact statement addressing potential impacts on the quality of the human environment.

Environmental Consequences of the Action

The primary change made in this final rule is to prohibit release of the muscovy duck in locations in which it does not occur naturally. It has been

introduced in other locations, where it is an invasive species that sometimes creates problems through competition with native species and damage to property. We amend 50 CFR part 21 to prohibit sale of muscovy ducks for hunting, and to allow their removal in locations in which the species does not occur naturally in the contiguous United States, Alaska, and Hawaii, and in U.S. territories and possessions. Revisions are made to § 21.14 (permit exceptions for captive-bred migratory waterfowl other than mallard ducks) and § 21.25 (waterfowl sale and disposal permits), and addition of § 21.54, an order to allow control of muscovy ducks, their nests, and eggs. The first two regulations are to prevent introduction of the species and will only have a positive environmental impact, if any. Because the muscovy duck occurs only in small numbers at scattered locations outside its natural range in southern Texas, the impacts of control of the species under a new regulation at § 21.54 are minimal.

Socioeconomic. This rule will have minimal socioeconomic impacts.

Migratory bird populations. This rule will not affect migratory bird populations.

Endangered and threatened species. The regulation is for migratory bird species that are not threatened or endangered. It will not affect threatened or endangered species or critical habitats.

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any action authorized, funded, or carried out* * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)). We have concluded that the regulations change would not affect listed species, and the Division of Migratory Bird Management has conducted an Endangered Species consultation on this rule to confirm this conclusion.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This rule will not interfere with the Tribes' ability to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule will affect only import and export of birds in limited circumstances, it is not a significant regulatory action under E.O. 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting, and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

■ 1. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108, 113 Stat. 1491, Note following 16 U.S.C. 703.

■ 2. Revise § 21.14 to read as follows:

§ 21.14 Permit exceptions for captive-bred migratory waterfowl other than mallard ducks.

You may acquire captive-bred and properly marked migratory waterfowl of all species other than mallard ducks (*Anas platyrhynchos*), alive or dead, or their eggs, and possess and transport such birds or eggs and any progeny or eggs for your use without a permit, subject to the following conditions and restrictions. Additional restrictions on the acquisition and transfer of muscovy ducks (*Cairina moschata*) are in paragraph (g) of this section.

(a) You may acquire live waterfowl or their eggs only from a holder of a valid waterfowl sale and disposal permit in the United States. You also may lawfully acquire them outside of the United States with appropriate permits (*see* § 21.21 of subpart C of this part).

(b) All progeny of captive-bred birds or eggs from captive-bred birds must be physically marked as set forth in § 21.13(b).

(c) You may not transfer or dispose of captive-bred birds or their eggs, whether alive or dead, to any other person unless you have a waterfowl sale and disposal permit (*see* § 21.25 of subpart C of this part).

(d) Lawfully possessed and properly marked birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of like species from the wild (*see* part 20 of this subchapter).

(e) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, you must leave the marked foot or wing attached to each carcass, unless the carcass was marked as provided in § 21.25(b)(6) and the foot or wing was removed prior to your acquisition of the carcass.

(f) If you acquire captive-bred waterfowl or their eggs from a waterfowl sale and disposal permittee, you must retain the FWS Form 3–186, Notice of Waterfowl Sale or Transfer, from the permittee for as long as you have the birds, eggs, or progeny of them.

(g) You may not acquire or possess live muscovy ducks, their carcasses or parts, or their eggs, except to raise them to be sold as food, and except that you may possess any live muscovy duck that you lawfully acquired prior to March 31, 2010. If you possess muscovy ducks on that date, you may not propagate them or sell or transfer them to anyone for any purpose, except to be used as food. You may not release them to the wild, sell them to be hunted or released to the wild, or transfer them to anyone to be hunted or released to the wild.

(h) Dealers in meat and game, hotels, restaurants, and boarding houses may serve or sell to their customers the carcass of any bird acquired from a holder of a valid waterfowl sale and disposal permit.

■ 3. Revise § 21.25 to read as follows:

§ 21.25 Waterfowl sale and disposal permits.

(a) *Permit requirement.* You must have a waterfowl sale and disposal permit before you may lawfully sell, trade, donate, or otherwise dispose of, most species of captive-reared and properly marked migratory waterfowl or their eggs. You do not need a permit to sell or dispose of properly marked captive-reared mallard ducks (*Anas platyrhynchos*) or their eggs.

(b) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B, waterfowl sale and disposal permits are subject to the following conditions:

(1) You may not take migratory waterfowl or their eggs from the wild, unless take is provided for elsewhere in this subchapter.

(2) You may not acquire migratory waterfowl or their eggs from any person who does not have a valid waterfowl propagation permit.

(3) Before they are 6 weeks of age, all live captive migratory waterfowl possessed under authority of a valid waterfowl sale and disposal permit must be physically marked as defined in § 21.13(b).

(4) All offspring of birds hatched, reared, and retained in captivity also must be marked before they are 6 weeks of age in accordance with § 21.13(b), unless they are held in captivity at a public zoological park, or a public scientific or educational institution.

(5) Properly marked captive-bred birds may be killed, in any number, at any time or place, by any means except shooting. They may be killed by shooting only in accordance with all the applicable hunting regulations governing the taking of like species from the wild.

(6) At all times during possession, transportation, and storage, until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot or wing must remain attached to each carcass. However, if you have a State license, permit, or authorization that allows you to sell game, you may remove the marked foot or wing from the raw carcasses if the number of your State license, permit, or authorization has been legibly stamped in ink on the back of each carcass and on the wrapping or container in which each carcass is maintained, or if each carcass is identified by a State band on a leg or wing pursuant to requirements of your State license, permit, or authorization.

(7) You may dispose of properly marked live or dead birds or their eggs (except muscovy ducks and their eggs) in any number at any time or place, or transfer them to any person, if the birds are physically marked prior to sale or disposal, regardless of whether or not they have attained 6 weeks of age.

(8) You may propagate muscovy ducks (*Cairina moschata*) only for sale for food.

(i) You may not release muscovy ducks to the wild or transfer them for release to the wild.

(ii) You may not sell or transfer muscovy ducks to be killed by shooting.

(9) If you transfer captive-bred birds or their eggs to another person, you must complete FWS Form 3–186, Notice of Waterfowl Sale or Transfer, and provide all information required on the form, plus the method or methods by which individual birds are marked as required by § 21.13(b).

(i) Give the original of the completed form to the person acquiring the birds or eggs.

(ii) Retain one copy in your files.

(iii) Attach one copy to the shipping container for the birds or eggs, or include it with shipping documents that accompany the shipment.

(iv) By the end of the month in which you complete the transfer, mail two copies to the Fish and Wildlife Service Regional Office that issued your permit.

(c) *Reporting requirements.* You must submit an annual report by January 10th of each year to the Fish and Wildlife Service Regional Office that issued your permit. You must report the number of waterfowl of each species you possess on that date, and the method or methods by which each is marked.

(d) *Applying for a waterfowl propagation permit.* Submit your application for a waterfowl sale and disposal permit to the appropriate Regional Director (Attention: Migratory Bird Permit Office). You can find addresses for the Regional Directors in 50 CFR 2.2. Your application must contain the general information and certification required in § 13.12(a) of subchapter A of this chapter, and the following additional information:

(1) A description of the area where you will keep waterfowl in your possession;

(2) The species and numbers of waterfowl you possess and a statement showing from whom the birds were obtained;

(3) A statement indicating the method by which birds you hold will be marked as required by the provisions of this part 21; and

(4) The number and expiration of your State permit if you are required to have one.

(e) *Term of permit.* A waterfowl sale and disposal permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit will not exceed five (5) years from the date of issuance or renewal.

■ 4. Add new § 21.54 to subpart D to read as follows:

§ 21.54 Control order for muscovy ducks in the United States.

(a) *Control of muscovy ducks.* Anywhere in the contiguous United States except in Hidalgo, Starr, and Zapata Counties in Texas, and in Alaska, Hawaii, and U.S. territories and possessions, landowners and Federal, State, Tribal, and local wildlife management agencies, and their tenants, employees, or agents may, without a Federal permit, remove or destroy muscovy ducks (*Cairina moschata*) (including hybrids of muscovy ducks), or their nests, or eggs at any time when found. Any authorized person may temporarily possess, transport, and dispose of muscovy ducks taken under this order.

(b) *Muscovy ducks in Hidalgo, Starr, and Zapata Counties in Texas.* In these counties, take of muscovy ducks, their nests, and their eggs may be allowed if we issue a depredation permit for the activity.

(c) *Disposal of muscovy ducks.* You may donate muscovy ducks taken under this order to public museums or public institutions for scientific or educational purposes, or you may dispose of them by burying or incinerating them. You may not retain for personal use or consumption, offer for sale, or sell a muscovy duck removed under authority of this section, nor may you release it in any other location.

(d) *Other provisions.* (1) You must comply with any State, territorial, or Tribal laws or regulations governing the removal or destruction of muscovy ducks or their nests or eggs.

(2) You may not remove or destroy muscovy ducks or their nests or eggs if doing so will adversely affect other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act. If you use a firearm to kill muscovy ducks under the provisions of this section, you must use nontoxic shot or nontoxic bullets to do so.

(3) If you operate under this order, you must immediately report the take of any species protected under the Endangered Species Act, or any other bird species protected under the Migratory Bird Treaty Act, to the Fish and Wildlife Service Ecological Services Office for the State or location in which the take occurred.

(4) We reserve the right to suspend or revoke the authority of any agency or individual to undertake muscovy duck control if we find that the agency or individual has undertaken actions that may harm Federally listed threatened or endangered species or are contrary to the provisions of this part.

Dated: February 3, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–3284 Filed 2–26–10; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Monday,
March 1, 2010

Part III

The President

Proclamation 8478—American Red Cross Month, 2010

Federal Register
Vol. 75, No. 39
Monday, March 1, 2010

Presidential Documents

Title 3—

The President

Proclamation 8478 of February 24, 2010

American Red Cross Month, 2010

By the President of the United States of America

A Proclamation

From rebuilding former adversaries after World War II, to combating HIV/AIDS in Africa, to saving lives after the tragic earthquake in Haiti, the American people have an unmatched tradition of responding to challenges at home and abroad with compassion and generosity. This tradition reflects our Nation's noblest ideals and has led people around the world to see the United States as a beacon of hope. During American Red Cross Month, we honor the organizations across our country that contribute to our Nation's ongoing efforts to relieve human suffering.

Founded by Clara Barton in 1881, the American Red Cross has provided assistance and comfort to communities stricken by disasters large and small. Amidst the final months of World War I in 1918, President Woodrow Wilson first proclaimed "Red Cross Week" as a time for our citizens "to give generously to the continuation of the important work of relieving distress." The American Red Cross continues to help ensure our communities are more ready and resilient in the face of future disasters. I urge all Americans to embrace our shared duty to better prepare ourselves, our families, and our neighbors against a wide range of emergencies; and to visit www.Ready.gov and www.CitizenCorps.gov.

Despite facing economic hardship at home, ordinary Americans are still contributing to humanitarian efforts worldwide. This year's catastrophic earthquake in Haiti caused untold suffering, and the American people have responded with speed and kindness. Donations have poured into the American Red Cross and other relief organizations. On the ground in Haiti, American search-and-rescue teams have pulled survivors from the rubble, and volunteer medical professionals continue to treat victims and save lives.

Our Nation's leadership relies upon our citizens who are motivated to act by our common humanity. This month, let us come together to celebrate the American spirit of generosity, and the dedicated individuals and organizations who keep that spirit alive.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2010 as American Red Cross Month. I encourage all Americans to observe this month with appropriate programs, ceremonies, and activities, and by supporting the work of our Nation's service and relief organizations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of February, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–4360
Filed 2–26–10; 11:15 am]
Billing code 3195–W0–P

Reader Aids

Federal Register

Vol. 75, No. 39

Monday, March 1, 2010

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, MARCH

9085–9326..... 1

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.J. Res. 45/P.L. 111–139
Increasing the statutory limit on the public debt. (Feb. 12, 2010)
H.R. 730/P.L. 111–140
Nuclear Forensics and Attribution Act (Feb. 16, 2010)
Last List February 4, 2010

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 2010

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
March 1	Mar 16	Mar 22	Mar 31	Apr 5	Apr 15	Apr 30	Jun 1
March 2	Mar 17	Mar 23	Apr 1	Apr 6	Apr 16	May 3	Jun 1
March 3	Mar 18	Mar 24	Apr 2	Apr 7	Apr 19	May 3	Jun 1
March 4	Mar 19	Mar 25	Apr 5	Apr 8	Apr 19	May 3	Jun 2
March 5	Mar 22	Mar 26	Apr 5	Apr 9	Apr 19	May 4	Jun 3
March 8	Mar 23	Mar 29	Apr 7	Apr 12	Apr 22	May 7	Jun 7
March 9	Mar 24	Mar 30	Apr 8	Apr 13	Apr 23	May 10	Jun 7
March 10	Mar 25	Mar 31	Apr 9	Apr 14	Apr 26	May 10	Jun 8
March 11	Mar 26	Apr 1	Apr 12	Apr 15	Apr 26	May 10	Jun 9
March 12	Mar 29	Apr 2	Apr 12	Apr 16	Apr 26	May 11	Jun 10
March 15	Mar 30	Apr 5	Apr 14	Apr 19	Apr 29	May 14	Jun 14
March 16	Mar 31	Apr 6	Apr 15	Apr 20	Apr 30	May 17	Jun 14
March 17	Apr 1	Apr 7	Apr 16	Apr 21	May 3	May 17	Jun 15
March 18	Apr 2	Apr 8	Apr 19	Apr 22	May 3	May 17	Jun 16
March 19	Apr 5	Apr 9	Apr 19	Apr 23	May 3	May 18	Jun 17
March 22	Apr 6	Apr 12	Apr 21	Apr 26	May 6	May 21	Jun 21
March 23	Apr 7	Apr 13	Apr 22	Apr 27	May 7	May 24	Jun 21
March 24	Apr 8	Apr 14	Apr 23	Apr 28	May 10	May 24	Jun 22
March 25	Apr 9	Apr 15	Apr 26	Apr 29	May 10	May 24	Jun 23
March 26	Apr 12	Apr 16	Apr 26	Apr 30	May 10	May 25	Jun 24
March 29	Apr 13	Apr 19	Apr 28	May 3	May 13	May 28	Jun 28
March 30	Apr 14	Apr 20	Apr 29	May 4	May 14	Jun 1	Jun 28
March 31	Apr 15	Apr 21	Apr 30	May 5	May 17	Jun 1	Jun 29